

**Hiram Township Board of Zoning Appeals  
Weigel Application for Variance  
February 12, 2018**

Board Members: Chairman, Janet Pancost, Tierney Bryant , Gary Bott, Judy Zidonis and Kathy Schulda.

Public Present: Tony Weigel, Debbie Weigel, and Stacey Turner.

The meeting was called to order at 7:00 p.m.

Janet Pancost explained the Board of Zoning Appeals and the evening's process. The Board members then introduced themselves.

Secretary, Eric Hankinson stated that a legal notice for the meeting was published on January 29, 2018 and that adjoining property owners were notified via certified mail on January 26, 2018.

Mrs. Pancost swore in the audience members for those in attendance that wish to speak during the meeting.

Mrs. Pancost prompted the Weigels to speak as to why they are here. Tony Weigel then asked if the Board had a chance to read the materials provided by him and Mrs. Pancost stated that she had read through them. Mr. Weigel stated that he was putting on a 20ft x 32ft addition onto the existing garage structure on their property. He stated that it is for multi-purpose use: agricultural, workshop, garage. He wants to store 2 tractors (1 of which is for sale), storage of supplies for their chickens, tools, and garage parking for their vehicles.

Mrs. Pancost clarified that the Application for Variance was regarding the building not meeting the minimum 85ft setback from Allyn Rd Right of Way. Mrs. Pancost inquired when the existing garage structure was constructed. Mr. Weigel stated that existing garage was built in 1992.

Mrs. Schulda inquired if the Weigels had the original building constructed. Mr. Weigel stated that he had someone build the building for them. Mrs. Schulda then followed up asking if permits were issued for that building. Mr. Weigel stated that he believed that permits were not issued for construction of that garage. Mrs. Pancost stated that she checked with the Portage County Building Department. The only permits that she found were 1998: a permit for a bedroom addition to the house and in 2002 a ductwork/heating expansion. Mrs. Schulda asked if the Weigel property is considered agricultural. Mr. Weigel stated he was not because their property does not exceed 5 acres. Mrs. Schulda then asked as to why there wasn't a permit acquired for the original building. Mr. Weigel stated the he probably should have acquired a permit, but did not do so at the time.

Mrs. Pancost provided a copy of Portage County GIS information of the Weigel property which included their buildings and the topography of the property. Tierney Bryant asked Mr. Weigel what their total acreage of their property. He responded he was told it was 5 acres exactly. Mrs. Schulda inquired about

the drainage behind the garage & the house on the property. Mr. Weigel explained that the majority of the property sloped towards the house & garage, using the drawing he provided to illustrate how water flows through the property.

For clarity, Mrs. Pancost reiterated that the addition being put onto the existing garage was 20ft x 32ft then she inquired about the size of the original structure that was built in 1992. Mr. Weigel stated 24ft x 40ft is the original building, shed roof of 10ft x 40ft, and that the addition 20ft x 32ft. Structure is 1600 sq ft not including the shed roof overhang but including the existing 24ft x 40ft structure and the new 20ft x 32ft addition.

Mrs. Pancost made the Weigels aware that there are additional issues with the construction of the addition to the garage. She stated that the current Township zoning of a 2.5 acre to 5 acre lot has a maximum of 1200 sq ft for an accessory building. This makes the combined building 400 sq ft over what the Hiram Township Zoning Law allows. Another issue Mrs. Pancost noted was that the Hiram Township Zoning law also states that the accessory building has to be behind the house on the property. Mrs. Pancost then iterated through the distances from the accessory building to property lines and to the house per the drawing provided by Mr. Weigel. All of the distance dimensions were in compliance with Hiram Township Zoning Law with the exception of meeting the minimum 85ft distance to the Allyn Rd Right of Way. Mrs. Pancost reiterated over the known issues based on the drawings and facts presented by the Weigels. The issues are: The size of the building being 400 sq ft over what Hiram Township Zoning allows for the lot size; The closeness of the building and addition to the Allyn Rd Right of Way; The fact that the main structure and addition are not behind the house.

Mrs. Schulda asked if the addition has been completed. Mr. Weigel stated that the main structure/framing with sheeting and roofing is in place but that no finished siding or a floor in the addition. Mr. Weigel stated that the main reason for the location of the addition to the garage is due to the water drainage through the property. Mrs. Schulda asked if originally could the garage have actually been put back further. Mr. Weigel stated that it could have been if proper drainage were installed prior to construction of the original building. Mrs. Schulda asked if the roof and siding of addition has been tied into existing structure. Mr. Weigel stated that the roof has been and the framing/sheeting has been.

Mr. Weigel stated that he felt the addition would not be an eye sore as the addition will be sided to match the existing structure. Mrs. Pancost agreed that it doesn't stand out on the property however there are multiple issues involved. The primary issue is that no permits were attained for the original garage construction in 1992, or for the more recent 20ft x 32ft addition.

Mrs. Pancost stated that this discussion is not about 1 variance as requested, but instead 3 different variances for the same structure: oversized building, sited in yard where not permitted per zoning code, too close to road right of way. She went on to explain how the perception of residents that follow the Hiram Township Zoning laws could result in frustration when hearing about those residents that don't follow the Hiram Township Zoning laws.

Neighbor Stacey Turner provided information to the BZA Board affirming the water drainage problem with the Weigel property as her property has the same general problem. She also asked the Weigels if there was any previously existing structure on the property. Mr. Weigel stated that only a foundation of a former barn exists on the property but that is located roughly 150ft behind the house. Gary Bott asked

a few clarifying questions about the previously existing barn that used to stand on the property as he knew some previous owners of the property.

Mrs. Bryant asked the Weigels what their expected outcome of this variance meeting was if the variance was approved. Mr. Weigel stated that he expected to be able to get a Portage County Building Permit for the addition. Mrs. Schulda asked if Mr. Weigel would be seeking 2 permits, but he is under the assumption that he would be getting 1 building permit.

Mrs. Pancost then moved the meeting onto reviewing the Variance Guidelines Checklist:

#### Criteria – Area Variance

- a) ***That special conditions and circumstances exist that are peculiar to the land, structures or building involved and are not applicable to other land, structures, or buildings involved in the same district?***

Kathy Schulda: Yes

Judy Zidonis: Yes

Janet Pancost: Yes

Gary Bott: Yes

Tierney Bryant: Yes

- b) ***That a literal interpretation of the provisions of this resolution would deprive the applicant of rights commonly enjoyed by other properties in the district under the terms of this resolution?***

Kathy Schulda: No

Judy Zidonis: No

Janet Pancost: No

Gary Bott: No

Tierney Bryant: No

- c) ***That special conditions and circumstances did not result from actions of the applicant?***

Kathy Schulda: Yes

Judy Zidonis: Yes

Janet Pancost: Yes

Gary Bott: Yes

Tierney Bryant: Yes

- d) ***That granting the variance requested would not confer on the applicant any special privilege that is denied by the resolution to other lands, structures or buildings in the same district?***

Kathy Schulda: Yes

Judy Zidonis: Yes

Janet Pancost: Yes

Gary Bott; Yes

Tierney Bryant: Yes

#### Guidelines for Variance Request

- 1) ***Whether the land will yield a reasonable return or whether there can be any beneficial use of the land without the variance?***

Kathy Schulda: Yes

Judy Zidonis: Yes

Janet Pancost: Yes

Gary Bott: Yes

Tierney Bryant: Yes

2) ***Whether the variance proved substantial?***

Kathy Schulda: Yes

Judy Zidonis: Yes

Janet Pancost: Yes

Gary Bott: Yes

Tierney Bryant: Yes

3) ***Whether the essential character of the neighborhood would be substantially altered or whether adjoining landowners would suffer a substantial detriment as a result of the variance?***

Kathy Schulda: No

Judy Zidonis: No

Janet Pancost: No

Gary Bott: No

Tierney Bryant: No

4) ***Whether the variance would adversely affect the delivery of government services?***

Kathy Schulda: No

Judy Zidonis: No

Janet Pancost: No

Gary Bott: No

Tierney Bryant: No

5) ***Whether the applicant purchased the land with knowledge of the zoning regulation?***

Mrs. Pancost asked the Weigels if they had any idea of zoning existing in Hiram Township. Mr. Weigel stated that when they bought the house, they had no idea as they did not live in the house yet when the garage was built in 1992. They used the garage as temporary storage when moving into the house.

Kathy Schulda: No

Judy Zidonis: No

Janet Pancost: No

Gary Bott: No

Tierney Bryant: No

6) ***Whether the applicant's predicament feasibly can be obviated through some other method other than the variance?***

Mrs. Schulda was going to clarify the meaning of the checklist item. Mrs. Pancost presented the scenario is the Board considering that the Weigels are coming to the Zoning Appeals Board asking for permission or forgiveness. Mrs. Schulda stated "Yes but not easily" to the checklist item.

Kathy Schulda: Yes

Judy Zidonis: No

Janet Pancost: Yes

Gary Bott: No

Tierney Bryant: No

7) ***Whether the spirit and intent behind the zoning regulation would be observed and substantial justice done by granting the variance?***

Kathy Schulda: No

Judy Zidonis: Yes

Janet Pancost: No

Gary Bott: Yes

Tierney Bryant: Yes

Mrs. Pancost reiterated a conversation with Chris Meduri, Township Legal Counsel. Chris and Mrs. Pancost had a discussion about the Variance request and the multiple issues with the existing garage on the Weigel property. She paraphrased the conversation as “you can pretty much choose which way you want to go as a [BZA] Board but keep in mind that in order for Zoning to be effective, and for Zoning to work, it has to be adhered to in advance”. She noted that this situation is an existing building and an addition that do not comply with Township Zoning. She also noted that in the past the Board has worked well with landowners in working out a compromise that is respectful of Zoning and taking into account the specific challenges that the landowners face when the landowner has come before the Board prior to construction.

Mrs. Schulda noted that denial of the Variance Request could entail legal action due to the existing garage structure, even though it does not meet Township Zoning regulations. Mrs. Pancost paraphrased a statement from Chris Meduri “regardless if the [BZA] Board does deny the Variance Request, and it does go before a Mediator or the Portage County Court, there will be either a civil penalty or deconstruction order.” Mrs. Pancost noted that the BZA Board has the option to approve the Variance Request with a penalty if the Board wants to.

Mrs. Schulda makes a suggestion to grant the variance with a penalty. Mrs. Bryant asks what kind of penalty. Mrs. Pancost states a financial penalty, possibly assessed on square footage, or any basis that the BZA Board chooses. Mrs. Schulda noted that this Variance Request has uncovered other Township Zoning issues which are more extenuating circumstances than a previous request from another landowner that was just oversized for the lot. Mrs. Schulda commented that she would prefer to not go to Portage County Court over this Variance Request. Mrs. Bryant inquired why the square footage was not originally addressed in the Variance Request. Mrs. Pancost stated that a previous conversation with Zoning Inspector Rich Gano was that the original conversation with the Weigels was that the building was to be for agricultural use. Mrs. Pancost then explained what “agricultural use” means. She stated the following criteria for “agricultural use”: there has to be a bonified agricultural operation going on the property; the building has to be specifically instrumental in the type of agricultural that is going on the property; Mrs. Pancost is under the assumption that because the building did not meet the criteria for “agricultural use” this is why the original Variance Request was for not meeting the 85ft setback from Allyn Rd. right of way. Mr. Hankinson then apologized for not notifying Zoning Inspector Rich Gano when he originally scheduled this Board meeting.

Mrs. Zidonis followed that up that she felt that this discussion “is a bit like closing the gate after the horse is gone” and that the building is attractive to the house & property and once it is finished she didn’t feel she would have a problem with it. She also commented that she felt the original garage construction is long in the past and the concern should be the new addition to the garage and it’s compliance with the Township Zoning regulations. Mrs. Schulda pointed out that the Board should not

condone turning a blind eye to Zoning violations after an amount of time has passed. Both Mrs. Schulda and Mrs. Zidonis agreed that they felt that the Weigels did not intend to subvert Township Zoning laws by not getting a building permit for the construction of the original garage in 1992.

Mr. Weigel stated to the Board that his house is only 17ft from the Allyn Rd. Right of Way. Mrs. Pancost followed that up by acknowledging his comment and stating that is a pre-existing structure on the property. She reiterated that “other Township residents pull their permits, they do their drawings, and if something doesn’t work with their current Zoning code, they come before the BZA Board prior to building the structure” and she felt that to approve a variance request would be disrespectful to the Township residents that follow the Zoning code in the Township.

Mrs. Pancost explained how the Zoning Board & BZA support the Township Comprehensive Plan and how the Comprehensive Plan was created in conjunction with the residents of the Township. The Zoning is meant to support the Comprehensive Plan. She also acknowledges “that stuff happens and there are lots that don’t comply and you need to do something different.”

Mrs. Schulda makes a motion to grant the variance with a penalty based on the information presented during the meeting, the support of the neighbor in attendance, but that the original structure and the addition are breaking three of the Township Zoning laws.

Mrs. Pancost asks for clarity from Mrs. Schulda on if she is asking to grant a single Variance, or all three variances based on the information presented and discussed at the meeting. Mrs. Schulda responds to grant three Variances. Those three Variances are:

1. Encroaching on the Road Right of Way
2. Position in side-yard instead of the back-yard
3. Exceeds 1200 sq ft allowed accessory building size by 400 sq ft

Mrs. Pancost then tells the rest of the Board that they now have to discuss an appropriate penalty. She clarified that the penalty does not directly go to the Trustees, but to the Township Parks budget as a way to benefit all Township residents. Mr. Weigel asked if the penalty is arbitrary. Mrs. Pancost & Mrs. Schulda responded that it is arbitrary without precedence as each Variance Request is unique.

Mrs. Weigel asked for clarification about the limitation of more than one building on a property and placement of the addition. She followed up with a question regarding if the BZA Board would have approved a second building. Mrs. Pancost stated that she did not know how the Board would have voted on that as each case is decided individually.

Mrs. Schulda commented that she felt she did not know what monetary amounts would be appropriate for the penalties presented. Mrs. Bryant asked if there were any consent agreements for first time Zoning offenders. Mrs. Pancost responded that she felt that was not in the BZA’s ability to do and that they would probably not want to do that with each individual landowner that comes before the Board. Mrs. Pancost suggested discussing with the Trustees that possibly signs be posted on all major roads coming into the Township state that Hiram Township “is a Zoned Community” as a way to publicly announce that Zoning laws do exist within the Township.

Mrs. Pancost then starts formulating the penalty for the three Variances starting off with 2 structures built without permits which Accessory Buildings are \$50 per Township Permit. The discussion amongst

the Board for an appropriate penalty includes a penalty of \$100 for not pulling proper Township permits for the original building and addition, \$700 appeals fee for additional 2 BZA meetings they would have had if the Weigels had to come before the Board for each infringement, and \$400 (\$1 per sq ft of overage). This would bring the total Penalty to \$1,200.

Mrs. Pancost then summarizes for the record that Mrs. Schulda is making a motion to approve the three Variances:

1. Encroaching on the Road Right of Way
2. Position in side-yard instead of the back-yard
3. Exceeds 1200 sq ft allowed accessory building size by 400 sq ft

This motion includes a penalty of \$100 for not pulling proper permits, the \$350 BZA Appeals fee for 2 meetings, and \$400 for the footage overage of the combined buildings which brings the total monetary penalty to \$1,200.

Mrs. Pancost asks for a 2<sup>nd</sup> on the motion. Mr. Weigel asks if he would have been able to get a Portage County Building Permit and Mrs. Pancost stated that would not be possible without a Hiram Township Building Permit. Mr. Weigel stated that when the original garage was being built, the builder stated that “the Inspector did not want poured dried concrete into the post hole”. Mrs. Pancost then iterated her findings from the County Building Department on what permits were issued for the Weigel property. The only permits that she found were in 1998: a permit for a bedroom addition to the house and in 2002 a ductwork/heating expansion. The Weigels insisted that they were issued a permit for putting new siding on their house in the past but could not recall when that work would have been done and also reiterated for the original garage that “the Inspector did not want poured dried concrete into the post hole”. Mrs. Pancost then asked who was responsible for pulling the permit for that building. Mr. Weigel stated that the builder was responsible. He could not remember if the permit was issued for the original structure and had no proof.

Mrs. Pancost then asks the Board if no one seconds the motion, then is there an alternate motion. Mrs. Bryant then states she would like to lower the monetary amount of the penalty as she felt it would be a financial hardship. She then makes a motion for the same 3 penalties, but for an \$850 penalty instead of \$1200. Mrs. Schulda 2nds the motion.

The Board votes on the motion:

Kathy Schulda: Yes

Judy Zidonis: Yes

Janet Pancost: No

Gary Bott: Yes

Tierney Bryant: Yes

The motion is approved and carries. Mrs. Pancost then explains next steps to the Weigels including the journalizing of this meeting’s minutes, then after that journalizing is a 30 day window where anyone directly affected (generally those landowners that received the meeting notification letter) can appeal the decision by filing with Portage County Court. Mrs. Pancost does suggest to the Weigels that any work done during the 30 day appeals window could be forfeit if an appeal takes place.

The meeting for journalizing the minutes is set for Monday March 5<sup>th</sup>, 2018 at 7:00pm. The Board then processed some paperwork for the State of Ohio.

The meeting was adjourned at 8:25pm.