

Board of Zoning & Building Appeals

Memorandum

To: Karla Richards, Clerk of Council
From: Rebecca Lukats, Interim Boards & Commissions Secretary *RLC*
Date: 2-11-11
Re: Approved/Signed Board of Zoning & Building Appeals Minutes:
Tuesday, November 16, 2010

Attached you will find a copy of the approved/signed minutes from the Board of Zoning & Building Appeals meeting held on Tuesday, November 16, 2010.

Please note that the original approved/signed minutes have been forwarded to, and will be on file with the Clerk of Council.

E-mail: Mayor (per Admin. Asst.)
Administrative Officer
Superintendent of Building and Zoning
Board of Zoning & Building Appeals
Council
Municipal Engineer
Law Director
Fire Chief
Finance Director
Builder's Exchange

cc: BZA File/Posting

City of Norton
BOARD OF ZONING & BUILDING APPEALS
Tuesday, November 16, 2010

The Board of Zoning & Building Appeals convened in Council Chambers at the Safety Administration Building. Chairman Nick Genis called the meeting to order at 6:00 p.m.

I. ATTENDANCE:

PRESENT: Nick Genis, Dan Grether, Bill Helmick, Don Welch and Angie Wells

EXCUSED:

STAFF: Russ Arters, Supt. of Building and Zoning, Pat Ryan, Zoning Inspector/Interim Secretary and Tom Ocepek, alternate member

II. SWEARING IN: Chairman Genis reviewed the procedural requirements for this hearing. Chairman Genis stated that this is a quasi-judicial Board and asked that anyone wanting to speak to sign the attendance sheet and stand to be sworn in. Chairman Genis administered the oath to those intending to speak at the hearing.

III. PUBLIC HEARINGS:

- A.) **Application A5-2010**
Shawn Erickson, owner
Regarding property known as
4081 Watkins Ave./PPN 4601865
Requesting a 272sq. ft. variance from Section 1296.03(a)(1)
[Allowing for an accessory building over the allowed size limit]

Chairman Genis announced the application and stated the application was filed on Friday, October 18, 2010, and letters of notification were sent via first class mail, as required, per section 6.03 of the City Charter. Chairman Genis asked the applicant(s) to come forward and present the request. Mr. Shawn Erickson of 4081 Watkins Avenue in Norton, Ohio came to the podium.

Mr. Erickson stated the reason for the variance request was due to the death of his father in the summer and the fact that he has inherited 4 cars and numerous other items that he needs to store.

Chairman Genis asked how far the accessory building would be from the back of the home. Mr. Erickson stated approximately 30 feet. Chairman Genis asked where the septic system and well were located. Mr. Erickson responded the septic system is in the front yard and the well is in the backyard approximately 10 feet from the house and 20 feet from the proposed building. Mr. Genis inquired if Mr. Erickson could manage with a 1072 sq. ft. building to keep it within the code limit. Mr. Erickson stated there is too much stuff to fit. Mr. Erickson stated his father had 2 garages, one of which was over 2000 sq. ft., one 2 car garage and the house. Mr. Erickson said his father had cars, numerous tools, woodworking equipment and some antiques. Chairman Genis asked if the construction of the building would be consistent with the house. Mr. Erickson said it would have the same vinyl siding, no windows just a main door. Mr. Genis asked if gutters would be on the building and where they would drain. Mr. Erickson stated he would have gutters and they would drain on his property.

Chairman Genis asked if any of the Board members had any questions.

Mr. Grether asked Ms. Ryan if she received anything from Summit County Health District on the building approval based on the septic system. Ms. Ryan stated she had a call from Ryan Pruett, supervisor from SCHD, and he stated it was approved because the land in that area was not suitable for a replacement system. Ms. Ryan said she did not receive anything in writing as of the time of the meeting.

Ms. Wells asked if he would be putting in a drive back to the building. Mr. Erickson said he would be putting in a gravel drive to the right side of his house. Mr. Erickson said he would pave it when he had the money.

The Board reviewed the location of the building in relation to the neighboring lots. Ms. Ryan added this lot is zoned Business so there are no side or rear setback requirements but Mr. Erickson is allowing for a 10' setback.

Mr. Grether asked if 1296.07(e)-Off Street Parking, would apply. Both Mr. Arters and Ms. Ryan stated it would not in this case and that gravel is actually beneficial for water absorption.

Chairman Genis asked if there was any testimony from the audience. There was no one in the audience to speak for or against the variance. The Board recessed to discuss the application.

The Board reconvened and Chairman Genis asked for a motion. **Mr. Grether made a motion to approve Variance Application A5-2010 regarding 4081 Watkins Ave./ PPN 4601865 for Shawn Erickson, owner, to allow the construction of an accessory building 272 sq. ft. over the allowed size limit with the following condition and safeguard:**

- 1. All gutters and water runoff must be directed as to protect the neighboring properties from damage.**

Motion was seconded by Ms. Wells. ROLL CALL: Mr. Welch-Yes, Ms. Wells-Yes, Mr. Helmick-Yes, Mr. Grether-Yes, Mr. Genis-Yes. Motion passed 5-0.

**B.) Application A6-2010
Averill Simons, Jr., owner
Regarding property known as
Vacant parcel on Pleasant St./PPN 4605266
Requesting a Variance from Section 1472.13(b) – Dredging and
Dumping within a Riparian Setback**

Chairman Genis announced the application and stated the application was filed on Friday, October 25, 2010, and letters of notification were sent via first class mail, as required, per section 6.03 of the City Charter. Chairman Genis asked the applicant(s) to come forward and present the request.

Mr. Averill Simons, Jr. of 2985 Oak St. in Norton, Ohio came to the podium. Mr. Simons stated the land was low on this property and he filled it in so it would be easier to maintain.

Chairman Genis asked what the reason was for removing some of the trees. Mr. Simons stated it was necessary because the fill would have killed them. Mr. Genis asked Mr. Simons to describe the property prior to adding fill. Mr. Simons explained there were wild trees that he cleared out and when they did the sewer project on Oak St. he took down other trees because the dirt would have choked the trees and killed them. Chairman Genis asked what was adjacent to the creek before this occurred. Mr. Simons stated it was rocky and rough. Chairman Genis asked what lead to Mr. Simons asking for the variance. Mr. Simons said his neighbor complaining about what he was doing. Chairman Genis asked Mr. Simons if he was aware of the existence of the riparian area prior to doing the work. Mr. Simons stated he was not aware. Chairman Genis asked if the complaint has been resolved. Mr. Simons stated he has spoken to his neighbor and taken the slope down, seeded it to make it better. Mr. Simons said he was just trying to make it look better and did not know about not being able to go near the creek. Chairman Genis explained the riparian setback and asked Mr. Simons how much of his property is in the riparian. Mr. Arters explained from the bank of the creek to Mr. Simon's property line is anywhere from 12 to 20 feet according to Dave White, Municipal Engineer and the County GIS, so approximately 30-35 feet of the riparian is on Mr. Simon's property. Chairman Genis stated that if a home was built on the lot in the future it could not be built within the riparian setback and asked Mr. Simons if he is

aware of this. Mr. Simons said he was. Chairman Genis asked if Mr. Simons had to go back afterwards and remove dirt from his neighbor's property. Mr. Simons said he removed 10 loads to reduce the slope because it was too steep to mow.

Chairman Genis asked if any Board members had any questions.

Mr. Grether asked who maintained the property prior to the work being done. Mr. Simons indicated he did.

Ms. Wells asked if the applicant did this work because he was going to build a home on the lot. Mr. Simons said eventually.

The Board reviewed where this lot is located. Chairman Genis asked if the applicant removed shrubs or thick vegetation next to the creek on his property in the process of filling. Mr. Simons stated not during this process but did when he first bought the property in 2004 or 2005.

The Board discussed the sewers and Mr. Welch asked if current septic systems in the area drain to this creek. Mr. Arters said they probably do.

Mr. Arters stated the applicant, as well as probably 90 percent of people, do not know about the riparian setbacks and that is one of the challenges the city has is letting people know about these areas so they are not disturbed. Mr. Arters explained the timeline on this issue. Mr. Arters further explained the reasons for the setback and what it does to help with water on properties. Mr. Arters agreed the applicant was in the wrong to disturb the area but that he did not know about the regulations, he has tried to correct the issues and has worked with the city. Mr. Arters stated that, according to the Municipal Engineer, this project probably would have been approved as it is today because it will slow the water down from getting to the creek.

There was discussion regarding the comments from the Summit County Soil and Water Conservation District (SWCD). Mr. Arters stated the County has jurisdiction on lots over one acre and everything under that is under the city's control. Ms. Fink from SWCD made the recommendation to remove the fill before measures were taken to modify the slope. Mr. Arters stated that both he and Mr. White felt that the best solution was to get the fill seeded to prevent more erosion and runoff. Mr. Arters further explained that at no time was work done in the creek or right up to the creek.

Mr. Grether asked if he has seen any flooding since he has lived there. Mr. Simons said perhaps once but it has to rain all day. Mr. Arters said the creek is not deep there and it will overflow the banks during heavy rains.

Chairman Genis asked if there were any other questions from the Board. There were none. Chairman Genis asked if anyone wanted to speak for or against the issue.

Mr. David Krege of 3840 Long Drive, Norton, Ohio came to the podium. Mr. Krege stated he believes the riparian regulations are a good thing and added that when Ms. Fink was out to the site she pointed out the Figley property as an example and mentioned the good things they had done on their property in the riparian area. Mr. Krege disputed that there was a dip in the yard as Mr. Simons had testified and that the clay fill on top of the ground doesn't slow down any water runoff. Mr. Krege handed a packet of information to Ms. Ryan to hand to the Board (see attached #1). Mr. Krege explained the pictures that he has taken in the recent months and the timeline he had created. Mr. Krege stated the yard was first filled in with wood chips and the covered with fill dirt. Mr. Krege said there were two instances when silt entered the creek from the site. One time was before the silt fence was installed and the second was after. Mr. Krege spoke to the construction of the silt fence and claimed it was not installed or maintained properly. Mr. Krege addressed the large woodpile on Mr. Simon's property. Mr. Krege explained that he too cleaned out the riparian area after he moved there to get out tires and make it look nicer. Mr. Krege said the long and short of the matter is that some of the work was done on his property and that when work like this is done it should be kept on the property where the work is occurring. Chairman Genis asked if Mr. Krege had the original pictures he had mentioned and Mr. Krege gave another set of pictures to Ms. Ryan to hand to the Board (see attached #2). Mr. Krege said these are in chronological order as the construction progressed.

Chairman Genis said after looking at the pictures he could understand Mr. Krege's position when looking at the initial construction but that the current conditions do not match that anymore as corrections have been made. Chairman Genis asked Mr. Krege is he is satisfied with the corrections that have been made to the original work. Mr. Krege

stated it was a vast improvement to what was there but that a silt fence should be installed properly and that would mean it would need to come onto his property. Chairman Genis asked Mr. Krege if he would be satisfied if Mr. Simons monitored the disruption to his property and did any necessary repairs on a continuing basis. Mr. Krege stated he really does not want Mr. Simons or his crews doing anything on his property. Chairman Genis stated he does not want Mr. Krege to have the burden of doing any repairs. Mr. Krege said he is considering taking the recommendations of the SWCD and letting the land grow naturally on both sides of the creek and be done with it.

Chairman Genis asked if the Board had any questions.

Mr. Welch asked Mr. Krege to answer yes or no if he was satisfied at this time with the corrections Mr. Simons has made. Mr. Krege said no. Mr. Welch asked, in Mr. Krege's opinion, what corrections would need to be made to satisfy him. Mr. Krege said a silt fence needs to be put in on the Simons property that is maintained. Mr. Krege said he really does not know what needs to be done but that he just does not want Mr. Simons on his property.

Mr. Grether stated, based on Mr. Krege's comment about the silt fence being placed too close to the property line, a silt fence could be placed approximately 4 feet from Mr. Krege's line and still decrease any potential damage over the winter thaw while keeping Mr. Simons off his property. Mr. Grether feels this may satisfy many concerns, this would put the fence on the Simons property, put the burden to construct the fence on Mr. Simons, protect the land, see what happens after the spring thaw and keep him off the property. Mr. Grether said it could be evaluated in the spring and, he can assume with the amount of money spent so far, that Mr. Simons will go even farther in the spring to make any corrections while he tries to get the vegetation established. Mr. Grether stated he does like Mr. Krege's idea of letting nature take its course along the creek, as recommended by SWCD.

Mr. Arters stated, in his opinion, he feels installing a new silt fence is a bad idea at this point because everything is seeded and covered in straw. Mr. Arters said it will just disturb what is there and it will be much worse when it rains. Mr. Arters said that if the grass does not come up in the spring the site can be re-evaluated at that time and plantings can be done.

Mr. Grether stated that if they were looking at the original construction they would probably be asking Mr. Simons to do something but corrections have been made and he would like to give the new topography a chance to do forward.

Mr. Helmick agreed with Mr. Arters' comments regarding the silt fence.

Ms. Pat Schleicher of 3862 Long Drive came to the podium. Ms. Schleicher said her property goes back to the creek and she stated that she did not know about the riparian setback either. They discussed the riparian and sewer easement on her property. Ms. Schleicher said she watched the whole process on this property and she said it looks very nice and is in favor of the improvements.

Mr. Paul Barnett of 2995 Pleasant Street came to the podium. Mr. Barnett said Mr. Simons has been a pretty good neighbor and the only objection he has is regarding the woodpile on his property. Mr. Barnett feels a condition to prevent the woodpile be part of his approval. Mr. Arters stated the woodpile is not the issue.

The Board recessed to discuss the application.

The Board reconvened and Chairman Genis asked for a motion. **Mr. Welch made a motion to Table Variance Application A6-2010 regarding vacant land on Pleasant St./ PPN 4605266 for Averill Simons, Jr., owner, for the following reasons:**

In order to give sufficient time to see if the recommendations made by Summit County regarding this application are sufficient in reestablishing, protecting, and repairing the riparian area, the motion is to table this request until the April 19, 2010 meeting [at 6pm] of the Norton Board of Zoning [Appeals]. The expectation of the Board is to protect the riparian setback.

Motion was seconded by Mr. Helmick. ROLL CALL: Ms. Wells-Yes, Mr. Welch-Yes, Mr. Helmick-Yes, Mr. Grether-Yes, Mr. Genis-Yes. Motion passed 5-0.

IV. OLD BUSINESS: None

Board of Zoning & Building Minutes

Submitted by Pat Ryan, Interim Boards & Commissions Secretary/Stenographer

*** Notes: These Minutes are not verbatim. ***

*** Due to the large size of Attachments, they will be kept with the Official Record in the Clerk of Council's files***

V. NEW BUSINESS:

Ms. Ryan asked if the Board would be able to set a special hearing date for December due to an application that came in and needs to be heard prior to their regular meeting on December 21, 2010. The Board decided their next hearing would be on December 7, 2010 at 6pm.

VI. CONSIDERATION OF MINUTES:

Chairman Genis asked if there were any corrections to the minutes of October 19, 2010. There were none. **Mr. Welch made a motion to approve the minutes as written. Mr. Grether seconded. ROLL CALL: Ms. Wells-Yes, Mr. Helmick-Yes, Mr. Grether-Yes, Mr. Welch-Yes, Mr. Genis-Yes. Motion to approve passed 5-0.**

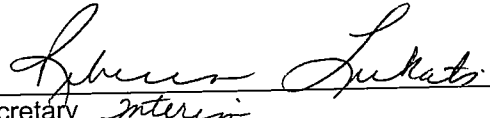
VII. ADJOURNMENT:

There being no further business before the Board the meeting was adjourned at 8:06pm. The next scheduled meeting is December 7, 2010 at 6pm.


Board of Zoning & Building Appeals
Chair/Vice-Chair


Board of Zoning & Building Appeals
Vice-Chair/Member

1/19/2011
Date


Secretary *Interim* 1/19/2011
Date

**BOARD OF ZONING & BUILDING APPEALS
AUDIENCE ATTENDANCE RECORD**

The following individuals were present at the Meeting of the Board of Zoning & Building Appeals, held on **Tuesday, November 16, 2010.**

PLEASE PRINT YOUR NAME CLEARLY

(PLEASE NOTE: P.O. BOX ADDRESSES ARE NOT PERMITTED)

NAME:	STREET ADDRESS (NO PO BOX):	CITY & ZIP CODE:
<u>Shawn Erickson</u>	<u>4081 WATKINS Rd</u>	<u>Norton 44203</u>
<u>Averill Simons Jr</u>	<u>2985 oak st</u>	<u>Norton 44203</u>
<u>David Krege</u>	<u>3840 Long Dr.</u>	<u>Norton 44203</u>
<u>Paul Barnett</u>	<u>2995 Pleasant</u>	<u>Norton 44203</u>
<u>Geralline Figley</u>	<u>2977 Pleasant</u>	<u>Norton 44203</u>
<u>Pat Schleicher</u>	<u>3862 Long Dr</u>	<u>Norton 44203</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Signed: Pat Reyer
Stenographer

**RESOLUTION
BOARD OF ZONING & BUILDING APPEALS**

Tuesday, November 16, 2010

BZA RESOLUTION NO.: 7-2010

BZA Application A5-2010

Regarding the property known as:

4081 Watkins Rd./PPN 4601865

Shawn Erickson, owner

Requesting a 272 sq. ft. variance from Section 1296.03(a)(1)

[To construct a 1280 sq. ft. accessory building]

The Board finds that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure. True False

The Board shall further make the finding that the granting of the variance will be in harmony with the general purpose and intent of the ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

True False

In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with the ordinance as provided by Section 1254.04(c)(1F2) of the Codified Ordinances of the City of Norton, Ohio.

The following conditions and safeguards are hereby made a part of the requested variance:

① ALL GUTTERS AND WATER RUN-OFF MUST BE
DIRECTED AS TO PROTECT THE NEIGHBORING
PROPERTIES FROM DAMAGE -

Vote on Motion: FOR 5 AGAINST 0 ABSTAIN 0

Therefore BZA Application A5-2010, requesting a size Variance is hereby:

GRANTED DENIED TABLED

This resolution shall be sent to:

Administration for action or information, and Council for their action or information.

N. Geni

Board of Zoning & Building Appeals
Chair/Vice-Chair

11-16-10
Date

[Signature]
Board of Zoning & Building Appeals
Vice-Chair/Member

Pat Ryan
Secretary

11-16-10
Date

**RESOLUTION
BOARD OF ZONING & BUILDING APPEALS**

Tuesday, November 16, 2010

BZA RESOLUTION NO.: 8-2010

**BZA Application A6-2010
Averill Simons Jr., owner
Regarding the property known as:
Vacant land/PPN 4605266/Pleasant St.
Requesting variance from
Section 1472.13(b) Dredging or Dumping
within a Riparian Setback**

The Board finds that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure. True False

The Board shall further make the finding that the granting of the variance will be in harmony with the general purpose and intent of the ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare. True False

In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with the ordinance as provided by Section 1254.04(c)(1F2) of the Codified Ordinances of the City of Norton, Ohio.

The following conditions and safeguards are hereby made a part of the requested variance:

In order to give sufficient time to see if the recommendations made by Summit County regarding this application are sufficient in re-establishing protective and repairing the riparian area, the motion is to table this request until the April 19, 2011 meeting of the Norton Board of Zoning. The expectation of the board is to protect the riparian setback

Vote on Motion: FOR 5 AGAINST 0 ABSTAIN

Therefore BZA Application A6-2010, requesting a Variance is hereby:

GRANTED DENIED TABLED

This resolution shall be sent to:

Administration for action or information, and Council for their action or information.

N. Conis
Board of Zoning & Building Appeals
Chair/Vice-Chair

Nov 16, 2010
Date

Wm E. Helms
Board of Zoning & Building Appeals
Vice-Chair/Member

Pat Ryan 11-16-10
Secretary Date