

WESTFIELD TOWNSHIP BOARD OF ZONING APPEALS
September 25, 2007 @ 7:30 p.m.
Public Hearing – Conditional Use Application
Submitted by Morton Buildings, Inc. for Cloverleaf Local Schools
8525 Friendsville Road, Lodi
and
Public Hearing – Variance Application – 8:00 p.m.
Submitted by Wayne and Becky Moore
7362 Garman Road, Creston

Chairman Mike Schmidt called the meeting to order at 7:30 p.m. Roll call indicated five members of the Board of Zoning Appeals were present: Michael Schmidt, Kevin Daugherty, Larry Bensinger, Ron Oiler and alternate Jack Poe. Robert Gecking was absent. Others in attendance included Trustee Tim Kratzer, Trustee Jeff Plumer, Zoning Inspector Gary Harris, Gary Schodorf (Morton Buildings, Inc.) and Randy Wilson (Cloverleaf Local School). Those attending for the 8:00 p.m. hearing included: Wayne and Becky Moore (7362 Garman Road), Ron Velker (9780 Daniels Road) and Dan Springsteel (7420 Garman Road).

MINUTES

The minutes from 9/10/07, 9/12/07 and 9/19/07 were reviewed. One correction was made to the 9/19/07 minutes: page 3, 2nd paragraph, remove the name Kevin Daugherty and insert the name Larry Bensinger. Upon motion by Larry Bensinger, duly seconded by Ron Oiler, the minutes of 9/10/07, 9/12/07 and 9/19/07 as corrected were unanimously approved.

PUBLIC HEARING

The applicant, Morton Buildings, Inc. (on behalf of Cloverleaf Local School), submitted a conditional use application to erect an equipment storage building for Cloverleaf Local School, 8525 Friendsville Road, parcel #041-15A-18-006.

On behalf of the applicant, Gary Schodorf was present and sworn in. He stated that the reason for the application was to build a storage building on the East side of the school complex to be used for equipment. Also on behalf of the applicant, Randy Wilson (Cloverleaf Local School) was present and sworn in.

Upon questioning by the Board members, the applicants indicated they were applying for a conditional use for a storage building for the high school to be used for storage of equipment. It will be on the south, kind of east of the large complex community center there. The school owns the property and is buying the building from Morton Buildings. The school used to have one at the corner of Friendsville and Buffham and that building was taken down and this one is to basically replace that. Storage in the building will include vehicles, mowing equipment, straw and pieces of equipment that we don't need all the time. It will be a pole-type building, typical concrete slab with ready-mix pads under the columns. Lighting will be as required by the county but there are some field lights back there.

There were questions and discussion among the Board members whether this would be considered a government project and there were different opinions offered as to which category it would fall into under our zoning code. One interpretation was that a public school is a permitted use in Rural Residential (Section 303 B. 1. g.) and this building would be an accessory use and therefore a conditional use would not be required. Section 205 A. 1-5 covers accessory structures and uses. Another interpretation was that this building would be a conditional use in Rural Residential and fall under Section 303 B. 2. e. (governmentally owned and/or operated buildings and facilities... Zoning Inspector Gary Harris indicated that to be on the safe side, he had them apply for a conditional use. The Board decided to go through the formalities of the public hearing.

The Board further discussed whether any variances would be required, what type of setbacks could apply (70' or 100'), whether the footage requirement would be off of SR 224 or Friendsville Road, the potential differences between the right-of-way and the centerline of the property, that in RR setbacks only apply to single-family and two-family dwellings, frontage on more than one street, similar uses, and additional discussion whether it would be a conditional use or a permitted use. It was determined that the school's south property line is on the south side of SR 224.

After further discussion, Larry Bensinger made a motion for parcel #041-15A-18-006 owned by Cloverleaf Board of Education that Morton Buildings, Inc. request for a conditional use to place a 36' x 38' structure (as presented in the application and architectural plan marked as Exhibits A & B) to be used for equipment storage is unnecessary in that a public school under Section 303 B. 1. g. is a permitted use and the Board determined that this is an accessory structure and therefore no conditional use is required. Further that the information presented with the request shows no conflict with current zoning.

Ron Oiler seconded the motion. There was no further discussion.

Roll Call Vote:	Larry Bensinger	- yes
	Kevin Daugherty	- yes
	Ron Oiler	- yes
	Jack Poe	- yes
	Mike Schmidt	- abstain

MOTION CARRIED.

The public hearing for Morton Buildings, Inc. (Cloverleaf Local School) was closed.

PUBLIC HEARING

The applicants, Wayne and Becky Moore, submitted an application for area variance (Article III, Section 303 D. 1) to construct a 24' x 40' accessory building. They requested a side yard variance of 15' in order to locate the structure 10' from the east property line of 7362 Garman Road, parcel #041-15C-27-027. Wayne and Becky Moore were both present and both were sworn in.

The applicants stated they want to get a side yard variance to build 10' from the property line rather than the 25' required. It's about the only place due to where the septic tanks

were placed when the house was built. It left us with that one area which is directly across from our existing driveway. Difficulties with other locations were discussed such as the structure would have to go far back on the property, fill would be required of over 3 ½', the location of the leech bed and interference with the leech bed and the possibility of covering the septic tanks. The applicants thought the current driveway was 12' wide. Where they are proposing the building would be pretty close to the first run of the leech field and they didn't want to change the location as it would require fill over the leech field and interference with the septic.

Chairman Schmidt indicated that some things the Board is supposed to consider is the applicants supposed hardship cannot be one of economics alone, the hardship must result from circumstances affecting the particular and unique piece of land, etc. and must not grant a variance for a use otherwise prohibited in the zoning code.

Jack Poe indicated that the Duncan factors are required to be used when we make a decision so that any decision we make is acceptable in court. He further stated there were two types of variances: an area variance and an use variance and in this particular case it relates to an area variance. The Duncan factors to be considered for an area variance are:

- #1 Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance;
- #2 Whether the variance is substantial;
- #3 Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a "substantial detriment";
- #4 Whether the variance would adversely affect the delivery of governmental services;
- #5 Whether the property owner purchased the property with knowledge of the zoning restrictions;
- #6 Whether the problem can be solved by some manner other than the granting of a variance;
- #7 Whether the variance preserves the "spirit and intent" of the zoning requirement and whether "substantial justice" would be done by granting the variance.

The Board reviewed each of the Duncan factors. Discussion items included: reasonable return; return on investment; additional costs; what determines "substantial"; the neighborhood character; knowledge of zoning restrictions, etc. There were differences of opinion as to which Duncan factors were applicable to this particular application and the Board thoroughly discussed them.

The applicants further indicated that the septic had to be placed in a location they hadn't intended and this wasn't realized until after the house was part way completed. The original intent was to put the building back and have the building run long ways with the garage door opening in the end of the building but that spot was taken by the septic. The original plans for the septic was to have it in the front yard but the county said no, so we had to come up with two proposals for the septic – one was in the far lower corner which would have been fine but when the builder submitted that plan, the county said no again, and the septic is where it is now. The builder was shocked where he had to put it and then having to put it uphill but he had to go with what the county told him.

There were a couple possible alternatives suggested and discussed for the location of the building. There were difficulties and issues with the leech bed, the septic tanks, the propane tank and line from the house, the driveway, convenient access to the building, parking and how it would look on the property. It was indicated there would be no problem to get a fire truck in with the drive that is there now and there would be more than enough room even with the building.

Ron Welker, the applicants' neighbor on the side, was sworn in (the people with the goats). He indicated that they have no problem with what the applicants are trying to do. These lots here are 250' and that's a pretty good stretch of land and thinks the way the applicants are proposing the building is very acceptable and would make it look more natural with the house. His land is currently an open field – it's pasture.

The applicants further stated they would like to put the building where they proposed. They are not opposed to moving it a little bit if they could stay on relatively flat land and the builder could lay it out so all the vehicles, tractors and stuff could fit in it without being cramped for space. They want to accomplish making it a nice look by having the end of the building look like the end of the house, same windows, same gable, same roof line, etc. The applicants have a Creston address and Wayne County is just down a bit on the other side of the track.

After further discussion, each Board member stated his opinion.

Chairman Schmidt – The biggest problem I have is that it really doesn't need a variance because it could be built somewhere else on the property.

Ron Oiler – In reviewing the Duncan factors for area variances, I find of the seven that are there, I find at least six of them are more favorable to the applicants than against the applicants. I realize that #6 is the one we were talking about but my viewpoint is that a 10' variance would be a fair compromise.

Kevin Daugherty – The best location for it is where the applicants are proposing, but of the Duncan factors, #6 is the big one – can it go some other place without the variance. I would feel better about a 10' variance rather than a 15' variance.

Larry Bensinger – When you look at the area it's not built up to the point where I think it would be impinging on anybody and if anyone would have a complaint I would think it would be the neighbor to the east and he has publicly and in written form stated he has no problem with it. Anybody else that would buy that property, the structure is going to be up and it would be an existing condition, so I personally would go with the 15'.

Jack Poe – I'm in agreement with you (Larry) that I think we should just give them the 15'.

After further discussion, Larry Bensinger made a motion regarding parcel #041-15C-27-027 located at 7362 Garman Road and owned by Wayne and Becky Moore to grant a side yard variance of fifteen feet (15') in order to locate an accessory structure ten feet (10') from the east property line as shown in the attached Exhibit A.

Ron Oiler seconded the motion. There was no further discussion.

Roll Call Vote:	Larry Bensinger	- yes
	Kevin Daugherty	- no
	Ron Oiler	- yes
	Jack Poe	- yes
	Mike Schmidt	- no

MOTION CARRIED.

The public hearing for Wayne and Becky Moore was closed.

ANNOUNCEMENTS

- September 27, 2007, @ 6:30 p.m. MCDPS Zoning Workshop
- September 28, 2007, @ 9 a.m. MC Soil & Water Conservation Resource Tour
- October 8, 2007, @ 7:30 p.m. Ruhlin Construction conditional use/site plan

ADJOURNMENT

Upon motion Kevin Daugherty, seconded by Larry Bensinger, it was unanimous that the meeting be adjourned. The meeting was adjourned at 8:50 p.m.

Marlene L. Oiler, Certified PP, PLS
Westfield Township Board of Zoning Appeals Secretary

(Minutes approved 10/8/07.)