

Jackson Township Board of Zoning Appeals

Meeting Minutes

August 13, 2015

Members present: Leon Vitale  
Daniel Creighton-recused from #2307  
Patrick Snyder  
Charles Rohr  
Richard Lutz-Alternate  
Zoning Inspector: Joni Poindexter  
Members Absent Edward McDonnell

5:30 PM Appeal #2305 – Mark Porter, property owner, 5656 Springlake Rd. NW, Canton, Ohio 44718 requests a variance for a 4 ft. west and 1 ft. south setback where a 10 ft. west and a 15 ft. south setback is required per Art. IV Sect. 401.6 of the zoning resolution. Property located at 5656 Springlake Rd. NW, Sect. 14NW, zoned R-1A.

Mr. Vitale read the file application, reason for the appeal and contents of the file. Mr. Vitale noted that there was an affidavit in the file from David Kidd in opposition of the appeal.

Those in favor were sworn in.

Mr. Mark Porter, 5656 Springlake Rd. NW Canton Ohio stated that the property floods and because of the way the property is outlined the only way they can put the gazebo is the way it is proposed. It does not have footer and will be attached by decks to the principal structure. There is wild life on the property and this will allow them to utilize the property better.

Mr. Vitale stated that the exhibit in the file shows what the gazebo would look like and asked if it is already on the property.

Mr. Porter stated that there is a deck but the gazebo is not on the property yet.

Mr. Creighton asked if the base it there.

Mr. Porter stated yes.

Mr. Vitale asked Mr. Porter if he was aware of the affidavit that Mr. Kidd sent.

Mr. Porter stated no.

Mr. Vitale asked if the two decks that are next to the house were there when Mr. Porter purchased the property.

Mr. Porter stated yes.

Mr. Vitale read a portion of page three from Mr. Kidd's affidavit regarding the triangle piece of property.

Mr. Porter stated that he owns the property. He had a surveyor come to the property and they stated that they are sure of the pins.

Mr. Creighton asked what floods on the property.

Mr. Porter stated the front and back on his property. Exhibit F is the front of the house.

Mr. Vitale stated the affidavit from David Kidd states that the home owner's association owns the property and asked if he has addressed them regarding filling the area to prevent flooding.

Mr. Porter stated no. He asked them about buying some property but they refused.

Mr. Snyder verified that the variance is for 4 ft. on the west and 1 ft. on the south and asked why the gazebo couldn't be moved closer to the house.

Mr. Porter stated that there isn't enough room and he doesn't have enough yard area. The yard has flooded about 6 or 7 times this year.

Mr. Lutz asked why he wanted a gazebo.

Mr. Porter stated so they could be outside and look at the lake and if it is raining they have some shelter.

Mr. Snyder asked if Mr. Porter considered putting the gazebo on one of the existing patios.

Mr. Porter stated no. They choose this location because of the view of the lake.

Mr. Jessie Jansin, 5642 Marshall NW stated that Mr. Porter has improved the property greatly since he moved in and he doesn't think the gazebo would hurt the looks of the neighborhood.

Mr. Vitale asked if the west is unused land.

Mr. Jansin stated yes. He owns three lots and they mow and maintain the property to the west of them but that is the association's property.

Mr. Rohr asked if the association owns the entire perimeter around the entire lake.

Mr. Jansin stated yes.

Ms. Jennifer Jansin, 5642 Marshall NW, stated she was not told much about the property or what they owned when they purchased the property but Mr. Porter has done a great job improving the lot. They can see the location where the gazebo will be and they have no problem with it.

No one else spoke in favor of the appeal.

No one in the audience spoke in opposition to the appeal.

Mr. Vitale stated that Mr. Kidd stated in his letter that it would be a hindrance if Mr. Porter was having dinner, etc. and people were walking along the walking path.

Mr. Porter stated that the walking path will not affect his gazebo.

Mr. Creighton asked if anyone is a member of an association.

Mr. Porter stated not that he knows of. They don't have lake rights.

Mr. Vitale closed the hearing to public input.

Mr. Snyder stated that in thinking of the distance from the property line it is a tight space and he understands Mr. Porter wants to use more of his yard. With the ground flooding he wonders if the gazebo would sink after a while. It is a significant setback. There is nothing there that will infringe on the home owners association at this point. There is some practical difficulty in flooding and the lot size is screwy. It kind of meets the practical difficulty.

Mr. Rohr stated that he sympathizes with Mr. Porter but he has a problem because of the adjoining property owner in against it. He is trying to decide what is right and what is not.

Mr. Lutz stated that he is struggling with this because he sees a practical difficulty with flooding but at the same time he struggles with the association that doesn't like the request but he maintains their property with no compensation. He thinks 4 ft. and 1 ft. is what he is struggling with. If it is closer to the house to him it would be much easier to deal with.

Mr. Vitale stated that they can't base their decision on what someone was told and home owners associations have no control over them. He is torn on this. He walked the property and was confused by the lines. There are two decks that are basically illegal but could be grandfathered in. On the other hand there is a letter that assumes everyone is an association member and Mr. Porter and Mr. Jansin stated they are not. Typically the board does not grant large variances due to safety issues. But, it does appear that nothing will be built next to him. The property is up against a 100 year flood plain so there will be some flooding on the property.

Mr. Creighton stated that the flooding is a consideration. He is basing some of his thinking on the decks that are already there, which is 2 ft. He would like to see more than a 4 ft. setback on the west side.

Mr. Lutz asked if both directions are combined into one variance.

Mr. Vitale asked Mr. Porter if he wanted the board to split the variance.

Mr. Porter stated yes.

Mr. Snyder made a motion to approve appeal #2305 for a 1 ft. south setback as requested.

Mr. Creighton seconded the motion.

The vote was: Mr. Rohr-Yes, Mr. Snyder-Yes, Mr. Creighton- No, Mr. Lutz-yes, and Mr. Vitale.-No

Mr. Snyder made a motion to approve the variance for a 4 ft. west side yard setback.

Mr. Creighton seconded the motion.

The vote was Mr. Lutz-no, Mr. Rohr-no, Mr. Snyder-no, Mr. Creighton-no, and Mr. Vitale-no.

Mr. Vitale stated that the variance for a 1 ft. south setback has been approved and the variance for a 4 ft. west setback has been denied. If Mr. Porter or anyone else does not agree with the decision they can appeal it to the Court of Common Pleas within 30 days.

5:45 PM Appeal #2306 – Lori Luman, property owner, 113 Spruce Dr. NW, Canton, Ohio 44720 requests a variance for an accessory structure to be at a 1 ft. 7 in. north side yard setback and 10 inches from the principal building where a 5 ft. north side yard setback is required and 15 ft. between building per Art. IV Sect. 401.11 of the zoning resolution. Property located at 113 Spruce Dr. NW, Sect. 3NW, zoned R-R.

Mr. Vitale stated that Ms. Luman, has requested that the appeal be continued until the next scheduled meeting per an email sent to Ms. Poindexter on 8/6/15.

Ms. Poindexter stated the next meeting is September 10, 2015 at 5:30 PM.

Mr. Vitale stated the appeal #2307 is continued until September 10, 2015 at 5:30 PM.

6:00 PM Appeal #2307 – West Tuscarawas Property Management, LLC/Tom Winkhart, 825 South Main St., North Canton, Ohio 44720 agent for Michael D. Kazes, property owner, 1573 Alexandria Parkway SE, Canton, Ohio 44709 requests a variance for a 10 ft. east parking setback and allow a zero ft. parking setback along the new and proposed lot line located approx. 220 ft. from the west property line where a 20 ft. east parking setback is required and a 5 ft. parking setback is required along both sides of the proposed new lot line. Property located at 4870 Frank Rd. NW, North Canton, Ohio 44720, Sect. 23SE zoned B-3.

Those in favor were sworn in.

Mr. Tom Winkhart, 7008 Victory Ct., North Canton, Ohio stated he is the attorney representing the property owner.

Mr. Winkhart stated that West Tuscarawas is the Aultman Health Foundation. Mr. Winkhart explained the aerial view and the site plan and stated that Aultman would acquire a portion of the Kazes property to expand the building by 16 ft. and extend the parking for the Aultman building. The property to the east is owned by Sunset Hills and there are trees between the property and Sunset Hills.

The hatched property shown on the site plan is contingent on a purchase agreement. The restaurant property is zoned B-3 so the parking is a permitted use. The restaurant is 2600 sq. ft. so they are required about 31 parking spaces. After the split they will still have about 40 parking spaces. The new addition to the building to the south will meet all the zoning requirements. The proposed parking lot will abut the cemetery which is zoned R-R and requires a 20 ft. parking setback and they are requesting a 10 ft. parking setback. He spoke to Ms. Gapen and the cemetery is in agreement with the proposed variance request. The second variance is a legal fiction. The new property line will remain paved surface and is currently used for parking. There needs to be a 10 ft. landscaped area, 5 ft. on each side. They are asking to go from a 10 ft. landscaped area to a zero feet. It will remain just as it is today. The commitment from Aultman is that the trees will be left in place between the cemetery and the property in question as a buffer.

Good land planning favor's good medical facilities. If they can't expand they will be forced to look for another facility. The variance will not harm nearby properties.

Mr. Winkhart reviewed the practical difficulty regulations and stated he thinks they meet the criteria.

Mr. Creighton asked if client is Michael's restaurant.

Mr. Winkhart stated yes.

Mr. Creighton stated that he would recuse from this appeal.

Mr. Rohr asked if there is a right of way to access of the property.

Mr. Winkhart stated Mr. Kazes owns the property and leases it to the restaurant and there would be a recorded document at closing.

Mr. Vitale stated there are two grease containers and a trash receptacle and asked where they would be relocated.

Mr. Winkhart stated they have an excess of parking so they will probably relocated them on the restaurant property.

Mr Michael Kazes .1573 Alexandria Parkway SE, Canton, Ohio stated most likely the trash receptacles would be located to the north in a parking space. They are not currently screened and would be quite a distance from the back of the building to the north.

Cindy Gapen 5550 Birchdale St. NW, Canton, Ohio stated she is the general manager for the cemetery and they don't want to see the back of the restaurant and was promised that there would be some type of barrier.

Ms. Poindexter stated they are required buffering between commercial and residential.

Mr. Stanley Evans, 1445 Spring Valley NW Canton, Ohio stated that they would keep the buffer and trees for the cemetery.

Mr. Kazes stated he never used the area of the property that they want to use for parking and they aren't changing the buffering.

Mr. Winkhart stated that they have to maintain the buffer and they will comply with zoning.

No one else spoke in favor of the appeal and no one spoke in opposition to the appeal.

Mr. Vitale closed the hearing to public input.

Mr. Snyder stated that the lot size is screwy and there is a practical difficulty. He understands the medical building wanting to expand and the zero foot setback is not an issue because it is an existing parking lot.

Mr. Vitale stated there are two variances and the property to the rear would probably never be used as anything but a parking area so he doesn't have a problem with that variance. He doesn't have a problem with the second variance because the parking lot is already paved. When the motion is made he would like to make sure there is a legal document for access.

Mr. Snyder made a motion to approve the variances with the condition there is a legal document addressing the cross over parking and Mr. Rohr seconded the motion.

The vote was: Mr. Lutz-yes, Rohr-yes, Mr. Snyder-yes, and Mr. Vitale-yes.

Mr. Vitale made a motion to approve the meeting minutes from the July 23, 2015 meeting and Mr. Creighton seconded the motion.

Mr. Rohr and Mr. Creighton was absent for the July 23, 2015 meeting therefore would not vote.

The vote was: Mr. Lutz-yes, Mr. Snyder-yes, and Mr. Vitale-yes.

Mr. Rohr made a motion to adjourn the meeting and Mr. Creighton seconded the motion.

The vote was: Mr. Lutz-yes, Mr. Rohr-yes, Mr. Snyder-yes, Mr. Creighton-yes, and Mr. Vitale-yes.

Respectfully submitted,

Joni Poindexter  
Zoning Inspector