

Westfield Township Board of Zoning Appeals

Public Hearing- November 15, 2012 at 7:30 pm

Attendance

The meeting was called to order by Michael Schmidt, Chairman. A roll call was taken and those present: Patricia Kwas, Kathleen LeMar, Kevin Daugherty, Lee Evans, Michael Schmidt and Zoning Board of Appeals Secretary Sherry Clarkson. Member not in attendance: Wayne Moore. Guests in attendance: Matt Witmer, Zoning Inspector, Bryan and Lori Smith applicants.

Chairman Schmidt advised the applicant, Bryan G. Smith, residing at 7553 Greenwich Road-Seville, Ohio 44273 is seeking an Area Variance Request from Section 305LC of the zoning code to permit the following: 20 ft. Variance as per Article III, District Regulations, Section 305-LC-Local Commercial District, Item C-Minimum Dimensions for Lots and Yards, Side Yard Depth. This variance would allow the applicant to build a detached garage allowing for a carport/garage.

Mr. Smith was sworn in by the zoning Secretary "Please state your name and address for the record: Bryan G.Smith-7553 Greenwich Road, Seville, Ohio" "Do you affirm that the statements, evidence and/or testimony you are about to give this evening is the truth to the best of your ability?" Mr. Smith states "Yes."

Mr. Smith advised he was applying for a variance, he has a detached garage which has a drive going up to it and he would like to build a carport extension 24 x 30 to the existing garage, following the roof line. Originally a fence was up and this fence was torn down and he started to build without a permit and since then, he has found out that a permit must be given by the township. Mr. Smith's neighbor made him aware of the fact that he was too far over, and he contacted Gary Harris which Gary advised he needed to contact Matt Witmer, Zoning Inspector. He stopped the builder from building and is now going through the process. Mr. Smith advised he has a long driveway and the owner next to him has built far to the back, along with the fact that the area is built up with stone, the location of where to build would be a good area to build, as he would only need to build three walls to attach to existing structure. To the left of garage, between house and existing detached garage, is a water well, which is not an option. From the back of the house to the sunroom down at an angle is all the gutter run off area where water goes, this would entail more fill to be placed. Mr. Smith advised the area where he started to build is the perfect location. Since talking to Matt, he can't have another driveway off the road. He advised he would not want to take the driveway around the front of the house. The septic area is in the middle of the property and applicant advised he wants to avoid this area.

Chairman Schmidt advised that the board needs to give Mr. Smith three lashings with a wet noodle since he started the project without obtaining the necessary permits. Mr. Smith advised that he is also aware that if he is granted a variance, the fee will also be double due to starting without a permit (\$160.00). Mr. Smith advised the building is being built by an Amish builder, Dan Yoder out of Homerville. Mr. Smith advised that he does not want to keep equipment stored outside due to the fact that he has already had a theft of a tailgate from the driveway. He would like to have all equipment inside buildings and will landscape areas.

The zoning secretary advised no calls were received to date in conjunction as to not allowing the project to come to completion. The file was in the office for public view and Mr. Lee Evans advised someone did look at the file. Mr. Smith did talk to property owners and they advised they did not have a problem with the building. Mr. Schmidt advised the board looks at each situation on a case by case basis, and with McElroy's being next door with a long driveway, this does not look to pose a problem.

Mrs. Lori Smith was then sworn in by the zoning secretary. Mrs. Smith advised she does not like anything sitting outside in the yard. They had the tailgate stolen out of their yard. When the vehicle went to Bailey's, they advised that this was the third tailgate taken within a short time. With Bryan being a landscaper, it will be landscaped nice and won't be as large as the fenced in area which was taken down.

Kathleen LeMar asked if they would be denied "Do you have a contingency plan?" Mr. Smith advised he has a few options. Either build a fence again, which can be on property line, or he can build out the back, which would be extra cost, as he can't build to allow for storage, due to non maneuver ability of vehicle, he does not want to lengthen the garage as this would be a pass through and a long garage, and the loss of storage availability, or to build a free standing barn, somewhere on property considering septic, and run off of house. The plan submitted tonight allows for the best use of space at a minimum outlay of cost in building. Lee Evans advised in reviewing the drawings, being in local commercial we must watch what we grant variances for, which may be opening the door to others within the LC area. If applicant were to sell property, this might cause a problem in the future. Mr. Schmidt advised that if he sold in the future nothing could be built, due to variance having to be granted in the first place. Mr. Evans advised he is within 2 ft. of the property line. Mr. Schmidt asked if the building were to be smaller and the variance less would this make a difference in your opinion of granting a variance. Mr. Evans advised since there is not a justifiable reason, (e.g. cliff, etc.) no reason why a variance should be granted. Mr. Schmidt advised we are not setting precedence for future zoning, nor granting a variance for this applicant should set precedence in the future. Mr. Evans felt that the applicant could build in the back of his property without obtaining a variance. The property next to Mr. Smith has only 90ft. of frontage and they cannot build on the front of the lot, this is a back lot where the individual has built upon, as it opens to the back. The driveway can only give access to the adjacent property owners house (McElroy's). Kevin Daugherty advised we did the same thing on Stuckey. But anyone that comes in and sees this realizes what is already there. Kevin advised he cannot see any other good place to build. Mr. Daugherty advised he would not like any of the other options discussed. He could not see any other good option without having to build a driveway through his back yard. It doesn't look feasible. You will be losing storage capability by driving through one building to another and/or driving around buildings, 5 ft is close, but if there would be a house, I would have a problem, but this is just a driveway, so I don't have a problem, especially since McElroy's haven't sent in anything or submitted anything. If you look at the map from Google, you can see the old fence, which was taken away. It was noted that there is a 6 ft restriction on fencing height. Mr. Daugherty advised he has no problem in granting a variance, since applicant is not causing a problem with another property owner. Kathleen Lemar advised that 5ft is really close to the line and she felt that with additional property the applicant has that he should take driveway to back and build. She proceeded to show options of drawings from what she came up with from the drawings submitted. Mr. Schmidt asked Ms. LeMar if she visited the site and she replied "No".

Mrs. Smith advised that per Ms. LeMar's options, they would be looking at a free standing building, by going down the driveway and making a 90 degree turn to get into a building. Mr. Daugherty, Evans, and Schmidt proceeded to explain to Ms. Lemar the driveway and the allotted side yard restrictions, size of a truck and trailer and trying to turn it (jackknife it) and turn it into a door within 25 ft. Mr. Daugherty advised there are many possibilities, but just not good ones. Mr. Schmidt asked Pat Kwas for her opinion and she advised that the problem can be solved in another manner without obtaining a variance. It could be beneficial without a variance, and we shouldn't change zoning.

Mr. Schmidt proceeded to review and read through the Area Variance Request (see attached Exhibit 1 pages, 2-4) under findings Item 1-7 aloud to those present. He also advised in general terms, there is no precedence being stated regarding granting a variance or not granting a variance, should someone come in tomorrow and request a variance, everything is treated on a case by case basis. He advised there are some unique characteristics that exist on the applicants lot, the fact that McElroy's lot next to applicant is a 90 ft. wide lot with a driveway going back that this is not a detriment to their property with what the applicant has proposed along with the fact that they are not here nor submitted anything regarding this stating any objection. The discussion we have been having, regarding putting to the side or behind, it is not the practical way to do it. We do not like to have to grant variances if we don't have to, as this is the reason why we have codes to follow. Mr. Schmidt advised if he were the applicant he would have submitted the same thing as this is a more practical way to do it. Is it possible to bring the drive to the north and then swing around, sure it is, but is it practical? This is why we have a board that discusses this. The practical way to do this is exactly the way the applicant has submitted it in my own mind.

Mrs. Smith advised is the option Ms. LeMar advised is to take the driveway around the front of the house and take to the back of the property? How are we to put a drive on the other side of our yard, won't we be having another problem, will we have to have the drive so close to the house so we won't have another problem? Our lot is long, not wide, if this is the case, even though I am not very keen about it, we could have another problem? It looks like you would have to add 300 ft of drive, which isn't feasible due to costs presently. It was noted that there are options, not necessarily good ones. The applicant advised there are other options but not necessarily feasible due to having to add more fill and costs to be incurred.

Mr. Evans advised that in LC side yard height is 8 ft, not 6 ft as stated previously.

Mrs. Smith advised Gary Harris built the house and due to the lay of the land and what they have, the most feasible and cost effective way to add on was the plan submitted. Otherwise they could be looking at elevating 8 ft. and 150 yards of fill. The grade of the land needs to be taken into consideration. The applicant advised he wants the property to look presentable and aesthetically appealing, vs. having a fence with equipment within the fence.

Matthew Witmer, Zoning Inspector was sworn in by the zoning secretary and advised another thing to consider is to think about putting another building in the back, in the future, where would drive come from to get to it? The applicant advised he would just like to add to the building which is what is presented and he would be happy. The only other option would be to make a free standing building somewhere on the property, but at this point he would not do if what is submitted is approved. It was noted that if he were to add to existing building, going out back, it would be for shelving and storage only, not equipment.

Mr. Schmidt asked if there were any other questions/discussion. If not, he asked for a motion to be brought forth from the board. He advised speaking out loud, that he and Kevin Daugherty are for granting a variance and it seems that Kathleen LeMar, Pat Kwas and Lee Evans are not for granting a variance, and if this is so, a motion should come forward from them to deny granting a variance. The members asked if a motion should be made prior to completing the official notice of board action. It was noted that the form will be completed. Kathleen Lemar proceeded to read and complete the form. Upon starting to complete the form, **a motion was made by Lee Evans that the board should deny granting a variance for granting a 20 ft. variance, making only 5 ft. from the property line**, because they (the applicant) does not want to put a driveway on the other side of the house, then proceed to state the findings being the following: (Please see attached Exhibit 1- pages 2, 3 & 4) Mr. Evans read each item and Kathleen Lemar completed form. **A second to the motion was made by Kathleen Lemar. A roll call was taken as follows: Pat Kwas-yes; Kathleen LeMar-yes; Lee Evans-yes; Kevin Daugherty-no; Mike Schmidt-no. The variance was denied by a 3-2 vote of the board.**

Minutes of May 16, 2012

Mr. Schmidt asked if there were any additions/corrections to the minutes. It was noted that the Minutes should reflect Lee Evans, not Lee English and to add Thorne as to Bill Thorne on Page 3. A motion was made by Pat Kwas to accept the minutes with the correction. A second to the motion was made by Kathleen Lemar. A roll call was made: Pat Kwas-aye, Kathleen LeMar-aye, Kevin Daugherty-aye, Mike Schmidt-aye and Lee Evans-abstain.

Other Business

It was noted that Morning Star Farms will be coming back to the BZA as their conditional zoning certificate expires on 12/31/12. It was noted that Patricia Kwas and Kathleen LeMar will be recusing themselves from the board as they are adjacent property owners. It was noted that we will need another member to be seated on the board and approved by the Trustees. It was noted that the Trustees do have someone in mind and that they will be seated on the board for this. It was noted that the applicant has the option to have a full 5 member board. Lee Evans advised we can allow a 5 member board after he is under oath, then we would have to wait until we have a full board. It was noted a tie is a no vote, this will be explained to applicant.

A motion was made by Lee Evans to adjourn the meeting and a second to the motion was made by Kathleen LeMar. All were in favor. The meeting was adjourned at 8:55 pm.

Respectfully Submitted,


Sherry Clarkson, Board of Zoning Appeals Secretary



Michael Schmidt, Chairman

1/3/13

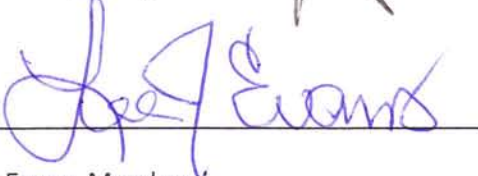
Date



Kevin Daugherty, Co-Chairman

1/3/13

Date



Lee Evans, Member

1/3/13

Date

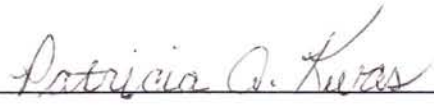
Kathleen Lemar, Member

Date



Wayne Moore, Member

1-13-13
Date



Patricia Kwas, Alternate Member

1/03/13
Date

EXHIBIT 1

Westfield Township Board of Zoning Appeals

Official Notice of Board Action

Area Variance Request

Application # 2012-10-26AV

Applicant : Bryan G. Smith

Application for Property located at: 7553 Greenwich Road- Seville, Ohio 44273

Phone: 330-948-8417

Cell Phone: 330-606-8204

Best time to contact: Any Time

Application for Property located at: 7553 Greenwich Road-Seville, Ohio 44273

Permanent Parcel# 041-15A-26-036 Westfield Township Zoning District

A variance is requested from Section 305 LC of the zoning code to permit the following: 20 ft. variance as per Article III, District Regulations, Section 305-LC-Local Commercial District, Item C-Minimum Dimensions for Lots and Yards, Side Yard Depth. This variance would allow the applicant to build a detached garage, allowing for a carport/garage.

General Facts about the Property:

1. The property is currently zoned : Local Commercial
2. The present use of the property is : Residential Property Acreage: 2.09 acres
3. The requested variance relates to property that (is / is not) under his/her control.

Findings:

After careful review of the evidence presented, the Board of Zoning Appeals has applied the standard of **Practical Difficulty** and finds as follows:

1. The property in question (will / will not) yield a reasonable return and there (can / cannot) be a beneficial use of the property without the variance.

Explanation:

*Continuous to remain a residence.
Property not adversely affected.*

2. The variance (is / is not) substantial. Explanation:

*Code state 25 ft side yard depth
asking for 20 ft variance bringing
building to 5 ft from property line.*

3. The essential character of the neighborhood (would / would not) be substantially altered and adjoining properties (would / would not) suffer a substantial detriment as a result of the variance. Explanation:

*No residence or building
immediately adjacent.
Unwaver to build on adjacent property
because of lot width.*

4. The variance (would / would not) adversely affect the delivery of governmental services (e.g. water, sewer). Explanation:

self explanatory.

-
-
5. The applicant purchased the property (with / without) knowledge of the zoning restriction. Explanation:
-
-

6. The applicant's predicament feasibly (can / cannot) be obviated through some method other than a variance. Explanation:

Large lot size and ability to build elsewhere on lot.

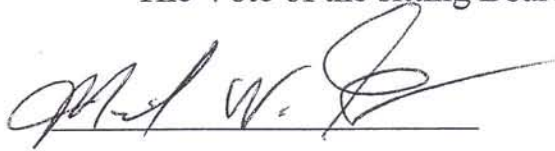
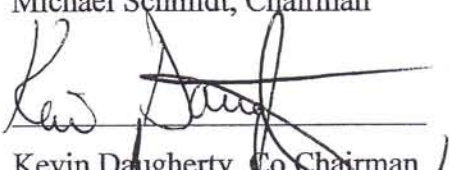
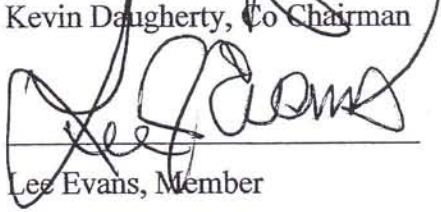
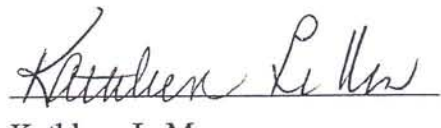
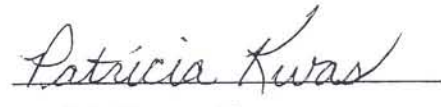
7. The spirit and intent behind the zoning code (would / would not) be observed and substantial justice (would / would not) be done by granting the variance.

Explanation:

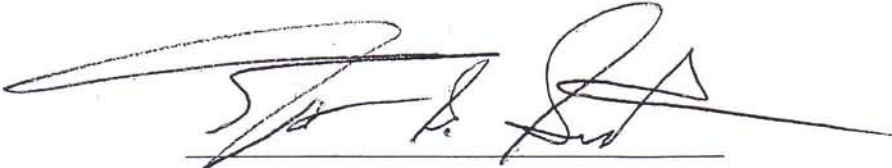
Variance requested is too large.

WESTFIELD TOWNSHIP BOARD OF ZONING APPEALS
 OFFICIAL NOTICE
 OF BOARD ACTION


The Vote of the sitting Board of Zoning Appeals is as follows:

| | | <u>Approve</u> | <u>Deny</u> |
|--|---------------------------|-------------------------------------|-------------------------------------|
|  _____ Michael Schmidt, Chairman | 11/15/12 _____ Date | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|  _____ Kevin Daugherty, Co Chairman | 11/15/12 _____ Date | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|  _____ Lee Evans, Member | 11/15/12 _____ Date | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| _____ Wayne Moore, Member | _____ Date | <input type="checkbox"/> | <input type="checkbox"/> |
|  _____ Kathleen LeMar | 11/15/12 _____ Date | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|  _____ Patricia Kwas, Alternate | 11/15/12 _____ Date | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

WESTFIELD TOWNSHIP
BOARD OF ZONING APPEALS
OFFICIAL NOTICE OF BOARD ACTION



Signature of Property Owner



Date

Your signature is to confirm your receipt of the Board's decision in the matter of your application for an Area Variance hearing on November 15, 2012 at 7:30 pm.

Please note this does not take away your right to file an appeal with the Medina County Court of Common Pleas within the legally specified time frame of 30 days from the receipt of the Board's written decision.