

# ZONING BOARD OF APPEALS MEETING MINUTES

Date – July 18, 2019

Chair Chuck Hawk called the Hearing to Order at 7 pm

Chair Hawk Called the Roll and the following Members answered: Don Glick, Chuck Hawk, Jerry Layne, Joe Musacchia, and Mike Schwab  
Member Ray Heitger had asked to be excused and was absent

Village Administrator/Zoning Commissioner: Mike Miller in attendance  
Audience: None. Variance applicant Larry Durben not in attendance

Chair Hawk advised that tonight's Hearing was advertised in the Massillon Independent on July 6, 2019, and that tonight's business is to consider a zoning variance request that had been submitted. He asked Village Administrator/Zoning Commissioner Mike Miller to outline the requested variances.

Miller noted - **BUSINESS:**

## A. **Zoning Variance Request – 2019-14**

Applicant: Larry E. Durben of 105 Jefferson Avenue SE, Brewster, Ohio 44613  
Owner: Larry E. Durben of 105 Jefferson Avenue SE, Brewster, Ohio 44613  
Zoning: R-3 (Medium Density Urban Residential District)

Property: **Parcel #7001428** by Stark County and is designated as 302 Jefferson Avenue SE  
Property is a corner lot measuring 100 feet by 140 feet = 14,000 square feet facing First Street E and Jefferson Avenue adjacent to Wheeling Place (Alley)  
A House is located on the Property facing Jefferson Avenue with 100 feet of depth on Wheeling Place and First Street E  
A six-foot high Fence is located on the northern portion of the Property bordering First Street E. and Jefferson Avenue with the Fence surrounding approximately 100' X 70' of land at the rear of the existing house and garage

### **Pending Proposal that requires a Variance:**

- Split Lot #7001428 into two 100-foot X 70-foot lots = two 7000 square foot lots  
**(Note: 153.082 minimum Lot Size in R-3 for a Single-Family dwelling = 7000 square feet)**
- The existing house and garage would be located on the resulting new 100-foot X 70-foot lot facing Jefferson Avenue bordering Wheeling Place to the South
- The new second 100-foot X 70-foot corner lot facing First Street E. and Jefferson Avenue would have an existing fence but would lack any dwelling or structure

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### **Requested Variance:**

Authorization to retain the existing six-foot-high fence without the dwelling or structure required for an Accessory Use by Village Zoning Code on the proposed new 100-foot X 70-foot corner lot facing First Street E. and Jefferson Avenue that would result from the proposed Lot Split

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### **Zoning Code Section 153.002 DEFINITIONS**

**ACCESSORY USE.** A use on the same lot and of a nature incidental and subordinate to the main use of the principal structure or land.

Under this definition a Fence which is incidental and subordinate to the main use of the principal structure would be an accessory use.

### **Handouts provide to each Board member and shown on Council Chamber's Monitor:**

Handouts: 1. An Agenda that provided the specifics of the requested Variance as well as the applicable sections of the Village Zoning Code that address the Variance

2. Copy of an area map taken from the Stark County Auditor's web site that had a blue line added at the Lot's midpoint to show the Proposed Lot Split of Parcel #7001428 and the surrounding neighborhood; this map was also displayed on the Council Chamber's monitor
3. Photos of the existing fencing on the Parcel were displayed on the Council Chamber's monitor

VA Miller used the map on the monitor to outline the proposed Lot Split of Parcel #7001428 into two 100' X 70' which would provide a 100' X 70' lot on which the existing house and garage would be located facing Jefferson Avenue and Wheeling Place (alley), and a second 100' X 70' Lot on the northernmost portion of Parcel #7001428 which would face Jefferson and First Street SE on which the current fence is located. VA Miller referred to the monitor to display pictures of the existing fencing on the Parcel to further explain the applicant's variance request.

**1. DISCUSSION by Zoning Board:**

Schwab stated that when the applicant had initially had the six-foot fencing installed last year he had concerns about the fact that Mr. Durben used the newly created area inside the fence to store a variety of vehicles and equipment that could be considered business oriented or inappropriate for a neighborhood zoned residential. Schwab stated that if resided in in that residential area he would not be pleased with the storage of equipment or vehicles or current use of the lot.

VA Miller noted that Mr. Durben has removed all grass and topsoil within the fenced area and in the immediate perimeter outside the fence and applied limestone to create a significant parking area in a residential district. VA Miller further noted that the current Village Zoning Code does not specifically address such a parking/storage area in a residential zone. VA Miller advised that Mr. Durben had explained to him that he had several options in mind for the Parcel if Parcel #7001428 were split. One was that he could sell the lot with the house and garage and retain the fenced lot for his use. A second was to remove the fence from the new lot and build a house and retain or sell the lot with the existing house and garage.

Glick talked briefly about storage of equipment in residential neighborhoods.

2. APPLICANT Comments: Applicant was not in attendance
3. AUDIENCE Comments: No audience

4. Chair Hawk asked if there was any other questions or comments from the Zoning Board about the requested variance:

5. ACTION, if any:

**Concerning a proposed Lot Split of Parcel #7001428 into two 100' X 70' Lots which would result in a the new northernmost Lot which borders First Street E. and Jefferson Avenue having an existing six-foot high Fence without a primary building or dwelling, a MOTION was made by Jerry Layne, SECONDED by Mike Schwab to DENY the variance requested to waive the requirement that the of the existing six-foot may remain without a primary building or dwelling on the Lot as required for an accessory use by the Village Zoning Code.**

**VOTE: Member Don Glick Abstained.**

**Members Hawk, Layne, Musacchia, Schwab, and Damewood voted YES to APPROVE the Motion to deny the requested variance.**

**B. Chair Hawk asked if there were any comments or any other Business from the members of the Zoning Board of Appeals ?**

None were offered

**Chair Hawk asked if there were any comments or any other Business from VA Miller ?**

VA Miller noted that a retaining wall had been installed in front of a new house on Sixth Street SW and that when asked to review the installation the Stark County Building Department advised that unless the retaining wall was part of a building the Stark County Building Department no longer reviews or regulates free standing retaining walls. Miller advised that the newly installed retaining wall appears to be designed to support the driveway in front of the house, but that he is concerned about the integrity of this retaining wall as in his opinion it is insufficient to retain the weight of the soil and driveway for which it is intended to hold in place.

Miller advised that he would prepare a draft of possible Village regulations to address the appropriate installation of retaining walls for the Planning Commission's review at their scheduled September 19, 2019 Planning Commission meeting

CHAIR Hawk advised that there was no other business and Adjourned the Hearing at 7:25 pm

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Secretary Mike Schwab

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Date