

**Hiram Township Board of Zoning Appeals  
Weigel Application for Variance Rehearing  
June 13, 2018**

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

Public Present: Rich Ward, Tony Weigel, Debbie Weigel, Dennis Cardello, Zoning Inspector Rich Gano.

The meeting was called to order at 7:07 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 May 30, 2018 and that adjoining property owners were notified via certified mail as well.

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

Ms. Pancost stated that after reading the Weigel's letter accompanying their request for a rehearing, that it appeared to her that the Weigels wished to withdraw their request for all Variances. Ms. Pancost then clearly asked the Weigels if they wished to withdraw their request for the Variances. Mr. Weigel stated that he and his wife were thinking that they didn't need the Variances. The Weigels want to continue with their building and Mr. Weigel stated that after he and his wife reviewed the outcome of the last meeting that the Variances weren't needed.

Ms. Pancost then asked Mr. Weigel again, "No, you are not withdrawing your request for Variances, or yes you are?" Mr. Weigel then asked what does that mean. Ms. Pancost then reviewed that the reason for the last meeting was that an addition to the existing outbuilding on the Weigel property was done without a permit. This prompted the initial contact from Hiram Township Zoning. Ms. Weigel did ask to clarify if they in-fact had a permit for their original outbuilding structure. Ms. Pancost stated that a copy of the original permit from 1992 was found in the Township records. However, the addition did not have a permit.

Ms. Weigel asked to clarify the intent of the original Variance meeting regarding setback of the outbuilding with the addition. Ms. Pancost stated that initial contact with Township Zoning was due to the addition going up and no permit was issued for the addition's construction. After that initial contact, other issues were found with the site of the outbuilding addition being: too close to the road based on Township Zoning, it was oversized (total square footage of building with addition) for the size of the lot, and the addition makes the outbuilding no longer behind the home per Township Zoning.

After that explanation, Ms. Pancost then asks the Weigel's again if they would like to withdraw their request for the Variances, or do they want to proceed with the Variances. Ms. Weigel stated that her understanding was the original Variance meeting was only because of the setback from the road Right of Way. She then goes on to iterate why the other items found during the original meeting are not valid. The Weigels argue that nowhere in the Zoning Code does it mention that accessory buildings have to meet an 85ft setback. Mr. Gano commented that if you stand at the Weigel house, and look due west, that the southwest corner of the building addition is not closer to the road than the home is and also meet's the 20ft distance from the existing home.

Ms. Pancost reviews that homes have to be 85ft from the road Right of Way, except for non-conforming use (such as the Weigel's home). Ms. Pancost explains the intent of non-conforming use (that non-conforming use will be extinguished due to passage of time and change of use). She then provides an example of non-conforming use being extinguished due to the passage of time. Ms. Pancost then explains that while the Weigel home is non-confirming use (too close to the road Right of Way but was built prior to those Zoning regulations) any new buildings should conform to the current Zoning regulations.

Ms. Weigel comments that she can't find anywhere in the Township Zoning code that an accessory building must meet the 85ft setback from road Right of Way. Ms. Pancost states that if the Weigels had sought out a building permit prior to construction, any issues found would have been addressed then. She mentions that the Weigels could have been found to be in compliance (with Zoning regulations), if not in compliance they would have been able to alter their plans in order to be in compliance, or they would have had the ability to come before the Board of Zoning Appeals for a Variance that is asking permission rather than beg for forgiveness. Then, after a meeting with the Zoning Inspector prior to construction, the Weigels would have been expected to follow the rules of the current Township Zoning regulations.

Ms. Pancost reiterated that we are here now discussing the issues with the construction of the outbuilding addition in retrospect because the Weigels did not seek a permit prior to construction of the outbuilding's addition.

The Weigels argue that the Township Zoning laws don't state that accessory building has to be 85ft of setback and is 20ft from the existing house. Ms. Weigel states that she was under the impression that the original meeting was for the setback only and that their property is over 5 acres (so the size limit of the outbuilding would not be an issue for them).

Ms. Pancost states that they have checked with the County Tax Auditor & Tax Map offices and neither records show that the Weigel property is over 5 acres. Ms. Weigel argues that point. Ms. Pancost then asks Ms. Weigel if she feels that the County has recorded the size of their property incorrectly. Ms. Pancost also asked if the Weigels had their lot resurveyed. They only had someone review their existing survey, a resurvey was not done. Ms. Pancost stated that a resurvey could possibly be in the Weigel's favor. If the Weigel's did a resurvey, and it was found to be over 5 acres, and the resurvey was then taken to the Portage County Tax Auditor's office, then it would be entered into Public Record as the property is over 5 acres (and then Township Zoning rules would then apply to the larger lot). Ms. Pancost stated that County Public Records are used by many different people and agencies as the official record for the size of a property.

The Weigels and the Board go back and forth over the size of the Weigel's lot from the Public Records and the recalculations that the Weigels had done. The Board asked the Weigels if they had a County Building Permit prior to construction of the outbuilding addition. Ms. Weigel asks why is that question relevant.

Ms. Weigel asserts that she "is receiving attitude" from the Board. Ms. Pancost announces that the Board will go into private deliberations and then explains what private deliberations are. This is presented as an opportunity for all parties involved to gather their thoughts and for the Board to formulate any further questions. Ms. Weigel then explains how the surveyor (McGuire) recalculated their measurements from the Tax Plat map prior to the break.

The Board goes into private deliberations at 7:35pm.

Private deliberations end at 8:06pm and the Board welcomes the Weigels and other Township attendees back into the Township Hall to resume the meeting.

Ms. Weigel asked if the three items from the previous Variance hearing would be reviewed. Ms. Pancost clarified her understanding of Ms. Weigel's ask prior to breaking for private deliberations "if the Board would hear the rest of their (Weigel's) testimony". Ms. Pancost reiterated that the Weigels can present the rest of their information.

Ms. Weigel reviews that their outbuilding is 20ft away from their house, their house is not 65ft back (non-conforming), the existing outbuilding is 1600sq ft, and in Hiram Township a lot over 5 acres would allow the Weigels to build a building up to 2000sq ft. Ms. Pancost reviews with the Weigels their original garage building permit from 1992 (copy from Township records). This original permit stated the garage was to be built at 85ft setback from the road right of way.

Ms. Pancost asked the Weigels if Leslie from the Tax Map office told them that with the recalculation done from the surveyor (McGuire) that it could be entered into the Tax Map records as well as the County Tax Auditor's records. Ms. Weigel stated that she (Leslie) did not. Ms. Weigel then stated that after talking to an attorney, the attorney suggested that Ms. Weigel should ask the Tax Map department to record the actual acreage. Ms. Weigel stated that she had not done so prior to this meeting.

Ms. Pancost then clarified with Ms. Weigel that in fact Ms. Weigel has not went to the Tax Map office to record the recalculations from McGuire. Ms. Weigel agreed that she had not done so.

Ms. Weigel stated that if the recalculation came back as below 5 acres, she was prepared for that answer. However, since the recalculation came back as over 5 acres (however slight) that she wanted to present it to the Board of Zoning Appeals.

Ms. Pancost asked Ms. Weigel why didn't they have their lot resurveyed instead of just a recalculation prior the Variance meeting. Ms. Weigel stated that she talked to McGuire Surveying, and he asked her for the deed to her property and the Tax plat map, and he would do the calculations from their instead of resurveying the property.

Ms. Pancost asked Ms. Weigel why she did not get the recalculation entered into County records. Ms. Weigel felt that the recalculation was sufficient proof that her property was over 5 acres. Ms. Schulda

stated that the legal description of the size of the property is what the County has recorded. Ms. Pancost reiterated that the County records show that the Weigel property is 5.000 acres.

Ms. Pancost stated that normally, individuals don't have land resurveyed or recalculated when purchasing a property and instead go off of the County Tax Map.

Ms. Pancost asked the rest of the audience if they have any questions or comments.

Dennis Cardello on Mumford Rd talked about changing his insurance because his insurance rates were going up due to the reported age of his home. He assumes that his prior insurance carrier was taking their data from the County Tax records. He stated that the information that was used to calculate his insurance was incorrect. The records stated that his house was built in 1947 but his home was actually built in 1973. The square footage of his home was also inaccurate.

Ms. Schulda asked Mr. Cardello to clarify if it was the insurance carrier or the County that had the wrong information. Mr. Cardello stated the County had the wrong information. Ms. Schulda then asked if he went to the Tax Map office to review the information. Mr. Cardello stated had went to the County and found the County Records to be wrong in his particular case. He was able to correct the errors with his Insurance carrier. He urged the board that "not everything on paper is accurate". The other resident, Rich Ward, just asked that a decision be made so that the Weigels can move forward.

The Weigels once again come back to the 85ft setback from the original Variance meeting. Mr. Weigel asked if the 85ft setback was in the Zoning code back in 1992. Mr. Gano stated that the 85ft setback was added to Zoning regulations in 1988.

Mr. Weigel asked if it applied to outbuildings. Ms. Pancost reiterated that Mr. Weigel acknowledged that the building was to have 85ft of setback when he signed the original outbuilding building permit in 1992.

Mr. Weigel stated that he did not understand what is the point of the 85ft setback on the outbuilding. Ms. Pancost stated that the point was that there is prior knowledge on the part of the Weigels that their outbuilding was to be built with an 85ft setback. The Weigels argue again that the Zoning code does not specifically say an outbuilding has to meet the 85ft setback. Ms. Pancost reiterates that the Weigels signed the permit clearly stating how much setback the original outbuilding was to have at the time of construction. By signing the permit, there was some knowledge on the part of Mr. Weigel that Zoning did in fact exist at that time. Ms. Weigel states that the writing of the permit was not Mr. Weigel's handwriting but it is his signature.

The Weigels again argue that the 85ft setback for an outbuilding is not stated in the Township Zoning code. Ms. Pancost then explains that Zoning is open to some interpretation. It is her belief that if there is an 85ft setback from the Road Right of Way, that the setback pertains to all structures on the property, not just a home. Due to the pre-existing house which is exempt from 85ft, Ms. Pancost's interpretation of the Zoning code regarding setback is that all buildings on the lot should conform to the 85ft setback.

Ms. Bryant asked Mr. Gano if he physically measured the setback for the existing building. He stated "No". She noted that the original building's setback was supposed to be 85ft, and the addition is 20ft x 32ft because the documentation provided by Mr. Weigel showed that the setback to the addition was 57ft (as submitted in the original Variance meeting).

Pancost asked for any other questions or comments from audience and Board members. Mr. Bott makes a motion to: Deny all variances and rescind the \$850 monetary fine. Ms. Schulda seconds the motion.

The Board does a roll call vote:

Tierney Bryant: Yes

Gary Bott: Yes

Janet Pancost: Yes

Judy Zidonis: Yes

Kathy Schulda: Yes

Motion carries to: Deny all variances and rescind the monetary \$850 fine.

Ms. Weigel then asks what the motion means. Ms. Pancost explains that the Board, based on information and testimony provided, do not agree with the Zoning interpretation of the Weigels and the Weigels do not agree with the Board's Zoning interpretation. The Board's interpretation is that the public records are still 5 acres for the Weigel's property, and no resurvey nor have the recalculations been published into the public records to record the larger lot size. The Board's interpretation is that all buildings should conform to the 85ft setback, not just homes. Ms. Pancost agrees that since Mr. Gano measured via the online GIS tool (on the County Tax Auditor's web site) that the Weigels are in compliance with the 20ft distance between the existing outbuilding and the home.

Ms. Pancost does state that while the fine has been rescinded, that they are still not in compliance with Township Zoning. The Weigels have 30 days to appeal the decision in Common Pleas court. Ms. Pancost explains that redress for the decision of the Board, from anyone including the Weigels, is through the Common Pleas Court.

Ms. Pancost states that since the Weigels still don't have their variances, they have to determine their next steps on the unfinished construction of their addition. Ms. Weigel states that the Weigels never asked to have the Variances to be revoked. Ms. Pancost reviews her previous statement of differences in interpretation of the Zoning code. Ms. Pancost then states that she believes that is it in the best interests of everyone involved to have a third party handle the issues at hand. Ms. Pancost stated that the Board tried to be fare to the Weigels and the rest of the Hiram Township community.

Ms. Pancost reviews the events of the initial variance meeting. Ms. Weigel asks if they can now not finish their building. Ms. Pancost states that they could, but they could be at risk.

After some comments from Ms. Weigel, Ms. Pancost reiterates the information provided, the actions taken by the Weigels, and the Board's reliance on County records when making decisions related to Zoning. Ms. Pancost also summarizes the discussions of the meeting up to this point.

Ms. Pancost asks if any other board members have any further to add. There were no further comments from the Board.

Ms. Pancost then moves onto the previous meeting's minutes which are up for journalization. Motion to accept from Ms. Bryant, Ms. Schulda seconds the motion.

The Board votes on the motion:

Kathy Schulda: Yes

Judy Zidonis: Yes

Janet Pancost: Yes

Gary Bott: Yes

Tierney Bryant: Yes

The minutes from the prior Board of Zoning Appeals meeting were approved.

Ms. Schulda motions to adjourn, Ms. Bryant seconds the motion.

The Board votes on the motion:

Kathy Schulda: Yes

Judy Zidonis: Yes

Janet Pancost: Yes

Gary Bott: Yes

Tierney Bryant: Yes

The meeting was adjourned at 8:42pm.