

**TYRONE TOWNSHIP ZONING BOARD OF APPEALS MEETING
APPROVED MINUTES – PAGE 1 – MARCH 4, 2013**

CALL TO ORDER

Chairman Gregory Carnes called the Zoning Board of Appeals Meeting to order on March 4, 2013, at 7:30 p.m., at the Tyrone Township Hall.

ROLL CALL

Present: Commissioners Gregory Carnes, David Cypher, Mark Meisel, Anne Linder, and Jeffrey Young

Guests: Greg and Janet Holliday, Jeff Rizzo, Dan and Terry Lee, Randy Deprez, And Ed Kaczor

MINUTES OF AUGUST 13, 2012, ZONING BOARD OF APPEALS MEETING

Cypher moved that the minutes of the August 13, 2012, Zoning Board of Appeals Meeting be approved as presented. (Linder 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 February 17, 2013, edition of the **TRI-COUNTY TIMES** and was posted at the Tyrone Township Hall on February 14, 2013, at 9:00 A.M.

VARIANCE REQUEST

- #1 Greg and Janet Holliday, RE: Request for a 10-Foot North Side Yard Setback Variance and a 10-Foot South Side Yard Setback Variance In Order to Build a New House and Attached Garage on Vacant Property Located on Ledgewood Drive, (TAX CODE # 4704-30-202-029), Currently Owned by Denis and Susan White. The Sale of This Property is Contingent Upon the Zoning Board Granting the Applicant the Two Variances They are Requesting.

Jeff Rizzo, of Fenn and Associates, Inc., representing Greg and Janet Holliday, requested a 10-foot north side yard setback variance and a 10-foot south side yard setback variance in order to build a new house and attached garage on vacant property located on Ledgewood Drive. He stated that the lot poses many challenges. He continued that one variance is needed due to the almost 30 foot vertical grade change from the road to the lake. He added that in order to accommodate the driveway up to the house, some length is needed for the house. He continued that they can create a home that is harmonious with the existing houses on the lake. He stated that Mrs. Holliday suffers from fibromyalgia, making it necessary for the master bedroom to be located on the first floor. He added that the two variances would allow them to create a decent size house that will be an asset to the community. Randy Duprez, of Duprez Custom Homes, stated that the site is extremely challenged when it comes to design ability of the home because the house on the right is closer to the road and the house on the left is closer to the lake. He continued that keeping in the sight line forces them to have to build a wider house. He stated they are disadvantaged with the driveway pitch, the size of the septic field and keeping with the sight line. He continued that if they built within the setbacks they could only built a tiny box type house and they would have to go vertical with it. He added that this would not be harmonious with the surrounding area. He stated that even if they are granted the

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variances, they would still be challenged to build a home, fit the septic field and stay behind the site line of the two neighbors. Jeff Rizzo stated it will be hard to accommodate the septic field because of the drainage culvert on the north side and the septic field needs to be 25 feet from the culvert. Mr. Holliday stated he contacted the Lake Shannon Architectural Committee. He continued that the LSAC looked at their plot plan and they had no issues with the variance request. He stated that he talked to Vanessa Bader, Tyrone Township Zoning Administrator, to make sure they would not be out of conformity with the rest of the homes in the area. He continued that looking at 49 lots in the plat, the largest lot width is 215 feet and the smallest lot width is 80 feet. He stated their lot is 84 feet wide. He stated that the median for the lots in the plat is 91.34 and the average is 111. He continued that the setbacks requested are not out of the ordinary with what already exists. He continued that the minimum setback for a number of homes is 6 feet and the maximum setback is 22 feet (out of a sampling of 12 homes). Mr. Holliday submitted a chart of lot widths and a graph of side yard setbacks to support his findings.

COMMENTS AND QUESTIONS BY ZONING BOARD OF APPEALS MEMBERS

Cypher stated it seems that the Board is being asked to give a broad stroke for a flat 10 feet here and a flat 10 feet there and not knowing what is being built there. He continued that the Board needs to review a drawing, know the height of the proposed structure, know the exact side yard setbacks of the proposed structure, know if it is a 1-story or 2-story structure, know if the proposed structure is within the sight lines, and know the distance of the proposed structure to the structures on both sides. He stated that looking at the aerial, to the north is a vacant lot and there are concerns with that. Cypher stated he has a concern with the broad stroke of a 10 foot south and a 10 foot north side yard setback and not knowing what is really going on with this property. He continued that the Board cannot give out a 10 foot variance when they might only need 8 feet or just 6 feet. Mr. Duprez responded that it would be extremely costly (10-20 thousand) for the applicant to have plans drawn up to submit to the Board, and possibly have their dreams shot down, which would be an emotional rollercoaster. He continued that with his 30 plus years' experience and with the constraints given on this lot, he cannot tell the applicant to go forward and be able to get them what they want. He stated there is only a 45 foot wide building envelope on this lot and with a 24-foot wide garage that leaves only 21 feet for an entranceway and to be able to make the house not look like a box. He continued that as they get wider with the house, the driveway pitch would be less. Mr. Duprez stated they could turn the house sideways and go back toward the lake, but it would impede the sight line of the neighbor to the right. He added that the house to the right has plenty of room for emergency vehicle access and the lot to the left is vacant and has plenty of space for emergency vehicles should a house be built. Carnes stated that the Board must answer 5 criteria in order to grant a variance. He continued it is difficult to answer those 5 questions legitimately without more specific information. Meisel questioned if there are any deed restrictions to this property. Mr. Holliday answered that none have been disclosed to him by the owner of the property. In response to Meisel's question, Mr. Holliday answered that he plans to have a boat and store it in one of the bays of his proposed 3-car garage. Meisel stated that 10 foot side yard setbacks are challenging with neighbors. He continued this is an interesting situation with a drain easement on one side, not sure what the restrictions are on the easement and if there are restrictions, the only way to access the rear yard would be to the south side of the property. Meisel continued that

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LSAC supports the variance request. He stated there are no issues with sight lines. Mr. Holliday responded that there is a hardship with the septic field needing to be larger and it will force them to move the house a bit closer to the lake. Meisel stated that the septic situation is a bit of a frustration. Meisel cited Zoning Ordinance Number 36 Section 26.01.A.2 (Yard Variances. Yard requirement variances may be obtained through approval of the Zoning Board of Appeals. Side yard variances, however, shall not be required for any single lot of record in a platted subdivision at the effective date of adoption or amendment to this ordinance where the subdivision restrictions provide for lesser side yards than required by this ordinance and that such lesser side yards were allowed by the then existing Township Ordinances in effect at the time of the recording of said restrictions. Furthermore, side yards for such lots shall be not less than ten (10) feet unless a variance is obtained through approval of the Zoning Board of Appeals.). Meisel stated that a 10 foot variance would be possible and that 20 feet is the current Zoning Ordinance requirement. Cypher stated that the LSAC is looking at where the house is on the lot and the style of the home and not concerned as much with the setbacks of the property. Meisel added that the LSAC can be more restrictive than the Township. Meisel stated that he has a concern with not having a concept of what the house would look like. Cypher stated a concern for the height of the structure. Meisel continued that the Board must determine the unreasonable burden and extraordinary circumstance in order to grant a variance. Meisel added that there are dimensional constraints, there are topography constraints to a degree, there is an easement that affects the use of the property, and the septic field takes up a chunk of the property. Mr. Duprez repeated his earlier comments and emphasized the possible emotional hardship on the applicants. Meisel stated that the Board, in his opinion, is extremely lenient and does everything it can to help the applicant to be successful with variances they have requested. Meisel questioned if the 10 foot side yard setback variance is with the overhang or is that the building envelope minus the overhang. Mr. Duprez answered that he would design it to what the Board mandates. Linder stated that the property presents some extraordinary circumstances in terms of challenges and in terms of setbacks and there are no health or safety issues. She continued that the substantial justice is answered by the fact that most of the lots in the area have homes with similar setbacks. She stated the unreasonable burden comes primarily from the fact that the applicant needs a house with a larger first floor footprint due to medical conditions. Linder questioned if there is another wider lot on Lake Shannon that will allow the applicant to build without needing setback variances. Mr. Holliday responded that there are two other lots that they looked at: one they looked at is not currently for sale on Lake Shannon; the other one was roughly the same width, will not perk and is on another lake. Linder stated that the Board must answer the 5 criteria needed in which to grant a variance. Carnes stated that it is a struggle to find unreasonable burden that is not self-created. He continued that the request meets substantial justice, extraordinary circumstance, and health and safety issues. He added that minimum variance required has not been met because the Board does not have a drawing or proposed house to make a determination. Meisel responded that Lake Shannon setback standards, when established, were less than what is required today. He continued that the Board could say this would represent the minimum and the maximum variance that is allowable and required. He added that this is not self-created; it was created by the developer. Young stated that he visited the property and that the lot is very challenging. Cypher again stated he has a problem granting broad stroke 10 foot side yard setback variances. He continued that

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page 3 of the application requires the applicant submit a scaled drawing and the application has six criteria that should be included on the drawing when requesting a variance. He stated that the Board cannot make a decision based on the limited information provided. Cypher stated that this is a restricted lot and the 5 lots to the north of this lot are narrower than this lot, 80 feet wide, and people are building on those lots. He continued that in his opinion, the Board does not have all the documents needed for review or to make a decision on a variance. Zoning Board of Appeals Recording Secretary, Lorie Thielen, stated that the applicant was to bring in a drawing to tonight's meeting. Mr. Holliday replied that he intended to, but it would only have been a concept drawing of something they may or may not build. Cypher stated a conception drawing would be great. He added that side landscaping has not been addressed. Cypher stated that a well truck needs 10 feet minimum for access. Mr. Holliday responded that the house plans he looked at were wider, in excess of 65 feet wide, than what they could even ask for and they were concerned they would only be showing thoughts and ideas of what they want. Mr. Duprez states that they could have gone to an architect to get plans and then possibly build something different. He again emphasized that emotional rollercoaster the applicant could go through by submitting plans that might get rejected and then having to settle on less desirable plans. Mr. Duprez stated they would build the proposed house within the Zoning Ordinance height requirement. He continued they are only seeking a north 10 foot side yard setback variance and a south 10 foot side yard setback variance. Cypher stated the Board could be setting precedent here. He continued the vacant lot to the north is 78 feet wide and how much of a variance should be given to them and should it be more because it is narrower? He stated that both these lots are buildable lots. Mr. Rizzo asked if the Board could grant them 8-foot side yard setbacks. Cypher stated having a house plan would make this a whole lot easier. Linder suggested a conditional variance; agreeing on a certain amount of variance and having the applicant come back with their plans before final approval from the Board. Cypher stated his concern that the applicant does not own the property and that any variance granted would stay with the property, so if the applicant does not build or buy the property, the setback would remain with the property. Meisel stated that procedurally the Board would table the request for additional information. Meisel continued that there is a legal definition of the building envelope and we need to establish a reason why you cannot use that building envelope and present a proposal to alleviate whatever that constrain is. He stated the applicant needs to verify with the Livingston County Drain Commission that you can actually build up to the drain easement or see if they require a setback from the easement. Meisel stated that the applicant needs to prove this is the only alternative. He continued that this is clearly not the only available concept. Meisel stated there are 5 statutory requirements that need to be satisfied to grant a variance. He continued that one of those is unreasonable burden and the applicant needs to demonstrate that this is effectively the only concept that will work and it is not self-created. He added that this should be a unique situation that only applies to the applicant and you are seeking relief. Meisel stated that the property to the north is going to have just as many challenges, maybe more, because it is a narrower lot. He continued there are not any issues with the sight lines. Carnes stated that there are three letters to the Board all in opposition to the variances requested. He stated that both the property to the north and the property to the south are opposed to the variances being requested. Carnes stated that the Board does not typically create a nonconforming lot. He continued that the Board has granted variances for already existing nonconforming

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situations where the Board tries to make improvements by reducing nonconformities. Meisel characterized the setbacks in the area as varied, based on the lot size, which is inconsistent in the area, and the ones that have smaller side yard setbacks are the earlier builds. He continued that this is a combination of surveyor error and different size lots; there are six smaller parcels that are obviously going to have more difficulty with side yards; and if you go north or south, those parcels do not have issues. Cypher stated that the Board normally does not grant variances of this nature when it is self-created. Cypher continued that the Board needs really hard concrete facts to grant this variance. Meisel stated that by statute the Board cannot grant anything that is self-created. He continued that this is why a concept is needed to show why other concepts will not work. Mrs. Holliday stated she is getting the idea that the Board is not going to grant the variances unless the Board can see that they cannot give up 5 feet this way just because they want the kitchen to be wider. She continued that the Board would not grant anybody a variance unless there is no other way to twist or turn or lessen the rooms' period. Meisel stated he thinks the Board could justify this request if the Board could come up with unreasonable burden. Linder suggested the Board table this appeal to allow the applicant time to get a drawing for the Board to review. Cypher stated he would like to see a conceptual drawing showing: the building envelope, distances to the property line, measurements from the proposed structure to the houses on either side, and height of the structure. He continued it would be nice if they came up with a drawing and showed it to each neighbor for support, because right now the neighbors on each side are opposed.

PUBLIC COMMENT

Dan Lee stated opposition to the variances being requested, especially since a drawing has not been submitted to substantiate the need for variances and because they do not own the property yet. Ed Kaczor, 7300 Ledgewood Drive, stated the property was purchased with its size and should be built upon it accordingly within the requirements. Written correspondence in opposition of the variance request was received from: Kenneth Gnapini, vacant property owner to the north; Eric and Jennifer Gulbis, 7244 Ledgewood Drive (property owner to the south); and Mike and Monica Laido, 7249 Surfwood Drive.

MOTION

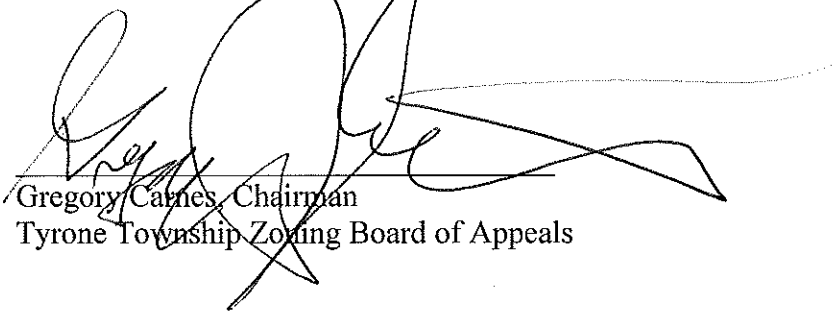
Linder moved to table the request of Greg and Janet Holliday for a 10-foot north side yard setback variance and a 10-foot south side yard setback variance in order to build a new house and attached garage on vacant property located on Ledgewood Drive, (TAX CODE # 4704-30-202-029), currently owned by Denis and Susan White, in order for the applicant to submit a dimensioned, conceptual drawing (showing the location of the house to the south, the location of the house two parcels to the north, the distance they are from the proposed house, as well as the height of the proposed structure) to the Board to offer some measure of Unreasonable Burden to further their request. (Young seconded.) The motion carried by voice vote.

The next regular meeting of the Tyrone Township Zoning Board of Appeals is scheduled for Monday, April 1, 2013 at 7:30 p.m.

ADJOURNMENT

The meeting ended at 9: 59 p.m.

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~~Gregory Carnes, Chairman
Tyrone Township Zoning Board of Appeals~~

Lorie A. Thielen

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