

**TYRONE TOWNSHIP ZONING BOARD OF APPEALS MEETING
APPROVED MINUTES – PAGE 1 – NOVEMBER 8, 2010**

CALL TO ORDER

Chairman Gregory Carnes called the Zoning Board of Appeals Meeting to order on November 8, 2010, at 7:55 p.m., at the Tyrone Township Hall.

ROLL CALL

Present: Commissioners Gregory Carnes, David Cypher, Dave Wardin, Mark Meisel, and Don Bunka

Guests: David and Mary Kuzner, Richard Graham

MINUTES OF OCTOBER 4, 2010, ZONING BOARD OF APPEALS MEETING

Meisel moved that the minutes of the October 4, 2010, Zoning Board of Appeals Meeting be approved as presented. (Cypher seconded). The motion carried.

READING OF THE PUBLIC NOTICE

The Zoning Board of Appeals Recording Secretary read aloud the public notice for tonight's meeting, which was published in the October 24, edition of the **TRI-COUNTY TIMES** and was posted at the Tyrone Township Hall on October 20, 2010, at 9:00 A.M.

VARIANCE REQUEST

- #1 David and Mary Kuzner, RE: Request for a Variance to Keep an Existing Accessory Structure on the Property Without a Primary Structure and a Variance to Build a Proposed New House Behind the Existing Accessory Structure, Should They Choose to Rebuild the House or Sell the Property, Located at 13085 Rohn Road, (TAX CODE # 4704-24-300-017)

David Kuzner requested a variance to keep an existing accessory structure on the property without a primary structure and a variance to build a proposed new house behind the existing accessory structure, should they choose to rebuild the house or sell the property, located at 13085 Rohn Road. He stated they have a piece of property that had a house on it and then they built a barn on it in compliance with the Zoning Ordinance. He continued they had a total loss house fire so they will need to rebuild the home. He stated they are in the process of tearing down what is left of the original home. He added that the building envelope may be unusable. He stated there is a pipeline easement right behind the house so they cannot back up the location of the proposed house. He continued they either have to move the location of the proposed home behind the existing barn or relocate the proposed home back further on the property; they are requesting a variance to relocate the proposed home behind the existing barn, or if they choose to move and sell the property they are requesting a variance to be allowed to keep the existing barn on the property without a primary structure.

COMMENTS AND QUESTIONS BY ZONING BOARD OF APPEALS MEMBERS

In response to Meisel's question, Mr. Kuzner answered that the pipeline easement is for the Embridge oil pipeline that is being worked on throughout the Township. In response to Bunka's question, Mr. Kuzner responded that the pipeline runs right behind the home and right behind the barn, so it runs on a diagonal. In response to Carnes' question, Mr. Kuzner answered it is 5 feet between the barn and the easement and there are 20 feet between the pipeline easement and the home. In response to Bunka's question,

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Mr. Kuzner answered the property is a 10 acre parcel that is about 300 feet wide at the road and about 1300 feet deep. He added it is a long narrow lot, so you cannot go sideways because you would be next to the barn and on the other side you would be too close to the property line, so you would have to go beyond the easement in order to do something different. In response to Bunka's question, Mr. Kuzner responded that the soil is very stable. In response to Cypher's question, Mr. Kuzner answered that he would like to have the option to rebuild behind the pipeline, because most of his property is behind the barn. He added the house and the barn are built on the front 200 feet of the almost 1300 foot deep parcel. At this time, Mr. Kuzner approached the Board to go over and explain the layout of the property as shown on the submitted drawing. Mr. Kuzner stated most of his property is behind the pipeline easement. In response to Cypher's question, Mr. Kuzner responded that the property is almost 300 feet wide at the road and almost double that at the back of the property. In response to Bunka's question, Mr. Kuzner answered that there are several building sites throughout the property that perked. He continued there really is not an unbuildable spot on the property except the elevation towards the woods where it slopes down severely towards the pond. In response to Carnes' question, Richard Graham, 7520 Denton Hill Road, Tax Code # 4704-24-300-016, answered he lives around the corner and that he built his home in 1963 before the pipeline was started in 1968. Mr. Kuzner stated he either builds in the spoils of the home being torn out or behind the existing barn. In response to Carnes' question, Mr. Kuzner responded that they are not planning on using the existing envelope, not that the existing foundation is not any good, but there is a carbon smell that they probably will not be able to get rid of. He continued it is more expensive to save the existing foundation: \$14,000 to tear it all out and \$24,000 to save it. He added you would have to clean it and worry about the crack in the drain tile and the mold. In response to Cypher's question regarding the minimum lot width being 200 feet and the possibility of this lot being split or keyholing it to where someone could put in a 66 foot easement to the back, Meisel answered that as much as that is technically possible, he does not see any legitimate reason why someone would do that. He continued it is not an all-sports body of water and the water is not navigable. keyholing is typically done to gain riparian rights to a body of water. Mr. Kuzner responded that the water is 5 feet deep at the center in the winter and not really a body of water, so to speak. Meisel stated that Cypher is technically right in that this is by rule a keyholing issue and someone could divide the property to get an additional divided interest to riparian rights even though there is not much you could do with those riparian rights. Cypher stated that for a parcel of property of this size and the location of it, he personally does not see a problem with having an accessory structure in the front yard. He continued he would like to confirm that the Board could grant this and then down the road the property is not divided into possibly 4 parcels with an accessory structure sitting out there. Meisel stated there are a couple of practical difficulties. He continued that if somebody splits this parcel, one property is going to have to be developed and the other property will have an existing accessory structure on it and its going to come back to the same issue because it does not have a primary residence on it. Meisel stated that to him, what they are discussing, there is an extraordinary circumstance. Cypher agreed. Meisel stated he does not see this as a relative issue. He continued that based on the location of the accessory structure, if you were to split this parcel, the way he thinks somebody would split it, he does not know where you would be able to build except for in the front yard, in other words, towards Rohn Road, and for the accessory structure

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given that pipeline easement, the necessary space needed for a septic tank and system, a well, and things of that nature, if the property did split someone would be under the same terms and conditions the Kuzner's are now, which is that the primary structure technically is not there. Meisel stated the question would be the same, whether to remove the accessory structure or to build a primary structure. Meisel continued that in this particular case they are trying to figure out what to do with the plans for a prior existing primary residence. Cypher stated if the Board were to grant the variance request to allow the accessory structure to be located in the front yard and if the parcel were ever split and the existing accessory structure were to be standing on its own, it would have to be torn down and/or a primary structure would need to be built on the lot within a certain amount of time. In response to Wardin's question, Cypher responded that a 66 foot wide easement to the back would be needed. Wardin stated if this were the case there would be two front yards. Meisel stated he does not know that there needs to be a 66 foot wide easement anywhere. Cypher responded a shared driveway requires 66 feet. Meisel stated that if this parcel were split you would not necessarily need a shared driveway. Cypher responded that when he split his property he had to have a 66 foot easement. Carnes stated that there are two variance requests before the Board. Meisel responded that one variance request is irrelevant until the applicants make a decision because the remnants of the primary structure still exists, a reasonable period of time has not expired for the applicant to reestablish building plans and the accessory structure still exists in the rear yard. He added that the accessory structure is far enough back that even if someone were to rebuild behind that so that it became in the front yard, based on the size of the lot, the topography, the surrounding residences and the distance from the road, he would not have an issue with it either. Meisel stated with the extraordinary circumstance upon which it existed originally he wouldn't say now you have to tear it down. Carnes stated the real issue is the variance to allow the applicant to keep the existing accessory structure on the property without a primary structure. Meisel stated it is only logical to say the applicants incurred a horrific loss less than a year ago, there are some insurance investigation issues associated with the cause, he does not think a reasonable period of time has existed for the applicants to resolve all of these issues and reestablish building plans and get the necessary closures and the beginnings of doing that, and then to actually construct. Meisel continued that to him there is nothing in the Zoning Ordinance that covers loss due to an act of God. He added that this happened in the winter and he personally does not think enough time has been allowed for the applicants to move on. Meisel stated that demanding the applicants to tear down the existing accessory structure is a bit harsh. Cypher stated the variance request states the applicant will either rebuild the house or sell the property, selling the property was not on the request. Meisel responded the Board would need to establish what a reasonable period of time from this day forward for the applicants to make a decision and they would then have to take some sort of action. He continued the Board should give the applicants a reasonable amount of time to come up with a reconstruction plan and once they have done that they would have a construction time frame and all this would be null and void or waived. He added once you reach this point of no return and the applicants say "I don't know what we are doing yet" or "We are going to sell the property", then you are faced with what to do with the existing accessory structure. Meisel continued if the applicants stay then the answer is pretty clear, but if they leave he is not sure how he feels about that yet. He added that tearing down the existing accessory structure does not do anybody any good. Cypher stated that he feels the same way and

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that his concern is if the property sold, with no restrictions on it, whoever bought it could start using it as a storage unit, and the Board's hands would be tied. Carnes stated this is what concerns him too. Meisel responded that the Board could say if the applicants sell the property, the new owner would have the requisite of 90 to 180 days to develop the property otherwise they would have to come in for a variance to keep the existing accessory structure. Cypher stated he personally does not have a problem with allowing 6 months to a year. Mr. Kuzner responded that land is not selling well and that is why they are asking for two variances. He continued they want a home without an attached garage. Mr. Kuzner stated that they may decide to build again on the property and that it is hard to replace what they have. He added he has no intention of splitting the property, but if he decides to sell the property he does not know how long it will take. Cypher stated the guy that buys it could come to the Township the next day and split it into 4 parcels. Mr. Kuzner responded that he does not have a problem if the Board restricts that, he just wants to be able to sell the property and allow themselves or the new owner the ability to build a home behind the existing barn. Cypher stated the Board could put a time frame on it to where the clock starts ticking whenever the applicants sell the property, even up to a year, then house plans would have to be brought in and the construction process would need to be started and/or the owner would have to come back to the Board for a variance. In response to Wardin's question, Mr. Kuzner answered that the property is zoned FR. Mr. Kuzner added that it would be hard to split the property into more than two parcels. Wardin stated if you do a shared driveway you would have to have a 66 foot easement, and the lot width is 300.02 feet, minus the 66 feet for an easement and that leaves 234 feet in width. Mr. Kuzner stated the property could possibly be split into two 5 acre parcels and the property is very steep by the woods. Cypher stated he said four parcels because you can have a maximum of four parcels off a shared driveway. Mr. Kuzner responded it would be hard to split the property into more than two parcels because you would not be able to go to the east of the barn with the easement, you would have to come up the center of the property. In response to Bunka's question, Mr. Kuzner answered that you would be able to go to the far west side of the property, but you would have to come across the front first and this would make a strange driveway. Wardin stated he does not think you would be able to go all the way to the west because you would not have site distance. Bunka added that on the far west side of the property there is a drop of about 35 feet and you cannot put a driveway on that drop. Mr. Kuzner stated when you take into account the woods and the topography, there is only one building envelope in the woods and that would be a road on a slope as well. Mr. Kuzner added that you would destroy the value of the woods by putting a road through them, so he feels the property could be split into only two 5 acre parcels. Carnes stated that there are two variance requests before the Board and they should be acted upon separately. He continued that the first request should be structured with a time frame on it. Mr. Kuzner asked the Board if it is strange that they are before the Zoning Board of Appeals and that the Zoning Administrator, George Van Hecke, directed them to come before this Board to get a variance. Bunka answered that the applicants should be here. Meisel stated that the applicants can build a primary residence anywhere on their property as long as it meets the setback requirements and minimum square footage of the Zoning Ordinance. He continued that building behind a primary residence behind the existing accessory structure needs a variance. Carnes stated that the Zoning Ordinance does not address keeping an existing accessory structure on the property without a primary structure when the primary structure burns down. Meisel

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responded that this is part of the purpose of this body and there is a reasonable predicament and you do not know if somebody will rebuild or not, who will own it or if will go into disarray, so at some point in time you almost have to draw a line in the sand and say decision time is here. He added it does not really matter if it is now or 6 months from now. Mr. Kuzner stated they want to tear down the remainder of the primary house, foundation and all and that if they decide to rebuild they will need until the spring to dig a new hole. Meisel stated spring would be the earliest with a maximum of three years to give a reasonable amount of time to rebuild.

PUBLIC COMMENT

Richard Graham, 7520 Denton Hill Road, stated support for the two variances being requested. The Board reviewed written correspondence from Dale and Kimberly Williams stating support for the two variances being requested.

MOTION

Meisel moved to grant the variance request of David and Mary Kuzner, located at 13085 Rohn Road, Tax Code 4704-24-300-017, to keep an existing accessory structure on the property without a primary structure for the following findings of fact: Unreasonable Burden: The prior existing residence was destroyed by fire less than one year ago. Investigations and insurance settlement time has arguably not yielded sufficient time for the owners to arrive at a decision regarding rebuilding. Additional time is needed to finalize plans. Until a formal rebuilding plan is established the location of the accessory building cannot be determined and the need for a variance is therefore unknown. Strict compliance to the Zoning Ordinance unreasonably prejudices the appellant while providing no measurable benefit to the immediate neighbors. Substantial Justice: The property is located in the FR zoning district. The existing accessory structure is located far from the road and was previously located in the rear yard based on the former location of the primary residence and exists alone solely as a result of the residence fire. Until such time as a formal rebuilding plan is established within a reasonable period of time any requirement to remove the existing accessory structure is unreasonable. Minimum Variance Required: The minimum variance to maintain the accessory structure alone is being granted. Extraordinary Circumstances: The prior residence was destroyed by fire less than a year ago. A reasonable period of time is needed to allow for a rebuilding plan and actual construction to take place. A pipe line easement also limits the potential locations for the primary residence. Health and Safety: Granting this variance does not adversely impact public safety or create a public nuisance. The granting of this variance is for a period not to exceed 12 months or until construction of the primary residence is completed if construction is started within 12 months. [Ref. Tyrone Township Zoning Ordinance No. 36 – Sections 21.02B (Accessory Structure Provisions – Number and Yard Locations) and 21.02F (Structures Constructed Prior to Principal Structures)]. (Bunka seconded.) Roll call vote: Bunka, yes; Wardin, yes; Carnes, yes; Cypher, yes; Meisel, yes. The motion carried.

MOTION

Bunka moved to grant the variance request of David and Mary Kuzner, located at 13085 Rohn Road, (Tax Code # 4704-24-300-017), for a variance to build a proposed new house behind the existing accessory structure for the following findings of fact:

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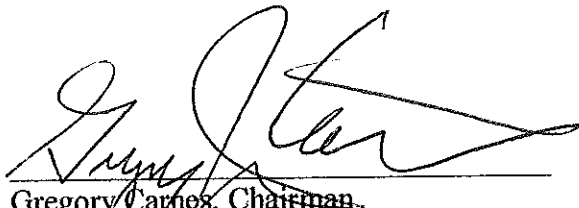
Unreasonable Burden: The prior existing residence was destroyed by fire less than one year ago. The accessory structure is existing and existed with a conforming primary residence. The accessory structure location is far from Rohn Road and its appearance is of good quality. Strict compliance to the Zoning Ordinance unreasonably prejudices the appellant while providing no measurable benefit to the immediate neighbors. Substantial Justice: The property is located in the FR zoning district. The existing accessory structure is located far from the road and was previously located in the rear yard based on the former location of the primary residence and exists alone solely as a result of the residence fire. Forcing removal of the existing accessory structure if a home is built behind it is unreasonable given its prior existence and the existing pipeline easement. Minimum Variance Required: The minimum variance to retain the existing accessory structure is being granted. Extraordinary Circumstances: The prior residence was destroyed by fire less than a year ago. A pipe line easement also limits the potential locations for the new primary residence. Forcing removal of the existing accessory structure if a home is rebuilt behind it is unreasonable given its prior existence and is location resulting from rebuilding a residence lost to fire. Health and Safety: Granting this variance does not adversely impact public safety or create a public nuisance. [Ref. Tyrone Township Zoning Ordinance No. 36 – Sections 21.02B (Accessory Structure Provisions – Number and Yard Locations) and 21.02F (Structures Constructed Prior to Principal Structures)]. (Cypher seconded.) Roll call vote: Wardin, yes; Meisel, yes; Bunka, yes; Carnes, yes; Cypher, yes. The motion carried.

MISCELLANEOUS BUSINESS

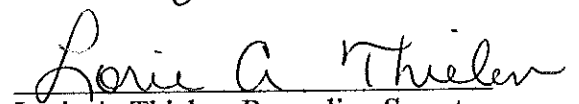
The next regular meeting of the Tyrone Township Zoning Board of Appeals is scheduled for Monday, December 6, 2010 at 7:30 p.m.

ADJOURNMENT

The meeting ended at 9:22 p.m.



Gregory Carnes, Chairman
Tyrone Township Zoning Board of Appeals



Lorie A. Thielen, Recording Secretary
Tyrone Township Zoning Board of Appeals

c File

Tyrone Township Clerk
Tyrone Township Zoning Administrator
Tyrone Township Zoning Board of Appeals Commissioners