

VILLAGE OF MINSTER ZONING BOARD OF APPEALS

December 13, 2022

AGENDA

7:00 p.m.

1. Public Hearing
2. Call to Order
3. Approval of October 11, 2022 and the November 8, 2022 minutes *New Change for 6/24*
4. New Business:
 - a) A conditional use permit request by Brian and Tricia Schmiesing to utilize the building located at 86 North Hanover Street as commercial office space. A conditional use permit is needed to operate commercial enterprises in a residential district.
5. Old Business: *SR
→ SR to SR continue
SR/NC - AP*
6. Comments
7. Adjournment *NS/SB*

*Ask
about
- Fr. Hwy/Williams
Time and have
to be present*



**NOTICE OF HEARING
BOARD OF ZONING APPEALS
VILLAGE OF MINSTER
AUGLAIZE COUNTY, OHIO**

The Minster Board of Zoning Appeals will conduct a hearing on December 13, 2022 in the Village of Minster Council Chambers located at 5 West Fourth Street, Minster, Ohio at 7:00 p.m. The purpose of the public meeting is to consider the following:

- a) A conditional use permit request by Brian and Tricia Schmiesing to utilize the building located at 86 North Hanover Street as commercial office space. A conditional use permit is needed to operate commercial enterprises in a residential district.

Any person wishing to comment on the proposed appeal may attend the meeting or call the Zoning Administrator or a member of the Zoning Board of Appeals.

Donald W. Harrod
Zoning Administrator

7019 2280 0001 3240 6720

Schmiesing

7019 2280 0001 3240 6737

et Augustine

MINUTES FOR MINSTER ZONING BOARD OF APPEAL

7:00 PM

11/08//2022

Zoning Board Present (P) or Absent (A):

Steve Bruns	P	Brad Garmann, Pres	A
Ned Sielschott	P	Eric Schmiesing	P
Jean Hinker	P	Jim Hearn	P
Don Harrod ZA	P		

Also Present:

Dennis Kitzmiller

Ed Goebel

Lisa Goebel

I. The public hearing was called to order by President Brad Garmann at 7:00 pm.

- a) A variance request by Adam Will owner of the property at 278 South Cleveland Street. Mr. Will would like to erect a front porch onto the home. The front porch would extend 6 feet from the house. Currently, the house sits approximately 23.4 feet from the front property line. The zoning code calls for an average front yard setback. This is where no front yard setback depth shall be required to exceed the average minimum depths of the existing front yards on the lots adjacent each side if each of such lots are within the same block and within one hundred feet. The average front yard setback in this area is 22 feet 4 inches, so a variance of 5 feet is needed. No one was present to discuss the request. D. Harrod stated that Mr. will would like to erect a front porch on to the home and that taking the average front yard setback of the homes on either side of the Will's , the average setback is 22 feet four inches. B. Garmann stated that he thought that the addition would enhance the look of the house and J. Hinker agreed. N. Sielschott asked how far the porch addition would set back from the right-of-way. D. Harrod replied that it would be approximately 18 feet four inches off the right of way. J. Hinker inquired is there were any comments from the neighbors, and Harrod replied that there were none.
- b) A variance request by Edward Goebel owner of the property at 201 South Frankfort Street. Mr. Goebel has erected a shed and breezeway addition onto the existing garage. This new shed and breezeway addition sits on the rear property line. The zoning code calls for a setback for detached accessory buildings of 7.5 feet from all property lines. Thus, a variance of 7.5 feet from the rear property line is necessary. E. Goebel stated that he had purchased a shed and moved it onto the lot and added a breezeway between the existing garage and the shed. He stated that they do not use the garage and that since his wife works at home, they were looking for office space and wanted to convert the shed and the garage into an office. He explained that the lot was only 120 feet deep and the village owned the parcel to the west of his lot. He stated that his family maintains the area between the garage and the lift station fence. B. Garmann asked if the failure to obtain a building permit was an oversight. E. Goebel replied that it was because he thought you only needed to get a building permit if you did actual construction, not moving in a shed. He stated that once he was notified of the issue that he completed the necessary paperwork. J. Hinker asked who did the work. E. Goebel stated that he did.

He said that there was also a gap between the garage and the fence and they thought that putting the shed there wasn't a problem. S. Bruns asked who owns the fence. E. Goebel replied that it was owned by the Village but that his family power washed the fence and kept it clean. B. Garmann asked when the project was started. E. Goebel replied that it was begun on Labor Day weekend. J. Hinker asked if the neighbors were notified and D. Harrod stated that they were. E. Goebel added that it was their intention to make the property nicer by adding the shed. E. Goebel replied that the finish of the garage and the shed matched the finish of the house and that the lot the house set on was not a standard lot. N. Sielschott asked if the Goebels were not aware of the setback requirements. E. Goebel replied that it was an oversight on their part.

- II. The regular meeting was called to order by Brad Garmann at 7:10 pm.
- III. The minutes from the October 11th meeting July 12, 2022 meeting were presented to the board at the meeting and they did not have time to review them. So, S. Bruns motioned to table the approval of the meeting minutes until further review. This motion was and J. Hinker seconded. Being no further discussion, all members voted in favor of tabling the acceptance of the minutes.
- IV. New Business
 - a) A variance request by Adam Will owner of the property at 278 South Cleveland Street. Mr. Will would like to erect a front porch onto the home. The front porch would extend 6 feet from the house. The average front yard setback in this area is 22 feet 4 inches, so a variance of 5 feet is needed. B. Garmann stated that the addition will be an improvement to the property. J. Hinker stated that with the houses in the area they all have various depths of front yard setbacks. E. Schmiesing stated that the proposed addition doesn't have a negative effect on the neighbors by shadowing. Being no further discussion, J. Hinker motioned to approve the variance request. This was seconded by E. Schmiesing. All voted in favor.
 - b) A variance request by Edward Goebel owner of the property at 201 South Frankfort Street. Mr. Goebel has erected a shed and breezeway addition onto the existing garage. This new shed and breezeway addition sits on the rear property line. The zoning code calls for a setback for detached accessory buildings of 7.5 feet from all property lines. Thus, a variance of 7.5 feet from the rear property line is necessary. S. Bruns stated that there two things that were important in his decision making. The opinion of the neighbors and whether or not the building can be maintained. N. Sielschott was concerned with the request as the board has always held a hard and fast line with setback limits. J. Hinker expressed concerns about the Goebels not obtaining a permit. She was concerned that anyone could build and then come in and ask for forgiveness. E. Schmiesing stated that everything looks nice and that the yard is well taken care of. He also stated that the lot is unusually small which sets up a hardship but yet granting the variance sets up a precedent because it is not great to build in the setback. D. Harrod stated that the impact of the Goebels being so close to the village's property is minimal. B. Garmann stated that given the fact that the lot is small and that the fence screens the property is a benefit. He felt that it was not setting a precedent because each situation is different. He also stated that he didn't like when people ignore the rules. N. Sielschott stated that he fears setting a precedent. S. Bruns stated that every case is different. N. Sielschott asked if the Goebels ever thought of buying property from the village. E. Goebel stated that he did discuss this with D. Harrod but they wanted to apply for a variance first. E. Schmiesing asked how many lots like this? D. Harrod explained that there were a number of lots like this, especially on the east west streets where lots were divided at the corners. Being no further discussion, S. Bruns made a motion to grant the variance. This was

seconded by B. Garmann. President Garmann asked for a roll call vote. N. Sielschott – no; S. Bruns – yes; B. Garmann – Yes; E. Schmiesing – Yes; J. Hinker – no. Motion passed 3 to 2.

VI. Old Business

D. Harrod shared with the Board, a letter from Phillip and Erin Frilling requesting an extension to the stop work order to allow more time for their attorneys and the attorney for the Williams to resolve the encroachment and zoning violation by the Frillings. After some discussion, everyone thought that another 60 days was adequate to allow the development of a solution. Being no further discussion, N. Sielschott made a motion to grant the variance. This was seconded by J. Hinker. All voted in favor.

VI. Comments:

- a) The Board continues their discussion on short term rental/air bnb's. The zoning Code allows up to 2 boarders in a structure as an accessory use. The Board felt that this language was outdated and that updates to the zoning code need to be made to reflect the growth in popularity of short term rentals. J. Hearn suggested that the Board contact Choice One Engineering to see if they have any updated language that could be adapted into our code. D. Harrod will follow up with Choice One.

VII. Adjournment

N. Sielschott motioned and J. Hinker seconded a motion to adjourn at 7:46 pm. Motion passed.

MINUTES FOR MINSTER ZONING BOARD OF APPEAL

7:00 PM

10/11/2022

Zoning Board Present (P) or Absent (A):

Steve Bruns	P	Brad Garmann, Pres	P
Ned Sielschott	P	Eric Schmiesing	P
Jean Hinker	P	Jim Hearn	P
Don Harrod ZA	P		

Also Present:

Dennis Kitzmiller	Aaron Lowe
Phillip Frilling	Paul Williams
Erin Frilling	

1. The meeting was called to order by President Brad Garmann at 7:00 pm.

BG: Discussion with all parties involved about the original variance that we granted back in August 2021 and that is what we will be discussing today. So, I will turn it over to Don and he can review the variance that was requested and granted back in August of 2021.

DH: Back in July 21, 2021 Phillip & Erin Frilling requested a variance with a desire to add a new garage and drive 4.5' from the North property line. Basically, based on that and the drawing that was submitted with the variance request which shows the new garage addition 4.5' off the North property line. You guys granted a variance of 3' to allow them to construct the proposed garage that distance off the property line. I granted a zoning compliance certification March 2022 to the Frillings based on that variance that you guys granted so they proceeded with construction. August 25, I received a call from Paul Williams regarding the Frillings construction. I subsequently met with Mr. Williams later that day and looked at the property and discussed his concerns. At that time, we discussed the possibility of Mr. Williams getting a survey to locate the property lines and verify the property lines. On Sept 6th I received a call from Mr. Williams and a copy of an email from Jackie Saintignon at Lock Two Survey that shows the lot lines and determined the garage is approximately 1.5' off the property line. After doing research on the original variance request, and based on information from Lock Two Survey, on September 8th I contacted the Frillings to advised them they were in violation of the zoning code and that they should cease to continue to work on the attached garage portion of the project. And that they would need to correct the violation or comply with the original variance by October 15th. At that time, we also discussed options they had including filing another variance, which they subsequently did. Also, on September 8th I issued a written letter to the Frillings stating they were in violation of the code, a cease-and-desist letter basically. That they were in violation of code and should stop working on the garage portion of the project. That letter was received by the Frillings on the 12th of September. On September 22nd I received another variance request by the Frillings which I processed in tonight's meeting. On October 7th I received a notice of complaint from Paul & Denise Williams that's before you tonight. That is the history of where we are at.

BG: When did the Frillings receive the written letter

DH: September 8th.

BG: That is when the Frillings received it?

DH: That is when I talked to them on the phone and also sent the letter which they received it on the 12th, it was sent certified mail.

JH: Cease-and-desist specifically said to stop work completely?

DH: To stop work on the garage portion of the project.

JH: oh, the garage portion of the project.

BG: Next we would like to hear from Mr. Williams

Attorney: I would like to speak on behalf of Mr. Williams, I am his attorney, Aaron Lowe. It's nice to be here with you folks tonight. I am a solicitor for the Village of Botkins. Although I am obviously not here in that capacity tonight, I am here as a private attorney. So, my clients are Paul & Denise Williams and live at 38 Hanover. They share north property line with Frillings at 40 S Hanover St. I just want to recap what was said here. There was a variance that was applied for by the Frillings because they were doing a construction project. They are putting an addition on their house and an addition on their garage also asking to put a fence up on their property line. They applied for this variance on 7/21/21. My understanding is from the meeting minutes from the hearing on the 10th of 21 is that they want to build based off the blue print that was submitted and I have exhibits so you can follow along with me. Hopefully I have enough copies. So, if you look at Exhibit A is the application filed by the Frillings for the variance for the property line. The very last page of Exhibit A is a blueprint. The blueprint submitted to the board. Let me know when everyone is there. You notice the bottom portion of the blueprint where they are proposing to build the garage addition and you can see where that overlaps where the existing garage was torn down. If you look top left side of the garage addition, the variance was for 4' 6" off the property line. From my understanding of your zoning code the set back is 7' 6" minimum. So they were given a variance of 3'. After that construction started, the garage was torn down and my understanding the foundation was removed. Then new foundation was laid to support the garage addition. Well, if you flip to the next page this is Frilling's site survey which I believe was done by the construction company that they hired. Do you see where it says site survey at the top? If you go directly down from there where it says note, you can see that the site survey was put together on September 15, 2022. So that was after the September 8th cease and desist letter was issued and served to the Frillings. If you look at the left and go straight down, there is another note where it talks about how the site survey is based off of a survey in May 1998 as to where the property line was. So, everyone follow me so far? If you look at detail 1 & 2 it shows exactly where on both the west end profile and east end profile of new construction, exactly how far the structure is off of the property. So, you've got 11-3/4" on the west end and 19.5" off the east end.

Essentially what happened is was this blueprint was implemented in the construction of the garage was built 1' .65" off the property. Obviously, that is in violation of the variance that the village granted in Aug 2021. With that being the case, another thing to take into consideration is my client did in fact go and have a survey done. To determine where the actual property line is. If you go to exhibit E. First of all, the front page of exhibit E is the email from Lock 2 survey and Denise Williams and states the garage is 1.65" south of the property line. If you flip past that there is a copy of the survey that was done by Lock 2 to determine the precise property lines. If you flip to the survey portion you can see the drawing. So, it turns out that the actual property line was about 1.5' closer to the Frilling's north property line then they had known or had known where the property line was based on the initial blueprint in July of 21. What you can see here is on the east end of property, part of the garage, the overhang of roof is .83" over the property line which is an encroachment. Then on the west side, part of garage roof is .45" over the

property line. And the actual garage is probably about, I'm estimating, an inch off the property line. What approved variance of 4'6" to now where we have a situation where part of the roof is approaching the property and the foundation on the side of the garage is actually an inch off the property line at this point.

PW: this is all before gutters are put on the garage

Attorney: My client brought up that there aren't any gutters on it either and when that happens there will be even more of an encroachment onto his property.

A couple other things to talk about. Let's talk about this cease-and-desist letter. We are going to present testimony and exhibits here in a little bit that will essentially show that there was construction being done on the garage on September 13th, 2022. Which was a day after Frillings were given notice of the cease-and-desist letter. A couple of things, I think that are important to sum this up. I've really just gone over the documents with you. This variance that was applied for on September 2022 if this variance is in fact granted, a small portion of my client's property is essentially going to be annexed and given over to the Frillings. Property they don't own. I don't think the zoning board of appeals should do that. I don't think that's fair. Paul paid for his property no matter the amount of that. That property belongs to him. Another issue is how are they going to maintain that building? They don't have an easement. They are going to have to be several feet on my client's property to correct any issues they might have. There is already an issue of standing water along the north property line. Right where the garage is. We have photos of that we are going to show you. We can only imagine building this larger garage right on the property line is only going to exacerbate his problems and cause standing water to worsen on the property line. This certainly is a concern he has. Not only that but by approving this the zoning board of appeals would be retroactively approving a violation of the zoning code which already occurred. Which was building 1' 6" off the property line. Not sure this is good precedence to retroactively approve variance when someone didn't comply. They applied for a variance, they were given one, and they built according to where they thought the line was, they built outside the scope of that variance and closer to the property line than the variance allowed. Now we find out the property line is even closer, which makes the situation even worse. That's our perspective, we believe the variance request should be denied.

BG: We will hear from the Frillings now to give you guys an opportunity to address the issues and address the complaint and what the situation is. We are talking about what the original variance was.

EF: We suspect that our house was inaccurately plotted on the original application drawing. After taking a look at it we feel that the house was shifted too far south on the drawing. Which there be off of the house. So that is where we got to where it is today. I do not think that the statement that is only 1.5" off the property line is accurate. We had our own survey done and feel that the back portion is 18" which is in our application and I don't think that is an accurate statement.

BG: May I ask who prepared this drawing, the ones you submitted with the original variance?

EF: We had Brian Schmiesing prepare them for us.

PF: He drew their house plans for us. And we said we needed a variance and asked if Brian could help us. And he said yes, no problem.

BG: he is from here in town, right?

PF: yes, he is

BG: So, you believe this was wrong?

EF: yes, we didn't know it was wrong when we submitted it.

BG: Is he building the house for you?

EF: No, he is not, just the drawings for us. So, it certainly wasn't intentional that it landed where it did. I don't know what else to say about that portion of it.

BG: Portions of it are accurate, but other portions are not. Is that correct? Like the distance of Mr. Williams house to the property line, is showing 40" and I think that is pretty close to being accurate.

PF: These were done by Kevin Schnell. Surveyor who came out and drew this for us.

BG: and who did this survey?

PF: Kevin Schnell

BG: and who had that survey done?

PF & EF: We did

SB: So, between the two surveys, there is a foot difference or more?

BG: no

SB: One shows 19" off the property line, the footer and you're saying it is inches

Attorney: First of all, there are 2 different distances. There is an east end and west end side.

SB: I'm just trying to put apples to apples, to see how close these 2 are. So, what we have here on the Frillings this shows 19 on the west east end shows 19.5. And what does yours say? 0.84' so like 9"

Attorney: Actually, what our survey is showing is that the overhang is .83" over the property line onto my client's property on the west end. And on the east end it is showing it is .45" over my client's property line. That is an actual encroachment on my client's property.

SB: So, it is 9". So, there is 10" difference between the surveyors. That's what I'm trying to understand if that is correct. One surveyor is saying 19" and the other is saying none.

Attorney: yes

SB: Ok that is where I'm starting. Don does that happen? There usually the same pins right?

DH: Yes, they show using the same pins.

SB: either way it is closer than it should be. I was just curious because it's almost a foot difference. A couple inches maybe, but a foot?

EF: When Kevin gave us these drawings. We went through this and so he was out there & located his pins. He said that Lock Two mainly uses GPS and, in his experience, GPS can be 2-3 centimeters difference. So that can be part of the difference.

Attorney: There is something else germane to this and we will hear from their testimony later. One of the pins looks to be tampered with and bent.

SB: With construction out the front of the west side.

Attorney: and that may account for some of these discrepancies too.

SB: but a foot?

PW: the pin was so disturbed at the 10" part that we are talking about being off, that the new pin was recently set now. But she didn't disturb that pin because she wanted to do more research as to how that came to be. Phil did tell me that there was construction, that could have pushed that pin and disrupted it. I didn't know where my pins were prior to this whole thing happening. When they did the tape measure, and I even told this surveyor to not put the pin back in the ground, I saw him hammer my pin back in the ground. I stopped him and told him not to hammer the pin back into the ground because my surveyor was going to reset the pins because she wanted to make sure they were accurate

SB: per their measurements.

PF: Kevin did say in this disclaimer that he found the pin to the south of us and measured it and found out where the south lot line is and measured it to the pin that was bent. The pin that was bent, deep down was still accurate based on the tape. It was just bent over.

EF: asking why that would need to be set up, if that's the case if it was found to be accurate.

Attorney: surveyor thought that was something that needed to be done to find an accurate property line.

JH: I think we are getting caught up in this. I would like to go back to your original proposal and you mentioned Mr. Schmiesing did the drawing. So that begs the question. Where did he get the data from for the drawings. That was the root cause of this, it seems to me.

Attorney: all of the assumptions are based on that drawing

JH: right, so it seems to go astray and we don't know. Obviously, that's where it started wrong. Because we looked at it & assumed you had the 3' and an easement of 3' based off of that drawing. I'm not blaming Mr. Schmiesing but we are basing everything off of that. I don't know what data he used to do that.

Attorney: he used the 1998 survey. A survey done in May of 1998

BG: there is a discrepancy, but it still significant difference from the variance granted. We are talking about 3.5' or foundations is a foot to 18 inches and should have been 3' 6". There was a 4' section that was granted. Now we know that is the issue. Anyone else here have questions or discussions? We as a board need to discuss, because this leads to everything else. What do we do when we have this kind of error, that causes problems for both parties.

Attorney: I was going to have my client testify under oath and take some brief testimony for the record.

Placed Mr. Williams under oath.

BG: clarified that this is in regards to the original variance and the cease-and-desist order and not the new variance.

States Paul's name, address, wife Denise & daughter Madison and several pets

Attorney: Do and your wife Denise, do you jointly own the property at 38 Hanover?

PW: yes

Attorney & PW: it my understanding that your property consists of lot 33 and the north part of lot 32. – yes. Look at exhibit A, and what is it - it is the application for variance brought to zoning board of appeals of Minster on July 21, 2021. And it's my understanding that you share a north property line with

Frillings on N. Hanover – that is correct. Flip to the drawing that was submitted with the application for variance in 2021. First, look at the section that deals with the existing garage and the garage addition. Can you compare and contrast the difference between these – it's significant because the existing garage is where the new addition is currently standing vs. between the two it should be 4' 6". Do you know what exactly what happened with the existing foundation from the garage, was it torn down, removed, or new foundation after variance granted in August? – They took the bucket and lifted it out so it broke and they pulled it out. I thought they would have to jackhammer it out. So what your saying is they poured a new foundation? – Yes. What does their blueprint show as to how far this garage addition was to be built off of the property line? – 4' 6". Let's look at the site survey on the next page. Paul, what would you say is significant on this on detail 1 & 2? – Detail one shows the new construction shows only 11 ¾" off the virtual property line. Detail two shows the north end is 19" off the property line. When you say "it" we are talking about the foundation – yes. Are either one of those numerical measurements within the 4' 6" variance that was granted by the VOM – no. Neither one – no. Next look at exhibit C and can you identify – this is the minutes of the zoning board of 7pm August 10, 2021. Is that the day the variance granted – I believe so. In Section I, please read this – A variance request by Erin and Philip Frilling owners of the property located at 40 South Hanover Street. The Frilling's would like to erect an addition onto their home as well as an attached garage. The addition onto their home would be 3 feet 6 inches from the south property line and the garage would be 4 feet 6 inches from the north property line. Variances of 4 feet and 3 feet from the side yard setback requirements would be required for the home addition and for the attached garage to be constructed. The zoning code calls for the side yard setbacks to be 7 feet 6 inches. E. Frilling explained that their lot is unusually narrow width a width of only 50 feet and that the addition is to provide more space for their family. She explained that the house addition would be the same distance from the lot line that the existing house is now and that the garage addition would actually be further from the lot line then the current garage is. I want you to flip to the second page under new business, please read - B. Garmann expressed concern about how close this was going to be to the neighbors, but that the Frilling's had answered all of his questions. What is significant about that to you? – Well that there was an initial concern being how close it was. Now, flip to exhibit D and identify this exhibit by the subject line – It is a notice of zoning violation stating that they need to cease and desist. It also states in here that this violation needs to be corrected or otherwise to comply you can be fined by October 15th. – yes. This is where we will get into some photographs to pass around. PW- this is off of our terrace, right next to my wife's office window. Did she take the picture – I took the picture. What is the date on that picture – 6/12/22. What does that show? – that shows a big pile of debris. This debris was on my lot and we agreed that they would fix this here. My confusion began when I saw them pour the foundation. This shows standing water because the old garage didn't even have a gutter. Are you concerned that with the new addition there will be additional standing water issues? – Absolutely. For years water would run off the old garage with no gutter and turned that area into a swamp. With the new building as it stands, it's causing a ravine and rolls right off the roof. Which is why the roots of this tree being exposed. Attorney: do the Frillings have an easement on your property – they do not. Would they need an easement on your property to maintenance this garage? – yes, absolutely. I have photos – that was taken 9/13/22 when they are working on the roof. I think the 8th came through to cease and desist. My wife was working and looked up from the office and saw people working. 5 days after the phone call and 1 day after the letter. Attorney: your testimony shows the violation of the cease and desist - yes. Please identify this photo – this is photo 20 it is more water and starting to go through there substantially now that the pile is gone. It also shows the root system of the tree where the bucket, they had to backfile what they dug for the foundation. They destroyed the root system and that tree will die, that tree is dead. So that is the wall that is now inches off the property line.

JH: Our zoning regulations require that people who are continuous land neighbors receive a notice that they are notified and invited to the hearing at that point. Were you in attendance of that hearing?

PW: I was not in attendance.

JH: did you receive a notice of the hearing

PW: yes, that is correct

JH: did you log a complaint with the village regarding the granting of a variance at that time

PW: we had no problem with 4.5'. we are neighbors and I thought that was certainly fair

JH: but there were standing water problems with the garage that existed at that time?

PW: there were and we discussed it and said as long as everything *inaudible* . The only request I had with the variance was that they put gutters on the new building and we both agreed. We also discussed just the other day that the driveway would be slanted because they were in recognition of that water issue.

JH: saying the water was an issue regardless of whether the garage was in compliance of the zoning code or not.

PW: I would say that makes sense, but it is something we discussed because it was an issue.

Attorney: what he is saying is that the concern of the addition being so close to the property line it's going to make the issue worse

PW: Because the building is so much longer, not just a small one that was detrimental to the root system.

Attorney: I want to show the Frillings, these are the photos that PW testified to.

BC: Chris Harmon did this survey, who is he with?

Attorney: he is with Lock Two. I do have 1 more photo.

SB: were you aware there were workers working after?

EF: I was not until that evening, by the time I went over there, they were already done.

SB: did you tell whoever the crew was working that day they needed to stop.

EF: they were subcontractors, so we told our contractor there was a cease-and-desist order and then we learned the next day that there was working being done. The next day I ran over there after work, I told them they couldn't work on it anymore, but they were pretty much done.

BC: who is your contractor

EF: Rick Gaier – Gaier Construction. As you know they are trying to paint this picture, we did not do these things intentionally, it was not the case. We didn't know where this thing was going to be until it was up. We didn't intentionally tell people to destroy the roots of their tree. I think it should be noted that it was reported to me that Paul had yelled at the crew that was out there digging. Part of me thinks that despite our direction to preserve the tree as much as we can. The crew said PW said F that & yelled at them.

Attorney: I would like to identify a photo

PW: this was taken on 9/13/22. This also showing them working on the roof, but it shows you how close they are to the line.

Attorney: Paul, how has this impacted you? You've obviously hired me to come here tonight.

PW: it's upsetting because we are a community of neighbors. The whether it was intentionally or not I had to hire an attorney because I felt like something was amiss based on conversations with the Frillings, what I understood and what has actually been built is not what I was under the impression. So, I had to take the financial thing for the family to hire an attorney and get the survey done. I don't know how it ever went through without a survey. Going through this has just been brutal. We are neighbors and I don't want animosity between the 2 of us. To speak to being upset with the contractor. I certainly was. I looked down and saw the tree in disgust. We confirmed before construction that it would not be coming done.

Attorney: I want to ask how has this structure has changed you.

PW: I feel it being so close to the house might be detrimental in the event if I do want to sell it someday, being that close without an easement and affect my property value. And if I decide to put anything on my property I need to come before this court and ask for a variance, that now being there. They already granted one and if I want to build something now, I'm on my property based on something that wasn't supposed to be that close to my property.

Attorney: are there any conversations or correspondence with the Frilling's before July 21 that could shed light on the issue of the intent?

PW: Me, my wife and them were very upfront and approached us before going to the board and told us what was happening. There were several conversations after that they were going to show us the blueprints and come over where at on the line something like that with my wife. I work 2nd shift at Honda, so that is something my wife and Erin talked about. I can't speak to that and she couldn't make it tonight. We never saw the blueprints. When I asked to see the blueprints, which was in between this all going down, we were kind of upset with each other. Phil & I once talked and I asked if he get a survey and he said I didn't get a survey. PW asked if the city gets a survey. I was wondering if my being upset was valid, if the building was as close to the property line as I thought. I am upset because the notes of what was to happen, didn't happen and I needed representation to do this the right way. I didn't come in 21 because it seems like it's not right.

Attorney: I don't have any additional questions.

BG: we as a board need to discuss this. We've heard from both parties. We've heard facts, situations, timeline, so we need to discuss to decide what we are going to do about this issue. Again, this is before we proceed with the 2nd variance application, again, dependent on what we decide here. We have some options. One option is to uphold Don's cease-and-desist order and correct the problem, or reverse Don's order like it didn't exist, or modify Don's order. So that is what we need to discuss as a board. These decisions are going to impact both parties and that is important and is unfortunate, but it's what we have to talk about.

NS: I've been listening to both sides of the argument and many points brought up. To me it fundamentally goes back to the original approval of the original variance and that variance was not met. We have a situation that was created by whoever, not saying whose survey, but ultimately, we as property owners are responsible for that. It boils down to one question. Was that variance met or was it not.

SB: I agree with Ned. I'm trying to view both points. I understand Paul's point and Frilling's they did it in good faith, but it didn't turn out the way they wanted, anyone wanted. I don't like making the judgement either way, but it impacts both sides no matter which way you go. But Ned is correct the initial variance request was not met, unfortunately.

JH: I too agree, you started out with bad data and it exacerbated from there. I do understand your point, it is very close, but I do also think this was not intentional at all. I hate that it's gone this far in the project, it's a real shame. If you look at the hard facts, I do agree with you guys. We granted a 3' variance what everyone assumed to be correct, that was not correct. I do agree, it is in violation in what we agreed to.

ES: Along the same lines that I've heard from the board. I understand the house was maybe south, once onsite, everything got shifted north. That critical dimension of 4.5, even with the shifting it shouldn't have been built there.

BG: Like I said this is a tough one. When you first look at this, it's an issue. As a design professional, it's one of those cardinal things you look at first...is where is the property line, where is the set-backs because it's a disaster if you don't know. I've seen an error in a survey that has caused problems, but ultimately it is the owner's responsibility to verify or have that surveyed so you know where that is. It's unfortunate, but that is the way it is. For you to build without knowing is where the problem exists. We all based that good decision based on faulty data. We made a decision on bad information, which was provided to us by you. So do we hold up Don's order of the cease-of-desist to take off 2.5-3' of your garage addition. Is that reasonable, feasible? I think it is, but at a great cost. I certainly at the very least, if the wall to remain where it is that fascia would have to be modified to get rid of that encroachment period.

EF: We intend to do that.

BG: I don't have dimension, about a foot -16" on the overhand that would have to be reduced by half. When I went by the property, I was hoping the roof wasn't on, but it can still be modified. Whether that is a reasonable accommodation that is something we need to discuss. Just looking at the situation as it sits right now. We granted the 3' variance with the understanding you would have 4.5' to take care of that side of the building, same thing we do with fences, you have to have room to maintain that. I can't see how we can say yeah that's ok. I've got to uphold Don's order.

NS: I see our task this evening is to approve or deny the variance request to let the building sit less than a foot off the property line. In that aspect I don't know if there is a good resolution to this, I would make a motion to deny this request.

JH: Well, were not there yet. Where we are at Don't cease-and-desist order. Then we will discuss the new variance.

BG: Bring up consideration and what was the reasons for the original variance. It's a narrow lot, it's 50', we understood. I questioned it, but because you were offset from their sunroom. It's a unique situation. We thought 4.5' was reasonable and decision based on that information. How has the violations changed the reasoning for variance? If you would have come to us asking for 1' from property line, I feel we would have said no. So had we had that accurate information we would have said no. It's too much, too close. Giving consideration to the impact of the violation on the neighbor, it is close. I think PW had some valid concerns, but if that's 3' closer to his property than it should be, those things we need to balance the impact on both homeowners into consideration. Again, we can uphold Don's order and they need to correct it to be in compliance, or come up with some other solution or throw it out completely.

ES: question for PW is there a solution that you have in mind, that will appease you and your family? And is the only solution that you see that you want that moved back, or is there another solution?

PW: I'm a reasonable guy. It's upsetting because these guys are really good people and I have empathy for them. I believe you guys that that you didn't do this on purpose. The only reason my lawyer is here today because I'm married to the laws that value the rules and regulations. Nobody is winning here, not me and not Phil. There is this big thing that we have here and need to decide. I don't know at this point. There may be a solution but again I want to protect what I'm leaving behind to my daughter someday and make sure that there isn't a loss of property value based on the bad information that was submitted initially. If there is a way around that, I don't know. I certainly feel like a don't need an attorney every time we have an issue. I don't believe it was malicious. I think it should be right.

Attorney: I think what Paul is saying is that he wants the benefit of the original variance and he wants the garage to be 4' 6' off the property line.

PW: That is, I just really want to explain why I have an attorney.

Attorney: I'm just paraphrasing.

PW: Nobody is winning. This is tough on everyone. It saddens me that there may be not neighborly vibe moving forward.

EF: That's funny that you talk about a neighborly vibe because I took some notes 3/29/22 shortly after garage was demolished, I witness disturbing behavior of Paul Williams and another individual in our driveway. Both individuals were talking very loudly, shouting, clearly not a friendly conversation. We could hear from inside of our house with the windows shut. I heard the phrases, he can't do this, he can't do this to me, you better watch out, he F'd with me, he's going to get it was repeated several times. The 2 individuals spoke of the plans of causing damage to the new building amongst other ways to get back at us. It should be noted that this is before the construction had begun. On 3/30/22 I stopped at the Minster police department to talk about this disturbing behavior. That evening we shared drawings with Paul & Denise and talked about construction details. What I'm trying to say here, he's trying to paint himself as a great outstanding citizen, but then he will go stab you in the back. So, I think he had this idea that he wanted to do something to get back at us, for whatever reason, and this gave him something to pick at.

BG: having heard everything. Jim, can I ask you a question? Would improper procedure to seek a motion to make an action.

JH: you need to seek a motion, to give them 3 options. To modify Don's order, fulfill Don's order or to revoke Don's order.

BG: So that is what we have before us. I think we've heard everything we need in to hear order to make a decision. I will entertain a motion if someone would like to entertain a motion to one of those 3 options.

NS: I would like to make a motion to uphold

BG: do we have a second

SB: I second the motion

BG: I have a motion & a second. All those in favor say aye. All voted aye. It is unanimous. We have to uphold his cease-and-desist order.

JH: what is the date of that order

DH: 10/15/22

JH: As the Village Solicitor will the board give consideration to expand that date, to give the 2 parties to have discussions as to how they may properly resolve this? We have the action of the zoning board which is 1 of the activities that can take place in this action. But have an action between two neighbors where they, the Williams have a cause of action with the Frillings through encounter in the common pleas court. Which is another method they could have chosen to go and can still chose to go depending on how the Frillings react to the court's decision. Understanding that the board's decision would potentially create a very expensive resolution for the Frilling's. There may be a discussion that could be held between the 2 parties that may resolve the issue without the Frillings having to go quite as far as the court's decision may make them go. Which this usually happens in a conflict court level for monetary considerations can balance off final results. I'm just saying maybe give them a little time to talk.

BG: I think that's very good advice to the board. Thank you.

Attorney: we have no objections to that either.

BG: What is a reasonable amount of time?

SB: Initially they had a month, roughly a month.

DH: Yes, a month.

BG: Hopefully extend that by a month. Does that seem reasonable? That a solution could be achieved in that time.

JH: I think that's reasonable, if negotiations are going well, if they need more time. Giving each time to discuss more, they can always come back and ask for an extension and we can entertain that.

BG: We want to be reasonable and get it so you guys can both agree upon. So, let's motion to extend that by a month. So moved Ned, seconded: Jean. All those in favor aye. – everyone: aye

DH: So, you are granting it until November 15th?

BG: Yes. I think that give them time and if there has to be other action by this board you have adequate time to do so and file. As Jim stated, we would not have a problem extending that further if necessary. Again, trying to come up with a solution. That being said we can call regular meeting to order.

JH: No, now we are going into the public hearing.

The Board entered into the Public Hearing portion of the meeting at 8:13 pm

BG: the public hearing for the variance request to let the building stay where it is. So, this is a public hearing and anyone can say anything they want about this issue. I'll read it so we are all on the same page. Under new business, under the public hearing is a variance request by Phillip & Erin Frilling owner of the property of 40 S Hanover St. Frillings have constructed an attached garage approx. 11-3/4" off the property line. The Frillings are requested a variance to allow the building to remain 11-3/4" off the property line. The zoning code calls for a side yard setback of 7.5'. Variance of 6' 6-3/4" would be needed. I'm going to open it up to the public.

Attorney: we are just going to rely upon the statements and evidence we presented. We object to the variance being granted for the reasons we discussed prior.

BG: Hearing nothing else, we will move on to our regular agenda. That being

JH: Do you have anything further you want to say about the variance?

EF: regarding the new application? JH: yes EF: nothing else

The Board returned back to the regular meeting at 8:20 pm.

BG: In the regular meeting, first things is to call to order and in the approval of the 9/13/22 minutes.

JH: I have a correction. I didn't vote yes, I voted nay on the Clyde Miller variance.

DH: I'm sorry, I will change that.

BG: any other corrections, if not I entertain a motion to approve minutes.

BG: our new business, a variance request to leave it where it is. N. Sielschott motioned to deny the variance. This was seconded by Steve Bruns. All those in favor of denying. All voted in favor of denying the request. Alright, I close on that business.

BG: We have a couple other items. Discussion on height requirements on accessory buildings.

DH: Yes, at the last meeting we brought up the topic of number of variance requests we get on garages or accessory buildings that they want to match the roof line of the existing house. It seems like we are having a number of those variance brought up, whether or not we need to adjust that 18". You eliminate all those variance requests we get.

BG: We did this about 3 or 4 years ago from 15'

DH: Yes, from 15' to 18' about 3 years ago, I think.

BG: We had the same problem.

BG: Do we pick an arbitrary number or do we. I think there was some discussion then about matching the existing roof line of the house. That's kind of a wide, white-wash, you don't really know what you will get. Especially if you have something that is like a barn, that could create some issues.

ES: I brought a sketch as a talking point. So last month when we were talking about this I was trying to think if there is a height that makes sense over that height. So, what I drew was basically 9' studs and whatever your structure is your joists and trusses. If you are at a 7/12 roof pitch and this is consideration 26' garage, this is maybe typical. People are building bigger, not smaller, but this would allow for car and casework on that back wall. If you have single story, no storage above you would be compliant under that 20' that we had discussed. At a 7/12 pitch and again people are going to be changing those pitches. That would allow if they went to 8' wall it would keep it under. If they went to 10' ceiling they could have that single story garage and by setting at 20' anything above that would be storage or some type of room above, I think the minimum height you could ever build something and still achieve would be at 21' and that's pretty tight. 8' 8 or 9' 9 and 7' 6 would be that storage room. Again, you could do something different, but this is maybe the standard/typical. In order to get that accessory room, you would need a variance. Single story whatever it may be: single car, 2 car or 3 car, you could play with the pitch based on your house, but you would most likely be under that 20'.

BG: this is very good Eric. This explains a lot. I think we talked about this last time, but this kind of hits home for me because on my original garage on S. Lincoln I had 7/12 pitch, but I had to get a variance because it was 18' because then it was 15'. The house I'm at now, it's a 9/12 pitch which matches the house and it's at 21'. It does match the house, but some people have a 10/12 pitch which is steeper. It would certainly reduce the number of variances we have to deal with.

ND: What height are you talking about?

BG: 21'

JH: is 21' pretty standard in a new build.

ES: I reached out to a couple of my friends that are in construction in the area, but I didn't get much feedback from them. I put this together so I'm not sure. I design schools.

JH: What's the limit of a house height?

DH: 35'

BG: That's why I don't think we want to match that, because it would get 2 story garages.

DH: Eric, you would base this on the slope of the house?

ES: No. The reason why I'm against that, is in my neighborhood the garages can be 100' away from the house and it's not really an association.

DH: Ok.

ES: that's why every plot is different in Minster. Obviously, the small lots the east/west roads are going to be right next to the house. What I'm saying if we did 20' maybe this keeps going, since this has happened, but at least it would eliminate the 1' height differences. I think it makes sense. I can't imagine a 15', that had to be a little challenging to get under that.

BG: They were really flat; but again, that was more common back then.

DK: Are you basically saying now that if somebody built a garage that is 20' you would not be able to have a living quarter in that situation or have an upstairs? If I built a garage at 20' and put enough room up top to put living quarters up there?

ES: I think at 21' and this is a quick sketch you would have a ceiling height of 7' that's is putting the tie high. I don't know if that is realistic.

BG: It's reasonable, but 7'6" ceiling

DK: Yeah, but we always talk about some of these bigger ones and we don't want living quarters up there. Probably still staying under that problem.

BG: It's an attic, a really nice attic. I have an attic and the way Eric has drawn this, he's never seen my plans, but that is exactly what I have. It's a storage attic above the garage in a 9/12 pitch and it's a 26' garage.

DK: Sometimes we see these and we don't want them to have rooms up there.

BG: Are we recommending this to the planning commission?

DH: You have to recommend this to the planning commission, yes.

BG: Do we have a consensus?

SB: Eric, you came up with this drawing. What is your recommendation?

ES: I think the variance process is important. It gets our eyes on it a little bit, so we can have a reasonable discussion. My thought was if you have it at 20', everything under that would be a single story, everything over that they are probably doing it for storage and then let's us have a look at it.

BG: What was the height of the one we had a couple weeks ago or months ago, do you remember? They had 20'?

DH: They were just barely over 20' I think.

BG: Well maybe that's the magic number and anything over gives us options to look at it.

ES: I do think there will still be a lot of variances because I think this is what people are building and wanting. When I bike down the alleys and I see most are going to storage above.

BG: Does anyone want to make a motion to recommend to the planning commission that we change to 20' height on an accessory building? Steve motioned; Jean seconded. All in favor? All ayes. Any other comments?

DH: I am still looking at the bed and breakfast or AirBNB's. There is a new law that I need to talk to Jim about House Bill 563 that was passed that is no benefit to subdivision for short-term rentals because it basically prohibits short term rentals, any laws and regulations regarding short-term rentals.

BG: You're saying you can't have short term rentals? Jefferson Township just dealt with that.

DH: Yes, I think so. I need to talk to Jim a little bit to figure out what we can do.

SB: Isn't that up to each individual?

DH: Local community goes against violation of home rule. The Ohio Constitution gives home rule powers to local governments and it's eroding those.

BG: Jefferson Township around the lake had a lot of complaints. People were renting their places out and of course having parties or for the weekend.

DH: Something we will continue to work on.

BG: Anything else? Otherwise, I will entertain the motion to adjourn, Jean, seconded by Ned. All those in favor – all ayes.



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