

**BOARD OF ZONING APPEALS  
NOVEMBER 28, 2007**

Vice-Chairman Dave Robinson convened the Board of Zoning Appeals meeting at 6:00 p.m. Present were Bob Juve, Paul Wilkerson, Lee Kleinbeck (alternate) and Bill Daniel (alternate) and Dave Robinson. Joe Weinstein and Russ Hose were absent. Kim Ferencz, Zoning Inspector, and Atty. Irv Sugerman were present.

**OLD BUSINESS:**

CONTINUED PUBLIC HEARING

APPLICANT: **CHICK-FIL-A**

LANDOWNER: **PRIVATE RESTAURANT PROPERTIES**

LOCATION: **335 FEET SOUTH OF RT. 18, BEHIND EXISTING FLEMING'S RESTAURANT**

VARIANCES: **ART. IV, SEC. 423-4 B. MINIMUM REAR YARD & ART. VI, 601 G. PARKING SETBACK**

The public hearing was reopened.

Robinson swore in all persons who wished to speak.

Kim Ferencz, Zoning Inspector was sworn in.

Ms. Ferencz stated that the public hearing was previously continued due to issues from Montrose Ford regarding the drainage and their detention pond. At that time, Mr. Gary Rouse and Company stated that they would contact the County Engineer's Office regarding the same. Ms. Ferencz stated that the Summit County Engineer's Office reviewed the site plan and storm water management. The letter states: "This Office has reviewed and approved the improvement plans and storm water sewer calculations for the above referenced project with the following comment: Improvement Plan Comments: "Please note that the existing site is currently an asphalt parking lot and the intended site improvements will not create additional impervious ground, therefore no detention is required for this site. Existing conditions also show that the existing drainage from this site enters a storm sewer system at the southeast corner of the site. This runoff enters a storm sewer system at the southeast corner of this site. This runoff enters the eastern neighboring property through the storm sewer system and outlets into an existing detention basin on the neighboring property. A downstream property owner shall accept runoff from upstream properties, provided the upstream property owner has not altered the runoff from their property. Any disputes regarding this issue is a civil matter and shall be resolved by the property owners."

Mr. Gary Rouse stated the issue with drainage is resolved.

Chick-Fil-A is also requesting a variance for parking to be two feet from Flight Memorial Drive (from 20 feet to two feet).

The second variance is for the rear setback of the building to be forty-one (41 feet) when fifty (50) is required.

Ms. Ferencz stated that she received a call from Joe Stefanini (Montrose Ford). He wrote a letter to the Board of Zoning Appeals, which was read at their last meeting. In a telephone conversation, he again stated he objected to the variance requests for Chick-Fil-A. The letter was again read into the record.

A letter was received from Bruce Obenour (Wendy's Restaurant - located to the south of the proposed Chick-Fil-A) stating that they were opposed to the reduction in the rear yard for the building placement.

Mr. Rouse presented pictures to the Board of Zoning Appeals showing the Chick-Fil-A that is located in Cuyahoga Falls. A service area would be the part of the building, which they are proposing to be in the required rear yard setback.

Mr. Scott Patman stated that the service area is in the back for the security of the employees. At night the employees can roll the trash out to a secured area and not go outside to the dumpster. The deliveries would come in the back and be secured in that area before they go into the kitchen. It could be considered a service area. Chick-Fil-A wants the employees to see out the back and still be in a secured contained area.

Mr. Rouse stated that Chick-Fil-A is permitted to put the dumpsters in the rear setback but they would be in a secured area attached to the building.

Mr. Daniel stated that he was concerned that the parking spaces would be two feet from Flight Memorial Drive when the requirement is twenty feet. Mr. Rouse stated that the parking spaces already exist. Fleming's already received a variance on the parking.

Mr. Robinson asked for comments from the floor. None were offered.

**Mr. Daniel moved to close the public hearing, Mr. Juve, second. Mr. Robinson called for the vote. Mr. Juve, aye, Mr. Wilkerson, aye, Mr. Kleinbeck, aye, Mr. Daniel, aye. The motion carried.**

Mr. Daniel stated that he was concerned with the parking setback but a variance was already granted to Fleming's.

Mr. Wilkerson stated that the rear setback request was minor. Mr. Wilkerson stated that he would have liked to see more green space.

**Mr. Wilkerson moved to approve the 18-foot parking setback variance (20 feet to 2 feet) along Flight Memorial Drive and a 9 foot variance reduction for the rear yard building setback (50 feet to 41 feet) as submitted, Mr. Juve, second. Mr. Robinson called for the vote. Mr. Juve, aye, Mr. Wilkerson, aye, Mr. Kleinbeck, aye, Mr. Daniel, abstain, Mr. Robinson, aye. The motion carried.**

**NEW BUSINESS:**

PUBLIC HEARING – 6:00 PM  
APPLICANTS: **JOSEPH & RENATE LIPOVAC**  
LANDOWNERS: **JOSEPH & RENATE LIPOVAC**  
LOCATION: **4299 COPLEY ROAD**  
ZONING DISTRICT: **R-1 RESIDENTIAL**  
VARIANCE: **ART. III, SEC. 302 Q. ACCESSORY BUILDING**

Mr. Robinson opened the public hearing.

Mr. Robinson swore in all persons who wished to speak.

Ms. Ferencz stated that the request before the Board falls under Art. III, Sec. 302 Q. Accessory Building which in part states: An accessory residential building which is not a part of the main building shall not be located closer than fifteen (15) feet from the main building and **shall be located entirely to the rear of the main building** and shall not be located closer than five (5) feet from the rear and side lot lines. The landowners are proposing to place the accessory building to the side of their dwelling and slightly closer to the road than their existing dwelling according to their site drawing.

Question #12 from their Variance Application: Please explain the practical difficulties or unnecessary hardship which justify this application for a Variance: "Due to the slope of the property, location of the house near the back property line, there is no other area available to build the building than on the east side of the house."

Mr. Lipovac stated that to the rear of his property there is approximately a 35 – 40 feet slope. There is no other place to put the accessory building other than on the east side of the property. The accessory building would be in the woods approximately 200 feet back. The intended use of the building is for storage of lawn and garden equipment.

Mr. Robinson asked for comments from the floor.

Mr. David Bachman, 4273 Copley Road, went before the Board and was sworn in. Mr. Bachman testified that the application states the setback direction is east and is 101 feet. The map that was provided shows that the house sits back 101 feet. Therefore, how close to the property line would the accessory building be?

Mr. Lipovac stated that the map shows 101.36 feet; there is 60 feet of turnaround area, so roughly 41 feet to the east property line. The accessory building would be about 60 feet from the neighbor's property line to the east. Mr. Wilkerson stated that the measurements don't add up.

Mr. Lipovac stated that he paced it off.

Mr. Lipovac stated that he spoke to the County regarding the riparian setback requirement. The property is marshy. There is water coming down the hill.

Mr. Wilkerson stated that he was concerned about streams and wetlands that have not been identified by the County, as some still may have a riparian setback requirement. Mr. Lipovac stated that he would not disturb wetlands on purpose. Mr. Wilkerson stated that if there is a setback established, then another variance would be required.

Mr. Lipovac stated that he does not know how Mr. Wilkerson can say that when his neighbor built a 30' by 40' barn that sits in front of his house probably by 40, 50, 60 feet. Mr. Lipovac stated that the accessory building he was proposing would be way behind his neighbor's barn in front of his house.

Mr. Robinson asked if the Board should look into seeing if there is a riparian setback regarding this issue.

Ms. Ferencz stated that if the Board of Zoning Appeals is going to want different agencies to review applications before they get to the Board of Zoning Appeals, she would like it done as a procedural issue by the Board but would forward to Soil and Water if the Board requested.

Mr. Wilkerson stated that the riparian setback is just as valid as any other setback but questioned if this area would even be considered a wetland or if a riparian setback required.

Mr. Robinson asked for additional comments from the floor. None were offered.

**Mr. Daniel moved to close the public hearing, Mr. Kleinbeck, second. Mr. Robinson called for the vote. Mr. Juve, aye, Mr. Wilkerson, aye, Mr. Kleinbeck, aye, Mr. Daniel, aye. The motion carried.**

The proposed building would be approximately 30 to 40 feet from the foot of the bank.

**Mr. Daniel moved to approve the variance as presented with the accessory building being to the front of the main building, Mr. Juve, second. Mr. Robinson called for the vote. Mr. Juve, aye, Mr. Kleinbeck, aye, Mr. Daniel, aye, Mr. Wilkerson, nay, Mr. Robinson, aye. The motion carried.**

PUBLIC HEARING – 6:10 PM  
APPLICANT: **REBECCA DONAHUE**  
LANDOWNERS: **ROBERT & REBECCA DONAHUE**  
LOCATION: **2597 HAMETOWN ROAD**  
ZONING: **R-2 RESIDENTIAL**  
VARIANCES: **ART. III, SEC. 302 CC. PRIVATE GARAGE EXCEEDS SQUARE FOOT RESTRICTION IN THIS CODE SECTION**

Mr. Robinson opened the public hearing.

Mr. Robinson swore in all persons who wished to speak.

Atty. Alex Regan stated that he was representing the applicant. The applicant is requesting a use variance at 2597 Hametown Road. There is an existing structure on the property, which has been used for agricultural purposes for the past few years. The request is for a variance to use the structure as an oversized detached garage for personal storage uses.

Question #12 from the Variance application: Please explain the practical difficulties or unnecessary hardship which justify this application for a variance: "On or about 1998-99, Mr. Robert Donahue telephoned the Copley Township Zoning Department to discover what permits, if any, were necessary for the construction of a barn on his property. Since Mr. Donahue intended to use the building for agricultural purposes, he was told that no permits would be required. At the Copley Township Zoning Department direction, Mr. Donahue obtained Summit County's approval for the construction of the barn, and then built the building.

Copley Township later sent Mr. Donahue an application to certify the agriculture use, which while initially denied on the grounds that Copley Township did not believe that the Donahue's planned purpose, keeping and raising horses, comported with the definition of "agricultural" use. This decision was appealed, reversed, and the agricultural use was certified.

Since the agricultural use variance was granted, Mr. & Mrs. Donahue have used the structure to board horses. However, Mrs. Donahue was injured in a riding accident and suffered permanent injury to her leg. Further, Mr. Donahue was injured and nearly paralyzed from a work-related accident, and has also sustained permanent disability. Because of their respective injuries both Mr. & Mrs. Donahue are unable to care for the animals. Consequently, Mr. & Mrs. Donahue have removed all of the horses from the structure. Due to their injuries, the now vacant structure has no beneficial use without the variance.

Mr. & Mrs. Donahue would like to use the structure as a private garage to house a boat, a few cars (some of substantial value), a riding lawn mower and a tractor and use a car port which is attached to the garage to house a motor home, all owned by the couple. There is no garage attached to the residence. However, as the structure is roughly 1600 square feet and the attached carport is roughly 400 square feet, it is not in compliance with Section 302 CC (A) of Copley Zoning Regulations – Private Garage not to exceed 900 square feet when the lot is up to and including five acres.

While the size difference is considerable, the building is almost entirely secluded from view and is barely visible from the street. The building is located on a large lot, is well within the vertical height restriction, and its substitute use as a passive storage garage should have even less of an impact on the surrounding neighborhood than its previous agricultural use. Because of the secluded location and the modern construction of the barn, the barn will not create any visible or practical nuisance for the neighborhood. Therefore, granting this variance would be in line with the spirit of the Zoning Regulations, and would accomplish substantial justice."

The building is a few hundred feet behind the home, it is 217 feet from the rear lot line, the north setback is 25 feet and the south setback is 15 feet. The building is less than 15 feet in overall height. The building is secluded from the road. There is no attached garage to the home. The carport is not fully enclosed. There is 1.85 acres of land. There is no encroachment of the side lot lines.

Mr. Robinson asked Atty. Irv Sugerma n if the Board of Zoning Appeals has the power to remove the agricultural designation? Atty. Sugerma n stated that he was not sure if the application submitted was for a use or area variance until this evening when their legal counsel stated that it was a use variance. Atty. Sugerma n stated that he was not aware of any cases where a Board has been able to approve a variance for an agricultural exemption. Atty. Sugerma n stated that originally it was not an agricultural variance it was an appeal from the zoning inspector's decision. The Board of Zoning Appeals overturned the zoning inspector's denial of the agricultural affidavit. There was no variance requested or granted on the size of this building.

Mr. Robinson asked for comments from the floor.

Rebecca Donahue, 2597 Hametown Road:

- The building was built to house horses until my injury.
- I am unable to take care of the animals as I am still being treated.
- I have a horse that stays three doors down from me.
- My husband and I also own three other parcels of land in Norton where our business is located. The business should not be an issue.

James Gordon, lives immediately north, stated:

- I can see the building from my house and have no objection to this request.
- The building is nicely kept.

Kevin Summer, 2581 Hametown, stated:

- I have no complaints about the building.
- I think it should be changed over.
- It should be used as a garage.

Atty. Irv Sugerma n stated that he was not speaking for or against the application. In 1999, the building was already constructed. The zoning inspector stopped the property owners (The Donahue's) from using it and asked them to submit an agricultural affidavit.

Mrs. Donahue stated that her husband was the one that communicated with the township and the county.

Atty. Sugerma n stated that Mrs. Donahue was the one that was before the Board in previous years and appealed the zoning inspectors decision. The Board of Zoning Appeals over-ruled the Zoning Inspector's decision and allowed the structure to be used for an agricultural use. At

the time of the application, Mrs. Donahue told the Board that she was going to have a cow, a horse and maybe some llamas. Mrs. Donahue stated that was correct.

Atty. Sugerman asked if the Donahue's ever had a cow in that building? Mrs. Donahue stated no.

Atty. Sugerman asked if the Donahue's ever bred llamas, like she testified before the Board of Zoning Appeals? Mrs. Donahue stated no.

Mrs. Donahue stated that she got custody of a grandchild and it slowed down what she wanted to accomplish. Mrs. Donahue stated that they had two horses.

Atty. Sugerman asked if the two horses Mrs. Donahue had came from her parents or different people. Mrs. Donahue stated that one horse came from her parent's home and the other one was purchased.

Atty. Sugerman asked how many tractors they own? Mrs. Donahue stated one, possibly two. Atty. Sugerman stated that previously the Board of Zoning Appeals was told that they have three.

Atty. Regan objected to the questioning.

Atty. Sugerman stated that he was just asking some questions.

Mrs. Donahue stated that her husband purchases different items and she doesn't know about it.

Atty. Sugerman asked if the building was built without any zoning and building permits?

Mrs. Donahue stated that she did not know.

Atty. Sugerman stated that the minutes from 1999 state that no permits were issued.

Atty. Sugerman stated that also in the minutes, eight stalls were going to be built in that building, were they built?

Mrs. Donahue stated that only two stalls were built in there right after it was built.

Atty. Sugerman asked if the stalls were still in there?

Mrs. Donahue stated no, they were removed three years ago.

Atty. Sugerman asked if the building has been used for the last three years without an agricultural use? Mrs. Donahue stated that was correct.

Atty. Sugerman stated that the Donahue's legal counsel stated that it was only recently, but actually it was three years ago.

Mrs. Donahue stated that her legal counsel works for the law firm that represented her previously.

Atty. Sugerman asked if there was a kitchen area in the building? Mrs. Donahue stated absolutely not.

Atty. Sugerman stated that in the 1999 minutes, it talks about a kitchen area?

Mrs. Donahue asked if that meant a sink?

Atty. Sugerman stated that in 1999, Mr. Donahue had a business called Bob's Heating and Cooling. Where is the business currently located?

Mrs. Donahue stated that it is in Norton.

Atty. Sugerman asked Mrs. Donahue since 1999, has your husband brought and truck, vans or equipment relating to his business at his home in Copley?

Mrs. Donahue stated her husband drives his truck to and from his job. When he is called in the middle of the night, he leaves. There is a company van at the home. Mrs. Donahue stated that she was in the building a couple of weeks ago and did not notice any materials relating to her husband's business.

Atty. Sugerman asked when the carport was built?

Mrs. Donahue stated it was built maybe two years ago.

Atty. Sugerman asked if she came to the zoning department to get a permit for the carport?

Mrs. Donahue stated no.

Mrs. Donahue stated that she was being interrogated like she was some kind of a criminal. She added she was a citizen that pays her taxes and added that she never gave it a thought that using the building for other than agricultural was going to be an issue.

Atty. Regan stated that Township Legal Counsel had asked Mrs. Donahue how many stalls were in the barn and she replied two. Two stalls for two horses. There was not a need for additional stalls.

Mrs. Donahue stated that the barn is not heated, has no running water but there is electricity hooked up.

Atty. Regan asked Mrs. Donahue if her husband owns his own business. Mrs. Donahue replied yes.

Mrs. Donahue stated that she realized there was a problem with the use when the zoning inspector came to her home.

Atty. Regan stated that once Mrs. Donahue was made aware of the

situation, she did everything to rectify it.

Mr. Robinson stated that in 1999 Mrs. Donahue received approval for her agricultural building, so why didn't she contact the zoning office when the use of the building changed?

Mrs. Donahue stated that the building was existing. The building also has a concrete floor.

Atty. Sugerma stated that the agricultural affidavit was signed by the landowners swearing that it would only be used as an agricultural use. If the Board of Zoning Appeals approves this variance, it would set a precedent that in his opinion would be harmful for the Township.

Atty. Regan stated that the building was used as agricultural for years.

Mrs. Donahue stated that there is no business being run out of her building on Hametown Road. It was stated that the carport is actually not a part of the building and could be removed. There is a concrete pad under the carport. Mr. Donahue built the carport.

Mr. Robinson asked for additional comments. None were offered.

**Mr. Juve moved to close the public hearing, Mr. Daniel, second. Mr. Robinson called for the vote. Mr. Wilkerson, aye, Mr. Daniel, Mr. Kleinbeck, aye, Mr. Juve, aye. The motion carried.**

Mr. Robinson stated that there are two variance requests: A Use variance from agricultural to residential and well as the size of the building. Mr. Robinson stated that the Board could be going down a new path.

Mr. Robinson stated that they have justified bigger buildings in the past by adding the size of the attached garage, detached garage and accessory building together.

Mr. Daniel stated that this building has a history and there is no business being run from this location.

**Mr. Daniel moved to approve a use variance from agricultural use to residential detached garage. This building can not be used for a business, Kleinbeck, second. Mr. Robinson called for the vote. Mr. Juve, aye, Mr. Wilkerson, aye, Mr. Daniel, aye, Mr. Kleinbeck, aye. The motion carried.**

**Mr. Juve moved to approve that area variance establishing the size of the building at 1600 square feet and the carport must be removed within 120 days, Mr. Wilkerson, second. Mr. Robinson called for the vote. Mr. Juve, aye, Mr. Wilkerson, aye, Mr. Daniel, aye, Mr. Kleinbeck, aye. The motion carried.**

PUBLIC HEARING – 6:05 PM

APPLICANT: **MARK SMITH / DESIGN MANAGEMENT, ARCHITECTS**

LANDOWNER: **WILLIAM GRIBBLE / PLASTEAK**

**LOCATION: 3489 SAWMILL ROAD**  
**ZONING: I-1 INDUSTRIAL**  
**VARIANCES: RIPARIAN SETBACK / REDUCTION IN REQUIRED PARKING SPACES / IMPERVIOUS SURFACE**

Mr. Robinson opened the public hearing.

Mr. Robinson swore in all persons who wished to speak.

Mr. Gribble explained his application for his justification of his variance requests. Mr. Gribble was asking not to pave that majority of his parking lot that would encroach into the riparian setback. They would like to use gravel, which is better for drainage. They would be installing rain gardens into the parking islands.

Ms. Ferencz stated that the applicants have been very cooperative. They submitted plans to the Summit Soil & Water Conservation Office regarding the impervious paving. Summit Soil & Water would like to see more of the site in grass and gravel than a hard surface.

Question #12 from the Variance application: Please explain the practical difficulties or unnecessary hardship which justify this application for a Variance: "In accordance with Copley Zoning Regulations, a total of 90 parking spaces are required per the design occupancy load for this revitalization of the former Hyponex fertilizer plant. There is no physical alternative location for the parking other than to encroach approximately 17,000 square feet into the riparian setback. Without either a variance or a significant reduction (+ 65%) of the number of parking spaces required, this project is no longer viable."

The Zoning Department supports the Variance requests.

Mr. Smith stated they did not ask for a specific number of parking spaces for the variance applied for. Since making application, they have contacted Ms. Cindy Fink from Summit Soil and Water, and it is her recommendation that the number of parking spaces be reduced from a water quantity and quality standpoint. If one double loaded row of parking at the north of the lot area was eliminated, the parking count could be reduced from 98 spaces required by the Township Zoning Resolution to 66 which is more than enough to handle the owner's maximum estimated needs. This would at least put a row of parking out of the riparian setback. None of the asphalt proposed would encroach into the riparian area.

Mr. Smith continued that if this row were eliminated, it would be simple to construct an additional 32 parking spaces if and when the building were sold to a new owner/operator required the additional parking.

ZI Ferencz stated she did take the issue of the number of parking spaces required for this project to the Zoning Commission, and they agreed that the required number per the Zoning Resolution of 98 was excessive, and that the 50 spaces Mr. Gribble proposed would be more than sufficient for his operation.

It was also stated that the proposed rain gardens would be reviewed by the Summit County Engineer's Office as well as Summit County Soil and Water.

Hearing no further discussion, Mr. Daniel made a motion to close the public portion of the hearing. It was second by Mr. Kleinbeck.

ROLL CALL-Daniel-aye, Kleinbeck-aye, Juve-aye, Wilkerson-aye, Robinson-aye.

Mr. Wilkerson made a motion to approve the variances for the reduction in parking spaces from 98 to 50 as well as an encroachment into the riparian setback as requested and per the drawing submitted and referred to as A-002. It was second by Mr. Daniel.

ROLL CALL-Wilkerson-aye, Daniel-aye, Juve-aye, Kleinbeck-aye, Robinson-aye.

Review of the minutes

Mr. Juve made a motion to approve the minutes from the Board's October 24, 2007 meeting as written. It was second by Mr. Daniel.

ROLL CALL-Juve-aye, Daniel-aye, Kleinbeck-aye, Wilkerson-aye, Robinson-aye.

FUTURE MEETING DATES:

December 20, 2007 at 6:00 p.m.

With no further business to come before the Board, the meeting was adjourned at 8:40 p.m.

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Dave Robinson, Vice Chairman

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Sue Schultz, Secretary