

The Tuesday November 15, 2016 meeting of the Delhi Township Board of Zoning Appeals was called to order by Chairman Joseph Scherer, Jr. at 7:00 p.m. at the Administration Building with the Pledge of Allegiance to the Flag.

Members present:

Robert J. Ashe  
Joseph Scherer, Jr.  
Thomas C. Foster  
Jerome H. Kearns  
Clay L. Tharp

Also present:

Gregory J. DeLong, Director of Community Development  
Thomas R. Stahlheber, Zoning Coordinator  
David C. Lane, Law Director

Mr. Stahlheber certified that the requirements of Section 121.22 of the Ohio Revised Code and the rules adopted pursuant thereto had been completely complied with as they concerned the meeting.

**Resolution 2016-11**

Mr. Tharp moved and Mr. Ashe seconded to approve the minutes of the Boards' September 13, 2016 meeting but to dispense with the reading. Mssrs. Kearns, Foster, Ashe, Tharp and Scherer voted Aye. Motion carried.

The hearing in Case VA2016-5 (5501 Revmal Lane) was re-convened.

Mr. Stahlheber advised that in Case VA2016-5 the Board denied a variance request to allow a fence having its most finished side facing inward at 5501 Revmal Lane, and required either removal or modification of the fence within 60 days of the effective date of the Resolution (December 19, 2016). He commented that the property owner Joe Kelly has requested a deadline extension.

Joe Kelly (sworn), 5501 Revmal Lane, advised he is requesting a deadline extension to modify his fence until such time as new owners of the neighboring property move in. He commented he would like the chance to work with the new owners to modify the fence to their liking.

**Resolution 2016-12**

Mr. Ashe moved and Mr. Foster seconded to extend the compliance deadline in case VA2016-5 120 days (until April 18, 2017). Mssrs. Kearns, Foster, Ashe, Tharp and Scherer voted Aye. Motion carried.

The hearing in Case VA2016-6 (1092 Timbervalley Court) was convened.

Mr. Stahlheber advised that on May 28, 2016 the Department of Development Services received an application filed by Christopher Spille for the construction of a shed at 1092 Timbervalley Court. He commented that the application was denied on August 11, 2016 and the applicant

notified of the denial by certified mail on August 11, 2016. He noted that in the letter were stated the reasons for the denial which included: the premises known as 1092 Timbervalley Court is located in Delhi Township, Hamilton County, Ohio, and is in the "A2" Residence District as shown on the maps of the Delhi Township Zoning Resolution; the submitted application and drawings indicated an existing 10' x 10' shed in the south side yard; the Township Zoning Resolution prohibits accessory structures from any yard other than rear yards; and requires that a zoning certificate be obtained prior to the construction of accessory structures. The denial was also based on the following sections of the Zoning Resolution: 51.1, 69, 70, 61, 62, 62.13, 62.14, 171, 171.7, 191, 192, 194, 251, 281, 282 and 291. Pursuant to Article XVIII of the Zoning Resolution the applicant had the right to file an appeal of the denial within twenty days of the action with an appeal being filed in the form of an application received September 1, 2016. Pursuant to the requirements of the Ohio Revised Code the hearing was advertised in a newspaper of general circulation at least ten days before the hearing and those parties of interest were notified by first class mail at least ten days before the hearing.

Exhibit "A" - application

Exhibit "B" - site plan

Chris Spille (sworn), 1092 Timbervalley Court, advised that when he built the shed he was not aware of the rules and procedures. He commented that he put the shed in the side yard because it is the most level spot and easy access. He noted that his back yard is a steep hill.

To Mr. Scherer's question as to how far off is the shed from the neighboring property line south Mr. Spille responded 7' off the property line.

To Mr. Ashe's question as to had he talked to his neighbors about the shed Mr. Spille responded that has not heard anything negative, commenting that some of the neighbors helped him build the shed.

To Mr. Ashe's question as to have you received any support or opposition Mr. Stahlheber responded in the negative.

Mr. Scherer advised for the record that there was no opposition present.

### **Resolution 2016-13**

Mr. Kearns moved and Mr. Ashe seconded to grant the variance as requested in case VA2016-6. Mssrs. Foster, Kearns, Tharp, Ashe and Scherer voted aye. Motion carried.

#### Finding of fact:

1. The case number was VA2016-6.
2. The date of the action by the Inspector was August 11, 2016, where a zoning certificate was denied for the construction of a shed.
3. The Appellant's name was Christopher Spille and he filed the appeal on September 1, 2016.
4. The address of the subject premises was 1092 Timbervalley, Delhi Township, Hamilton County, Ohio.

5. The Zone District of the subject premises was "A2" Residence.
6. Sections of the Zoning Resolution on which the denial was based included: 51.1, 69, 70, 61, 62, 62.13, 62.14, 171, 171.7, 191, 192, 194, 251, 281, 282 and 291.
7. Sections of the Zoning Resolution authorizing the Board to grant or deny the Appeal included 183, 184, 184.2, 184.6, 185 and 186.
8. There were no Sections of the Zoning Resolution cited by the Appellant as authorizing the Board to grant the Appeal.
9. There was no opposition present at the meeting.
10. There was no error on the part of the Zoning Inspector.
11. The Board finds that practical difficulties exist as a result of an area zoning requirement in this instance weighing the following:
  - a. The property owner purchased the property with knowledge of the Zoning restriction.
  - b. The property owner's predicament cannot feasibly be obviated through some other method other than a variance.
  - c. The variance is substantial.
  - d. The Board finds there is an irregular shape of the lot, topographic and other conditions present at the site.
  - e. The essential character of the neighborhood would not be substantially altered nor would adjoining properties suffer a substantial detriment as a result of the variance.
  - f. The property in question will yield a reasonable return and there can be a beneficial use of the property without the variance.
  - g. The variance will not adversely affect the delivery of government services.
  - h. The spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.
12. The granting of the appeal would not be contrary to the public interest, the general welfare or the adjoining landowners, for the reason that the distance between the subject structure and the neighboring residence south is 20'.
13. The Board wishes to review any alterations regarding the variance.

The hearing in Case VA2016-7 (5231 Cleves Warsaw) was convened.

Mr. Stahlheber advised that on September 16, 2016 the Department of Development Services received an application filed by Karl and Kathleen Kleeman for the construction of a fence and a shed at 5231 Cleves Warsaw Pike. He commented that the application was denied on September 20, 2016 and the applicant notified of the denial by certified mail on September 20, 2016. He noted that in the letter were stated the reasons for the denial which included: the premises know as 5231 Cleves Warsaw is located in Delhi Township, Hamilton County, Ohio, and is in the "C" Residence District as shown on the maps of the Delhi Township Zoning Resolution; the submitted application and drawings indicated an existing 12' x 16' shed and an existing 6' high solid fence in the south rear yard; the square footage of the shed, combined with the square footage of other accessory structures, exceeds 30% of the square footage of the rear yard; the fence has its most finished side facing inwards towards the subject property; the Township Zoning Resolution prohibits more than 30% of the square footage of rear yards being occupied by accessory structures as well as requires fences be designed and installed with the most finished side facing outward away from the subject lot or both sides equally finished. The denial was also based on the following Sections of the Zoning Resolution: 51.1, 81, 82, 61, 62, 62.13, 62.14, 171, 171.7, 171.9,

171.9-1, 191, 192, 194, 251, 281, 282 and 291. Pursuant to Article XVIII of the Zoning Resolution the applicant had the right to file an appeal of the denial within twenty days of the action with an appeal being filed in the form of an application received October 7, 2016. Pursuant to the requirements of the Ohio Revised Code the hearing was advertised in a newspaper of general circulation at least ten days before the hearing and those parties of interest were notified by first class mail at least ten days before the hearing.

Exhibit "A" - application

Exhibit "B" - site plan

Exhibit "C" - appeal package submitted

Sean Callen (sworn), 225 W. Court Street, advised he is an attorney and is representing Karl and Kathleen Kleeman. He commented that there are two parts to this case, the fence and a shed. He noted that he is requesting that the two issues be treated separately.

Mr. Kleeman (sworn), 5231 Cleves Warsaw Pike, advised this is his principal residence and that he has lived there since 1973. He commented that the fence was installed in 1998 or 1999 and is still in excellent condition.

Mr. Callen advised that it is his position that the fence is a lawful non-conforming use. He commented that the fence was constructed before the 2012 amendment to the text of the Zoning Resolution specifying that the finished side of fences needed to face outward. He noted that as the fence was installed in 1998 or 1999 and has been in continuous use since then that it was lawful when it was installed. He noted that in light of such facts that the regulation regarding the good side of the fence facing outward does not apply to this structure and asking that the Board approve that use.

Mr. Lane advised the fence, at the time of it's constructed, was in compliance and as such is considered a non-conforming fence inasmuch as the regulations affecting it changed after it was built. He commented that his recommendation to the Board is to find an error on the part of the zoning inspector and direct that a permit be issued for that improvement.

Donna Amrein (sworn), 1205 Beechmeadow Lane, advised her property abuts the Kleeman's to the south and that the subject fence faces the entrance door to her house. She commented that she does not have a problem with the fence other than the algae that grows on it. She noted her concerns are with the shed and the stormwater run-off eroding her yard.

#### **Motion 2016-4**

Mr. Ashe moved and Mr. Tharp seconded to find an error on the part of the zoning inspector and to direct that a permit be issued for the subject fence. Mssrs. Foster, Kearns, Tharp, Ashe and Scherer voted aye. Motion carried.

Mr. Callen requested that the hearing be continued in progress so that he could work with Township staff and council to come up with a resolution to issues concerning the shed.

To Mr. Kern's question as to if a resolution to the shed matter is reached could such be done without the Board holding another hearing Mr. Lane responded in the negative advising that the continuation of the hearing would need to be held.

Mr. Lane advised that there are some definitional issues with respect to the shed in this case. He commented that the Board granted a variance in 2006 for a garage and that if the garage is considered an addition then the shed is likely in compliance with the 30% area rule, while if the garage is considered an accessory structure it may or may not comply with the 30% area rule.

**Motion 2016-5**

Mr. Ashe moved and Mr. Kearns seconded to continue the hearing in case VA2016-7 in progress until January 17, 2016. Mssrs. Ashe, Tharp, Kearns and Foster voted aye. Motion carried.

**Motion 2016-6**

Mr. Kearns moved and Mr. Scherer seconded to change the Boards' meeting start time to 6:00 pm. commencing in 2017. Mssrs. Foster, Kearns, Tharp, Ashe and Scherer voted aye. Motion carried.

There being no further business on motion of Mr. Ashe seconded by Mr. Foster, the meeting was adjourned at 8:05 pm. Mssrs. Foster, Kearns, Tharp, Ashe and Scherer voted aye. Motion carried.

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Thomas R. Stahlheber, Secretary