

**NORTH RIDGEVILLE BOARD OF ZONING & BUILDING APPEALS
MINUTES FOR THE
REGULAR MEETING MARCH 28, 2019**

TO ORDER:

Vice-Chairwoman Masterson called the meeting to order at 7:00 p.m. with the Pledge of Allegiance.

ROLL CALL:

Present were members Mario Cipriano, Planning Commission Liaison James Smolik and Neil Thibodeaux and Vice-Chairwoman Linda Masterson

Excused was Chairman Shawn Kimble.

Also present was Chief Building Official Guy Fursdon, Assistant Law Director Toni Morgan, Council Liaison Michelle Hung and Deputy Clerk of Council Michelle Owens.

MINUTES:

Vice-Chairwoman Masterson addressed the regular meeting minutes dated February 28, 2019.

It was moved by Cipriano and seconded by Smolik to approve the minutes of February 28, 2019.

PLANNING COMMISSION REPORT(S):

Vice-Chairwoman Masterson addressed Planning Commission Liaison Smolik and asked if there were any reports from Planning Commission.

Planning Commission Liaison Smolik responded there are no reports at this time.

OTHER REPORTS OR CORRESPONDENCE:

Vice-Chairwoman Masterson asked if there were any other reports or correspondence.

There was brief discussion surrounding the email correspondence received from Assistant Law Director Morgan regarding the application submitted by Daniel Eckenrode.

Correspondence was read into the record.

Assistant Law Director Morgan advised a motion to suspend the rules to move item 2 to first position.

Vice-Chairwoman Masterson asked for questions from the Board regarding the email correspondence. No discussion was offered. She addressed Council Liaison Hung and

asked if she had questions concerning the correspondence. No discussion was offered. She asked for any questions from audience members. The meeting was moved to new business.

NEW BUSINESS:

APPLICANT: Daniel Eckenrode

7030 Fairacres Ave, North Ridgeville, OH 44039

OWNER: Daniel Eckenrode; Mary Eckenrode

7030 Fairacres Ave, North Ridgeville, OH 44039

REQUEST: Requesting accessory use (5' × 15' greenhouse) in front yard, approximately 39 feet from right-of-way.

LOCATION: 7030 Fairacres Ave, in an R-1 zoning district.
Permanent Parcel No. 07-00-016-108-004

Mary Eckenrode, 7030 Fairacres Ave, North Ridgeville, OH 44039, was sworn in. She stated she received two violations on the original greenhouse; that the first notice of violation did not list any charges and was subsequently dismissed. She continued that the second violation was received due to lack of a building permit. She stated that, to the best of her knowledge, there are no permits for portable structures of any type. She explained that it is a portable greenhouse, having no foundation or electric. She stated she is disabled and uses her greenhouse to grow her vegetables in the summer. She explained that her greenhouse had been next to her garden but has since been moved behind her house. She stated that, because she has a large side yard, she would like to use part of it for more than decoration. She then further described the greenhouse as being located behind her house but in the side yard; that it is not in the front yard.

Vice-Chairwoman Masterson stated that, due to the correspondence from Assistant Law Director Morgan, the Board is not able to hear her case. She explained that the applicant had exceeded the allowable 30-day period in which to file an appeal; that a citation had been hand-delivered by Building Inspector Paul Blanchette.

Mary Eckenrode responded that the citation had not been delivered by Building Inspector Blanchette. She stated it had been hand-delivered by the Police Department with no prior certified letters; that it is currently in municipal court.

Vice-Chairwoman Masterson stated that she understands, however that concerns court. She continued that the applicant's request does not fall under the jurisdiction of the Board of Zoning and Building Appeals.

Assistant Law Director Morgan addressed the Notice of Violation. She clarified that this notice is issued by the Building Department to indicate a problem. She explained that the individual may correct the problem or file an appeal with the Board of Zoning and Building Appeals. She stated that issuance of a citation is a completely different process

out of Mayor's Court, which has nothing to do with this Board.

There was dialogue from the audience. It was inaudible.

Vice-Chairwoman Masterson interrupted and stated that audience members wishing to speak must be sworn in. She stated that – because they are unable to – Board members will not vote on this case. She suggested the applicant seek the advice of the Law Department or Building Department to determine what is permitted for her property.

Mary Eckenrode began to speak about the complainant but refrained.

Vice-Chairwoman Masterson responded that she understands but that the Board is unable to do anything about these complaints.

Mary Eckenrode referred to a previous discussion between her husband and Chief Building Official Fursdon. She requested that her husband be permitted to speak.

Daniel Eckenrode, 7030 Fairacres Ave, North Ridgeville, OH 44039, was sworn in. He explained that his application was not an appeal in response to a citation; that it was a request for a variance to obtain approval for a greenhouse in the side yard.

Assistant Law Director Morgan responded that, while he may have believed he was requesting a variance, a variance cannot be granted when such requests are not allowed in the first place. She stated that variance requests typically concern area and setback requirements, or the location of something on a property. She stated that no rule allows such a structure to exist at all, so there is nothing from which the applicant can request a variance. She discussed the Notice of Violation which, when issued by the Building Department, instructs those who disagree with the decision to file an appeal at that time. She indicated the applicant had submitted a request for a variance but that it is far beyond the allowable 30-day timeframe, which began when the applicant received the Notice of Violation. She stated the opportunity for the applicant to file an appeal has passed; that Board members cannot hear their case.

Daniel Eckenrode stated that his application concerns a greenhouse, which is a portable tent that can be put up and taken down within ten minutes.

Assistant Law Director Morgan responded that appeal procedures are the same regardless of the underlying issue.

Vice-Chairwoman Masterson suggested the applicant contact Chief Building Official Fursdon to discuss their request elsewhere. She stated that the Board cannot grant a variance for something that is not allowed at all.

Mary Eckenrode stated she had been advised by the City Prosecutor to apply for a variance.

Vice-Chairwoman Masterson asked which Prosecutor.

Mary Eckenrode responded it was the Mayor's Court Prosecutor.

Vice-Chairwoman Masterson asked whether the applicants had been informed that they had 30 days.

Daniel Eckenrode stated that a patrolman had been present in the room; that the City Prosecutor had advised them to request a variance.

Mary Eckenrode recounted the conversation with the City Prosecutor. She stated the City Prosecutor was surprised and asked why they had not applied for a variance.

Vice-Chairwoman Masterson addressed Assistant Law Director Morgan and asked if she knew what the applicant was talking about.

Assistant Law Director Morgan answered that she does not. She stated the City Prosecutor does not handle issues concerning Building and Zoning. She stated the comments by the City Prosecutor may have been about appealing the citation but that she was not sure. She said the only way to appeal a Notice of Violation, not ticket, is within 30 days from receipt.

Vice-Chairwoman Masterson asked the applicants whether they knew the names of the individuals to whom they spoke.

Mary Eckenrode stated she came to court and talked to the Prosecutor. She explained she had pleaded not guilty so she could find out whether a variance would be granted prior to reappearing in court on April 10. She indicated she went to court seeking to postpone her case so she could attempt to obtain a variance.

Assistant Law Director responded they may have sought a continuance of their case in hopes that a variance was an option. She stated it is not an option; that a variance cannot be granted for something not allowed in the first place.

Mary Eckenrode asked about receiving a refund.

Chief Building Official Fursdon responded that the Building Department was unaware of the decision of the Law Department until this week. He recommended a refund of the application fees. He stated that, in order to provide a refund, a memo should be delivered to the Building Department; the Building Department will instruct the Auditor's Office.

Mary Eckenrode addressed Chief Building Official Fursdon and asked about the fines imposed at 50 dollars per day.

Chief Building Official Fursdon stated he has nothing to do with those fines; that Law

Department and the legal system.

Vice-Chairwoman Masterson responded that fees of the Board of Zoning and Building Appeals can be refunded, but that the applicant will have to individually pursue a refund of fees from other departments.

Daniel Eckenrode asked about the proper steps that would allow for a greenhouse once the citation has been handled.

Vice-Chairwoman Masterson responded that it is not allowed.

Daniel Eckenrode asked why a greenhouse would not be permitted when fences in his neighborhood have been approved that were not allowed.

Chief Building Official Fursdon discussed variance requests. He responded that it is not that fences are prohibited, but that a variance is requesting something different than what the ordinance requires. He clarified the decision of the Law Department is that their greenhouse – defined by North Ridgeville Codified Ordinance Section 1464.02 as an accessory structure – whether attached to the ground or not, cannot be in the their front yard. He stated that it is specific in the ordinance so they cannot obtain a variance. He continued that the applicants may appeal his decision but that his decision is quoted directly from the ordinances. He stated that, while he does not know how the judge will rule when the applicants appear in court, they will likely be ordered to comply with the ordinance; this would mean the greenhouse cannot be in the front yard. He advised the applicants to move the greenhouse behind the building line, which would put it in the rear yard.

Mary Eckenrode mentioned a fence that had been installed by a neighbor directly on her property line.

Chief Building Official Fursdon responded that, because they have a corner lot, the building must be behind or even with the two building lines. He stated it cannot be in front of that line because that would be their front yard.

Vice-Chairwoman Masterson spoke about refunding the application fee of the Board of Zoning and Building Appeals. She stated a refund check will be issued for the application to the Board.

Chief Building Official Fursdon stated that he did not know the decision of the Law Department until this week; that he would never have had the applicants present before the Board.

Debbie Thorn, 33980 Dodge Ave, North Ridgeville, OH 44039, was sworn in.

Assistant Law Director Morgan addressed Board members and advised them that,

following the testimony of Ms. Thorn, Board members are to vote on the denial.

Debbie Thorn, 33980 Dodge Ave, North Ridgeville, OH 44039, was sworn in. She stated she was a neighbor and asked why all neighbors had been notified by the Board to appear for the meeting. She asked why they received a letter concerning a request for a variance and took time out of their busy lives to show up for this meeting.

Vice-Chairwoman Masterson responded that the decision of the Law Department had only been received this morning.

Debbie Thorn stated that her neighbors live on a corner lot and they have huge trees along the side. She asked why they are allowed to have these trees.

Chief Building Official Fursdon responded that a tree is not an accessory structure; that he does not write the rules but does have to enforce them.

There was discussion in the audience. It was inaudible.

Vice-Chairwoman Masterson interrupted and stated that all comments from audience members must take place at the podium. She deferred to Assistant Law Director Morgan for advice concerning the application.

Assistant Law Director Morgan suggested that, since the application does appear on the agenda, the Board make a motion to deny the appeal on the grounds that it is outside the time allowed for an appeal.

Vice-Chairwoman Masterson asked for any questions from Board members.

It was moved by Smolik and seconded by Cipriano to deny the appeal on the grounds that it was filed outside the time allowed for the appeal.

A voice vote was taken and the motion carried.

Yes – 4 No – 0

APPLICANT: Richard Stickland; UYA Holdings, LLC
118 Mill St, Medina, OH 44256

OWNER: 37775 Properties, LLC
2167 S Cleveland-Massillon Rd, Copley, OH 44321

REQUEST: Property split creating a 0.626-acre lot, requiring a variance to N.R.C.O.
§1268.04(a) of 0.374 acres.

LOCATION: 37775 Center Ridge Rd, in a B-3 zoning district.
Permanent Parcel No. 07-00-034-000-133

Application was read along with comments from Chief Building Official Fursdon.

Vice-Chairwoman Masterson asked for a representative to come to the podium to be sworn in.

Rick Stickland, 2238 Brookhaven Ln, Hinckley, OH 44233, was sworn in. He stated he had presented before the Board a little over two-and-a-half years ago with James Johnson. He addressed an agreement he had with Mr. Johnson: that he would purchase the property and Mr. Johnson would apply for a property split. He indicated that Josh was buying the property and, at the time, Mr. Johnson had asked that he appease him by allowing Josh to purchase the property; that they could pursue their request at a later date. He stated that this later date was a little longer than expected, which just surpassed the two-year limit. He stated he is present to again request approval.

Vice-Chairwoman Masterson asked if he is requesting exactly as he had the first time.

Rick Stickland answered exactly.

Vice-Chairwoman Masterson asked the applicant if he owns South of the Square.

Rick Stickland responded that he does.

Vice-Chairwoman Masterson discussed the unique shape of the property and asked members if they remember this application.

Rick Stickland addressed the shape of the parcel. He stated that Mr. Johnson used to own the property in front of the subject property; that he left a right-of-way to get back to the two buildings located on the property.

Vice-Chairwoman Masterson asked for any questions from Board members.

Planning Commission Liaison Smolik stated he is not familiar with the previous application. He asked about the property split and if the lot to the south will be isolated from any public right-of-way.

Chief Building Official Fursdon stated that the split will produce one lot of approximately 0.6 acres; that the back land, once split, will attach with Mr. Stickland's property on Race Road so that it has frontage. He stated that the variance had been granted two years ago but, by ordinance, action must be taken within two years. He indicated this as the reason the applicant is again seeking the variance. He then stated that the amount of lot coverage on the 0.626-acre lot does not exceed the 25% limitation; that it is compliant. He explained that the property has more than 150 feet of frontage and that the applicant is only seeking a variance for the acreage.

Planning Commission Liaison Smolik referred to site improvement plans presented when

he was a member of Planning Commission. He asked if the encroachments within the site improvement plans had been taken care of.

Rick Stickland stated he was not aware of any encroachments.

Chief Building Official Fursdon asked what encroachment he was referring to.

Planning Commission Liaison Smolik responded that he thought there were encroachments on the access drive, which are visible on the aerial.

Member Cipriano asked whether there was a variance granted.

There was discussion concerning an addition to the west of the building for which a variance had been granted.

Chief Building Official Fursdon clarified that, even with the addition, the applicant does not exceed the 25% lot coverage.

Member Cipriano asked whether or not granting this variance will land lock the property.

Chief Building Official Fursdon responded no because the Board is only granting the variance. He stated the applicant would then have to pursue the property split. He explained that he is not allowed to land lock a parcel; that the applicant will be required to attach that parcel to Mr. Stickland's parcel on Race Road, which will give it frontage.

Vice-Chairwoman Masterson asked if there were any questions from the Board. No discussion was offered.

It was moved by Masterson and seconded by Cipriano to accept the application as presented.

A voice vote was taken and the motion carried.

Yes – 4 No – 0

OTHER BUSINESS:

None

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ADJOURNMENT:

Vice-Chairwoman Masterson adjourned the meeting at 7:30 PM.

**Linda Masterson
Vice-Chairwoman**

**Michelle A. Owens
Deputy Clerk of Council, Secretary**

Date Approved May 13, 2019