

**BOARD OF ZONING APPEALS
MINUTES FOR THE
July 25, 2017
MEETING**

Pursuant to written notice, the meeting of the Board of Zoning Appeals (the “BZA”) was called to order by Chairman Al Schutte at 7:30 PM on Tuesday, July 25, 2017, in the Council Chambers of the Village of Evendale Municipal Building. Attending were Chairman Al Schutte, members Dave Harwood, Rhett McGregor, Mike Reed, and Ken Valentine. Supporting the BZA was Pam Morin (staff). Also present were the persons listed on Exhibit A attached hereto and incorporated by reference herein.

After all those present who planned on giving testimony were duly sworn in by Chairman Schutte, the following appeals were on the Agenda:

1. Brian Butt, 2 Indian Woods Drive

The applicant has submitted a request for an appeal of the Building Commissioner’s decision to deny the construction of a detached garage exceeding the maximum allowable area of 800 square feet for an accessory building in the Residential District as set forth in Schedule 1266.04(A) of the Village of Evendale Zoning Code and is seeking a variance from the maximum area requirement per 1284.01.

2. Daniel Graham, 3680 Glendale-Milford Road

The applicant has submitted a request for an appeal of the Building Commissioner’s decision to deny the construction of a detached garage exceeding the maximum allowable area of 800 square feet for an accessory building in the Residential District as set forth in Schedule 1266.04(A) of the Village of Evendale Zoning Code and is seeking a variance from the maximum area requirement per 1284.01.

The first order of business was consideration of the appeal filed by **Brian Butt** regarding 2 Indian Woods Drive.

Section 1284.02 of the Code establishes the parties entitled to appeal to the BZA. “Any application for appeal to the Board of Zoning Appeals may be filed by any person adversely affected by an order, decision, determination, or failure to act of the Building Commissioner or the Planning Commission”.

After hearing the testimony of those testifying and reviewing the written evidence submitted, the BZA, upon motion made by Mike Reed, seconded by Ken Valentine, unanimously adopted the following Findings of Facts.

1. By letter dated June 9, 2017, Don Mercer, Building Commissioner of the Village of Evendale, Ohio, denied applicant, Brian Butt’s request for a Building Permit to build a free standing garage in excess of 800 square feet. A copy of said rejection shall be marked as Exhibit B on file in the Building Department and incorporated by reference herein.
2. Applicant, Brian Butt filed an appeal dated June 16, 2017 with the Evendale Zoning Board of Appeals within the required 14 days following the denial of the applicant’s request. A copy of said appeal is marked as Exhibit C is on file in the Building Department and incorporated by reference herein.
3. After proper notice to the required parties, the BZA held a hearing on July 25, 2017, said date being within the required time. A copy of said notice is on file in the Building Department marked as Exhibit D and incorporated by reference herein.
4. The Board must determine whether the proposed variance is a “Permitted Variance” or “Prohibited Variance”, as set forth in Section 1284.05 (a) and (b) of the Code. Although the proposed variance is not (i) intended as a temporary measure only and (ii) is not a change in land use resulting in the establishment of a use not normally permitted in the

applicable use district, which would mean it is a Prohibited Variance, if found to be greater than the minimum variance from dimensional, numerical or locational standards necessary to relieve the particular hardship or practical difficulty demonstrated by the applicant, it is a Prohibited Variance. Notwithstanding the foregoing, Section 1284.05(e) of the Code permits the Board to reduce the extent of the variance sought to the minimum required, which would make it a Permitted Variance.

The Board must determine whether the proposed variance satisfies the requirements of Section 1284.05 (c) of the Code, which specifically addresses the criteria for a variance.

Section 1284.05(c) of the Code states as follows:

“The Board shall not grant a variance as authorized by § [1284.05](#) unless it can determine that there are practical difficulties encountered by the applicant in complying with this Zoning Code. The evaluation shall include, but is not limited to, the following criteria, which need not all be met in order to grant the requested variance.

(1) Whether the property will yield a reasonable return without the variance or whether there can be beneficial use of the property;

(2) Whether the variance is substantial;

(3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

(4) Whether the variance would adversely affect the delivery of governmental services;

(5) Whether the property owner purchased the property with knowledge of the limitations currently imposed on it by this Zoning Code;

(6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and

(7) Whether the spirit and intent behind this Zoning Code would be observed and substantial justice done by granting the variance.

5. Applicant submitted the following testimony and other evidence:

a. The property will yield a reasonable return without the variance.

b. Even though the proposed structure is substantial as a percentage of what would otherwise be allowed, the size of the lot and the screening provided by the heavily wooded lot result in the proposed size not being a substantial variance.

c. The essential character of the neighborhood would not be substantially altered and the adjoining properties would not suffer a substantial detriment as a result of the variance given the size of the Property and the wooded nature of the neighborhood.

d. The Property is 2.61 acres of heavily wooded land.

e. The variance would not adversely affect the delivery of governmental services

f. The property owner purchased the property without actual knowledge of the limitations currently imposed on it by this Zoning Code but the restrictions are in the public record.

g. The Property owner's predicament feasibly can be obviated through some method other than a variance such as by renting off-site storage.

Section 1284.5 (f) (see below) of the Code permits the BZA to impose conditions on the granting of a variance.

(f) Conditions on Variances. The Board of Zoning Appeals may impose such specific conditions and limitations concerning use, construction, character, location, landscaping, screening, and other matters relating to the purposes and objectives of this Code upon the premises benefitted by a variance as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject property. Such conditions shall be expressly set forth in the resolution granting the variance. Violation of any such condition or limitation shall be a violation of this Code and shall constitute grounds for revocation of the variance.

Section 1284.05 (g) of the Code (see below) requires the applicant to notify the Village and provide evidence of compliance.

(g) Compliance with Conditions. Whenever any variance authorized pursuant to this section is made subject to conditions and limitations to be met by the applicant, the applicant shall upon meeting such conditions notify the Building Commissioner for inspection of compliance.

Upon due consideration of the testimony and other evidence submitted for consideration, the foregoing Findings of Fact and the application of the facts to the applicable law, the BZA adopted the following resolutions, made by Mike Reed and seconded by Ken Valentine , by a vote of 5 to 0 with 0 abstentions:

DECISION

RESOLVED, that the Board hereby accepts the application for a variance to allow a 1280 square foot detached garage to be built on the subject Property by the Applicant; and

RESOLVED FURTHER, that approval is subject to compliance with the following condition imposed by the BZA: The Property may not be subdivided or otherwise reduced in size

The next order of business was consideration of the appeal filed by **Daniel Graham** regarding 3680 Glendale-Milford Road.

FINDINGS OF FACTS

After hearing the testimony of those testifying and reviewing the written evidence submitted, the BZA, upon motion made by Al Schutte, seconded by Rhett McGregor, unanimously moved to continue this matter in progress until the next scheduled meeting of the BZA in order to give the applicant time to determine the feasibility of reducing the height of the proposed structure.

The next order of business was review of the minutes from the June 5, 2017 meeting of the BZA. A motion was made by Mike Reed and seconded by Rhett McGregor to approve the amended minutes of the June 5, 2017 meeting. The motion passed by a vote of 5 in favor, 0 against and 0 abstentions.

Upon a motion made by Mike Reed, seconded by Rhett McGregor and unanimously adopted, the meeting was adjourned at 8:25 P.M.

Attest:

Al Schutte, Chairman
Board of Zoning Appeals