

**TYRONE TOWNSHIP ZONING BOARD OF APPEALS MEETING
APPROVED MINUTES – PAGE 1 – APRIL 4, 2011**

CALL TO ORDER

Chairman Gregory Carnes called the Zoning Board of Appeals Meeting to order on April 4, 2011, at 7:51 p.m., at the Tyrone Township Hall.

ROLL CALL

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

Guests: JoAnn & Paul Phelps, Rob Richmond, Jason Baroni, Carroll Strange, and Jon Strange

MINUTES OF NOVEMBER 8, 2010, ZONING BOARD OF APPEALS MEETING

Cypher moved that the minutes of the November 8, 2010, Zoning Board of Appeals Meeting be approved as presented. (Wardin 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 March 20, edition of the **TRI-COUNTY TIMES** and was posted at the Tyrone Township Hall on March 16, 2011, at 9:00 A.M.

Commissioner Meisel recused himself from the first variance request, by Robert Richmond, because he has a business relationship with the applicant and will consult within a reasonable manor at the discretion of the chairman, but otherwise will abstain from voting on the appeal and abstain from the general discussion.

VARIANCE REQUEST

- #1 Robert Richmond, RE: Request for a 175 Square Foot Size Variance in Order to Keep the Existing Newly Built Detached Accessory Structure Behind the Existing House Located at 9633 Longmeadow Street, (TAX CODE # 4704-04-102-006)

Robert Richmond requested a 175 square foot size variance in order to keep the existing newly built detached accessory structure behind the existing house. He continued that 2 years ago construction began for a 20 by 40-foot structure and then he decided to make it wider and shorter. He continued that a friend did the excavating and he originally gave him the 20 by 40-foot structure plan and unfortunately when he told his friend about the plan to make the structure wider and shorter, his friend did not hear him say to make it shorter. He stated that his friend dug on the inside of the line on one side of the structure and on the outside of the other side of the then proposed structure, so the structure ended up being a 25 by 39-foot structure.

COMMENTS AND QUESTIONS BY ZONING BOARD OF APPEALS MEMBERS

In response to Cypher's question, Mr. Richmond answered that the structure has a gambrel style roof instead of an a-frame style roof. He continued it was a last minute change due to an association meeting, where they voted for a gambrel style roof and not the a-frame style roof. In response to Cypher's question, Mr. Richmond responded it was originally scheduled for a 6:12 pitch roof. Cypher questioned the overall height of the structure and stated that according to Zoning Ordinance Section 20.01 (Footnote to

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Schedule of Regulations), there is a 15 foot maximum height for the structure. Mr. Richmond answered he did not know about the 15 foot height requirement. He added the overall height of the structure from floor to peak is approximately 17 feet. In response to Cypher's question, Mr. Richmond answered that the structure has 9 foot sidewalls. Cypher stated the submitted drawing shows 10 foot sidewalls. Mr. Richmond stated the sidewalls were changed from 10 foot sidewalls to 9 foot sidewalls due to association regulations. In response to Cypher's question, Mr. Richmond answered the overall structure height is about 17 feet and that on the top of the gambrel there is only 1 foot between the peak and the lower truss. In response to Cypher's question, Mr. Richmond answered that he did get a building permit from Livingston County and a land use permit from the Township for the structure. In response to Bunka's question, Mr. Richmond stated he had the building permit and then showed it to the Board for review. In response to Carnes' question, Mr. Richmond answered that the sidewalls are 9 feet and the overall structure height is approximately 17 feet. He continued the structure is shorter than the existing garage, which has an 8 pitch roof and an 8 foot garage door. In response to Cypher's question, Mr. Richmond answered that he has not measured the head height on the second floor but figured it was approximately 6 to 7 feet. Bunka stated that on the drawing provided it shows a standard garage picture and a hand drawing. In response to Bunka's question, Mr. Richmond answered that he wrote down 10 foot walls and then after reading the association book found out that he could only have 9 foot walls, and the 10 foot walls on the drawing should have been changed. In response to Cypher's question, Mr. Richmond answered that the submitted drawing was the old drawing and he decided to make the structure wider for storage reasons. Cypher stated it is very, very difficult for the Board to review documents that are not accurate. He continued the submitted documents need to be accurate because they become part of the file for the overall property. Cypher added the Board needs to have an accurate height of the structure per the Zoning Ordinance, not what the association allows. Cypher stated the Zoning Ordinance allows a height of 15 feet and if the structure exceeds 15 feet it would need to be requested in a variance. Mr. Richmond responded that Zoning Administrator George Van Hecke came out to see the structure and did not have a problem with the structure being 17 feet to the peak. Mr. Richmond stated that he thought Van Hecke had the new drawings that he submitted and not the old ones. Cypher stated the building permit is incorrect because it shows 800 square feet. Carnes questioned if the building permit is incorrect or if the structure was not built to the permit requested by the applicant. Bunka stated that the applicant needs to go over the roofline dimensions again. Cypher stated that without having exact measurements, we do not know what the pitch is, what the size is for the gambrel roof, and the Board would only be guessing what the overall peak height is. He continued that the Zoning Ordinance height of 15 feet is not to the peak but halfway between the overhang and the peak, and nobody knows what this structure height is. Cypher stated if the structure has 6 foot head height on the second floor, 9 foot sidewalls, 1 foot for the floor joist, and 3 to 4 feet to the peak, the structure would have a height of 19 to 20 feet to the actual peak of the roof. Bunka stated he agreed with Cypher. Cypher stated if the structure is 19 to 20 feet, it is too high for the Ordinance and the request would have to be revised and re-advertised. Bunka stated that as a Board member there is insufficient documentation in which to make a decision. At this time, Cypher went through the measurements again with the applicant and came up with an overall height again of 19 to 20 feet. In response to Cypher's question, Mr. Richmond responded

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that there is not a height restriction by the association. Bunka stated that the Township Zoning Ordinance would supersede any association regulations. Carnes stated that this is a really difficult situation. Carnes stated that the request before the Board is only for a 175 square foot size variance and that other variances might be needed. He continued that if other variances are needed the applicant would have to go thru the entire process again, a public hearing, re-publishing the notice in the paper and re-notifying the neighbors. Cypher stated that the submitted documents do not match the existing structure or show the structure height. Cypher stated that accurate documentation is needed for the Board to make a decision and that the Board is basically approving the submitted documents to be filed with the parcel of property. Cypher added that the Board needs to base its decision on the submitted documentation and not on what someone says. Cypher questioned what the options are. He continued he knows that the Board has had to do this in the past, as far as an all out denial, and then to do a reapplication and the costs that go with it, but would a motion to table the appeal for additional information be consideration by the Board. Meisel stated that procedurally there is a real challenge here because if the structure is larger height wise and requires a variance, the Board is literally forced to deny this request, so that it can be properly re-noticed and submitted. He continued that the Board cannot approve the structure without approving all variances that are required. He added that maybe if there is enough time to notice the other variance and relate it to this variance request you could make the one variance approval conditional upon the other. Meisel stated that at the same time if the applicant does not have a height issue then this arguably should be tabled to determine that, so maybe an option right now is to table this pending receipt of height information and if the height information is an issue then procedurally there needs to be a discussion on how to handle that. Meisel continued that if height is not an issue, this appeal can be reheard. Meisel stated that if height is an issue does the Board want to tackle two independent variances, one conditional upon the other or does the Board want this one to be denied and then reapplied, so that both conditions are covered in a single variance request. Cypher stated that the 175 foot size variance really has not been addressed. Bunka stated that there is not enough information here to grant this variance request. Cypher stated that the drawing in the application does not match the structure that is built. Carnes stated that the Board should vote on the size variance presented before the Board. Cypher stated that the information in the application is incorrect and the Board needs additional information in order to make a decision. In response to Bunka's question, Carnes answered that the applicant can withdraw his appeal and resubmit it when he gets all the necessary information together. Cypher stated there are advertising and other costs that the applicant would to resubmit his appeal. Meisel stated that Cypher made a very good point. He continued that if he does not withdraw so he can reapply; unless the variance request is substantially altered he must wait a year before he can reapply. Meisel stated that the applicant's best option would be for the Board to withdraw his appeal, so he can resubmit the application with the necessary documentation. Carnes stated that we have tabled other requests for lack of information, but not necessarily incorrect information. Cypher stated that the applicant needs to provide an accurate site plan showing the correct length, width, and height of the overall structure.

PUBLIC COMMENT

None. No written correspondence was received prior to tonight's meeting.

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MOTION

Cypher moved that the request of Robert Richmond for a 175 square foot size variance in order to keep the existing newly built detached accessory structure behind the existing house located at 9633 Longmeadow Street, (TAX CODE # 4704-04-102-006), be tabled until the next appeal comes before the Board, due to the need for additional information, specifically the dimensions and location of the structure including its height, and a correct site plan. The applicant is responsible for any additional costs associated with re-advertising his request and should the applicant want his appeal heard before the next appeal comes before the Board, he has the option of paying to have a special meeting. [Ref. Tyrone Township Zoning Ordinance No. 36 – Section 20.02 O (Footnote to Schedule of Regulations)]. (Bunka seconded.) The motion carried by voice vote. Meisel abstained from the vote.

VARIANCE REQUEST

- #2 Paul D. and JoAnne K. Phelps, RE: Request for a 400 Square Foot Size Variance in Order to Build a Proposed 30 by 40-Foot Detached Accessory Structure Behind the Existing House, Located at 9009 Apple Orchard Drive, (TAX CODE # 4704-05-101-001)

Paul Phelps requested a 400 square foot size variance in order to build a proposed 30 by 40-foot detached accessory structure behind the existing house. He stated he would like an enclosed building for additional storage space for several vehicles and a trailer. He stated Linden Road is right there and everything is out in the open. He continued that he originally planned to locate the proposed structure behind the house towards the west property line, but the existing septic field/field reserve area and a row of trees are located there. He stated that the power, gas and cable lines come in along the west side of existing garage. He continued he would like to put everything in an enclosed building and have a small workshop for himself too.

COMMENTS AND QUESTIONS BY ZONING BOARD OF APPEALS MEMBERS

In response to Bunka's question, Mr. Phelps answered that he has not applied for a land use permit or a building permit yet because he was following proper procedures. In response to Cypher's question, Mr. Phelps responded that he has plans of accessing the proposed structure off of Linden Road. He continued that he already has a driveway permit from the Livingston County Road Commission. He added that the proposed driveway would come in 110 feet from the back property line. He stated that he did not want to drive over the front lawn and there was not enough room to go around the septic field/ field reserve area. He continued that he has not put the proposed driveway in yet, but that he has the specifications for doing it. In response to Carnes' question, Meisel answered that the Planning Commission has not yet made any decisions on providing some additional means or flexibility on increasing the 800 square foot maximum size for an accessory structure requirement of the Zoning Ordinance. Meisel continued that it is the position of the Planning Commission that the Zoning Board of Appeals is doing what is necessary, at this time, to accommodate the requests for larger accessory structures based on the surroundings, etcetera. In response to Cypher's question, Meisel responded that the property to the south of Apple Orchard Drive is church property and it is zoned

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RE. Cypher stated that RE zoned property is not restricted to a maximum square foot size for an accessory structure. Meisel stated the applicant is trying to do the right thing by reducing the clutter and put it inside, keep the visual negative aspects away, the potential for crime, etcetera and there really isn't a provision in the Zoning Ordinance to accommodate that, unless the Board can determine that this necessitates or creates some unreasonable burden. Cypher stated that the request does not meet all 5 of the criteria needed in which to grant a variance request. He continued that this is a nice subdivision with nice lots, but wants to know if the Board is prepared to have twenty 1200 square foot accessory structures on Apple Orchard Drive, because the Zoning Ordinance says 800 square foot maximum and the Board grants one that is 1200 square feet in size. He added that there would be nothing to stop everyone on Apple Orchard Drive from coming in to get a 1200 square foot accessory structure. Meisel stated that he does not have a problem personally granting one if unreasonable burden and extraordinary circumstance can be met. He continued that each variance request by neighbors would have to comply with all 5 criteria individually on their own in order to be granted a variance. Meisel continued that an argument for unreasonable burden could be the applicant needing to keep his yard clean and keep his things inside. Meisel stated that he could not come up with an argument for extraordinary circumstances and is not sure what to do in this case. Cypher stated that for him unreasonable burden could be the property location on Linden Road, which is almost considered a primary road in the township. Meisel stated that north of the property it is zoned agricultural and also across the road. Carnes stated the applicant has over an acre of land. Meisel questioned if square footage was an issue, relating to the requirement that the proposed structure does not exceed the allowed percentage of the primary structures first floor area. Carnes stated the proposed structure is under half the first floor of the primary structure area. Bunka stated that the Board would be setting precedent by granting this variance request. Meisel responded that the applicant would be able to store all of his belongings instead of leaving them out in the open. After reviewing an aerial view of the general area around the applicant's property, Carnes stated this would be the largest structure in the neighborhood. Carnes added that the Zoning Board has tried to get the Planning Commission to review the 800 maximum square foot size for an accessory structure and at this time no changes have been made. Mr. Phelps stated there is a park behind his property, a row of 20 to 25 foot blue spruce trees and Apple Orchard Park will never be built due to open space. In response to Meisel's question, Mr. Phelps answered that he would like to start building his structure as soon as possible because he has already waited 6 months to build. In response to Meisel's question as to whether Mr. Phelps could wait an additional couple months, to see if the Board can get some more discussion with the Planning Commission, Mr. Phelps reluctantly answered yes. Meisel stated he cannot guarantee anything, but expressed his frustration because this is a situation where it is at least right for consideration, but the Board cannot grant the request because they cannot find an extraordinary circumstance. Cypher stated the request does not meet substantial justice either. Meisel responded that the substantial justice would be the neighbors would not be burdened with the unsightliness because the belongings would be stored in the proposed structure. Cypher stated he does not feel substantial justice could be met by saying all of the stuff would be stored out of sight. He continued there is nothing in the Zoning Ordinance that says everything a person owns cannot be in his back yard. Meisel responded that he did not mean to imply items could not be stored in the rear yard, but that the applicant has no objections from his neighbors and they would benefit

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by the applicant's items being stored and not left out, it would keep the area clean. He continued being off of Linden Road, every time someone drives by and sees something they like, it would be ripe for the picking, which encourages theft. Bunka stated he thinks this needs to be sent back to the Township to be reworded, because it specifically stated "shall not exceed 800 square feet". Meisel responded that this is why the Zoning Board members need to attend a Planning Commission meeting and help with the argument to increase the maximum size for an accessory structure in LK-1, R1, or R2 zoning.

PUBLIC COMMENT

None. No written correspondence was received prior to tonight's meeting.

MOTION

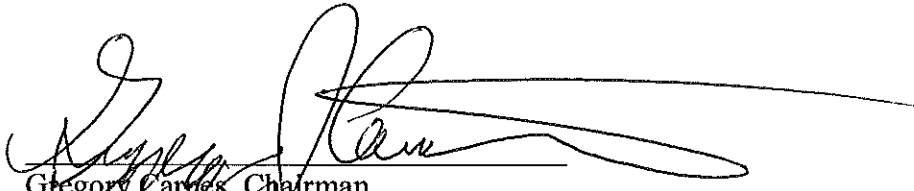
Meisel moved that the request by Paul D. and JoAnne K. Phelps for a 400 square foot size variance in order to build a proposed 30 by 40-foot detached accessory structure behind the existing house located at 9009 Apple Orchard Drive, (TAX CODE # 4704-05-101-001), be tabled until the next appeal comes before the Board, to give the Zoning Board of Appeals and the Planning Commission a chance to discuss if there is any possibility to relax the Zoning Ordinance requirements for these types of situations, [Ref. Tyrone Township Zoning Ordinance No. 36 – Section 20.02 O (Footnote to Schedule of Regulations)]. (Wardin seconded.) The motion carried by voice vote.

MISCELLANEOUS BUSINESS

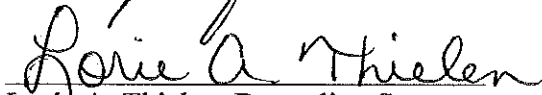
The next regular meeting of the Tyrone Township Zoning Board of Appeals is scheduled for Monday, May 9, 2011 at 7:30 p.m.

ADJOURNMENT

The meeting ended at 9:29 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