

Liberty Township

Delaware County, Ohio

2845 Home Road

Powell, OH 43065

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740-938-2000

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LIBERTY TOWNSHIP BOARD OF ZONING APPEALS

MEETING MINUTES

JULY 12, 2022

Vice-Chair Kelly Kammann called the Meeting to order at approximately 7:00 p.m. Meeting was held at the Township Hall, 7761 Liberty Road, Powell, Ohio.

MEMBERS PRESENT: Kelly Kammann, Mel House, Vince Margello, Christie Marker, and Becca Mount.

OTHERS PRESENT: Eric Gayetsky, Liberty Township Code Compliance Officer, and other attendees are listed on the attached sign-in sheets.

PURPOSE:

The purpose of the meeting is:

1. **DPV #22-15** submitted by Becky Jordan requesting to amend the Olentangy Falls Development Plan for their property located at 796 Elderberry Loop, Delaware, OH 43015 (Lot 4923 Olentangy Falls), to allow for a swimming pool fence to be located in front of the furthest forward rear facing wall (one side) of the house. This 0.766-acre Planned Residence (PR) zoned property is located in Range 19, Township 3, Section 1, Liberty Township, Delaware County, OH.
2. **BZA #22-12** submitted by Juliann and Garth Denlinger for their property located at 1564 Wren Lane, Powell, OH 43065 (aka Lot 495 Westchester) requesting approval for a side yard setback reduction from 25' to 10' for two 16' x 10' accessory buildings. This 1.67-acre Farm-Residence (FR-1) zoned property is located in Range 19, Township 3, Section 4, Liberty Township, Delaware County, OH.
3. **DPV #22-16** submitted by Sean and Elizabeth Trende requesting to amend the Olentangy Falls Development Plan for their property located at 1146 Elderberry Loop, Delaware, OH 43015 (aka Lot 4933 Olentangy Falls) to allow for a fence to be located in front of the furthest forward rear facing wall (one side) of the house to be used as a barrier for swimming pool equipment. This 0.8-acre Planned Residence (PR) zoned property is located in Range 19, Township 3, Section 1, Liberty Township, Delaware County, OH.
4. Approval of Minutes
5. Other Business

Liberty Township Board of Zoning Appeals, July 12, 2022

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Board of Zoning Appeals Member Kelly Kammann called the meeting to order and stated that there are five board members present and three votes are needed to pass a motion. Mr. Kammann swore in members of the audience.

PURPOSE:

1. **DPV #22-15** submitted by Becky Jordan requesting to amend the Olentangy Falls Development Plan for their property located at 796 Elderberry Loop, Delaware, OH 43015 (Lot 4923 Olentangy Falls), to allow for a swimming pool fence to be located in front of the furthest forward rear facing wall (one side) of the house. This 0.766-acre Planned Residence (PR) zoned property is located in Range 19, Township 3, Section 1, Liberty Township, Delaware County, OH.

ZONING REPORT:

Liberty Township Code Compliance Officer Eric Gayetsky presented the Staff Report, a copy of which is attached hereto and made a permanent part of the record.

Mr. Kammann asked Mr. Gayetsky if correspondence was received from the nearest neighbor. Mr. Gayetsky said, "I have not." Mr. Kammann will ask the Applicant.

APPLICANT PRESENTATION:

Brian Griffith, Easy Living Pools, 7500 Industrial Pkwy., Plain City, OH. Mr. Griffith has been working with the Jordan family for quite sometime. Their property has quite a bit of topography and a lot of conservation areas. In this case, the Applicant's property is right along a heavy tree lined area along the property line. There is not a lot of sun in this area. The area where they can get the most sun is the north side of the pool. They want to get some pool-side living on the north side of the pool. They are proposing a wall with steps that go up. The fence is "right at the top of the retaining wall."

Mr. Kammann asked for more details on the steps and if there is a topography change. He also asked if it was an elevated platform. Mr. Griffith said, "It is." If someone is up at the street level, the pool area is down where there is a walkout basement. It is a good 10' down from the street. With the amount of screening they are proposing, people on the sidewalk and 50+ feet away really will not have a different perspective because they will be looking down on the pool area. Mr. Griffith stated that "12' to the eyes of the pedestrian, walking along the street or passing by their car, really whether the trees were right there at the back rear façade of the home, their perspective would be the difference of seeing a tree 10' closer or 12' closer." They are trying to be sensitive to the views and screening.

Ms. Mount asked from the picture in the packet labeled "Swimming Pool Permit Plan/Imagery, Jordan Residence, 796 Elderberry Loop, Delaware, OH," has the pool already been built. Mr. Griffith said, "No." The picture is just an image to show an example of their pool. It is a pool they actually did for the Robinson family in the same neighborhood. He just wanted to show a similar pool with a retaining wall. Mr. Griffith apologized to the Board for it be misleading.

Ms. Mount wanted to confirm that the retaining wall is going to be on the back on property. She also asked where the fence will be located on top of the retaining wall. Mr. Griffith stated they are trying to keep the beginning of the retaining wall close to the corner of the home. There will be steps that allow you to go up to the yard. The fence will be on top of the retaining wall.

Ms. Mount also wanted to affirm that there will be a 54" fence on top of the 4' retaining wall. Mr. Griffith said, "Correct."

Mr. House asked if the pool met all the required setbacks. Mr. Gayetsky stated, "Yes." The pool and the fence meet the setbacks. The only thing the Application does not meet is Section 7.15.D, which states: "Fences and walls shall be built at or behind the furthest forward rear facing wall, on each side, of the Principal Building on the lot."

Mr. Margello asked how large is the pool. Mr. Griffith stated 16' x 33'. It is a shallow pool.

Mr. Margello asked Mr. Griffith if there was a reason why they could not come back further with the fence on the one side to meet the setback requirement. Mr. Griffith said the pool on the south side is where the conservation easement is. They are right on that conservation easement line, which is also a No Build Zone.

Mr. Margello said the homeowner is trying to get seating area up in the 12' area. Mr. Griffith stated they are trying to get a little bit of sun.

Mr. Margello pointed on his Site Plan and asked if they could move the seating area to that spot. Mr. Griffith said they are trying to get the seating area in as much sun as possible.

Ms. Marker stated Mr. Griffith said that the fence will be on top of the retaining wall, but the drawing seems to indicate the fence is to the north of the wall. Mr. Griffith said they will be cutting into the hillside. There will be the pool, a 4' tall wall that allows them to cut into the hillside, and then the 54" fence will be on top of that. It will be at the grade of the slope that currently exists. They are not creating something taller or bigger. They are just "cutting out a piece of that hillside."

Mr. Kammann wanted to confirm that they will not be shortening the height of the fence. Mr. Griffith stated, "Correct."

Mr. Kammann asked if they will be using self-closing/self-latching gates. Mr. Griffith said, "Yes."

Ms. Marker questioned Mr. Griffith on the purpose of the stairs to the front of the house. Mr. Griffith stated that they provide access up to the lawn space. The Applicant's patio is to the right. Their pool space will be there. Everything to the south, on the bottom, is all trees.

Mr. Margello asked how far the fence can go before it encroaches into the green space. Ms. Robinson brought up on the computer screen another picture of the property.

Mr. Margello asked Mr. Gayetsky what represents the dotted line shown on the drawing. Mr. Gayetsky said that that was the edge of the conservation/drainage easement.

Mr. Margello questioned Mr. Griffith if the property is right up against the conservation easement. Mr. Griffith said, "Pretty close." There also is a lot of existing trees, even beyond the conservation easement. Mr. Gayetsky showed Mr. Margello on the drawing where the conservation easement is located.

Mr. Kammann asked Mr. Griffith if they had a backup plan to go further west instead of going north, which would take the Applicant closer to being in compliance. Mr. Griffith said they have done some studies where the Applicant would just have a walkway going along the easement side, which was not accepted by the Applicant. They really want to optimize their pool-side living with respect to the sun.

Mr. Kammann questioned Mr. Griffith if the Applicant has any correspondence from the neighbor to the west. Mr. Griffith feels the homeowner is better able to speak to that question better.

Mr. House asked Mr. Griffith if the trees they will be using for landscaping will be 6' tall. Mr. Griffith said, "I believe so." They are looking at providing a lot of spruces or arborvitaes. They are typically 5-6 feet tall at the time of planting.

Mr. House said with the 6 feet tall trees and the 4-foot wall, will this 10 feet block the sun they are trying to get. Mr. Griffith stated, "They will be behind the sunny space, so to speak." The proposed trees are primarily for screening, but they will not be casting shadows on the pool space.

Mr. Margello walked up to the computer screen and pointed to the existing patio area on the Site Plan, and asked if that area is the same level as the pool area. Mr. Griffith said, "Correct." Mr. Margello said this would give the Applicant extra seating area in that space if they needed it for the pool. Mr. Griffith said, "It would." He said their HOA directed the Applicant to not use the pool fence as a perimeter fence. They would have to switch over to a split rail fence, to achieve that, which does not meet the pool safety codes. This is why they have a double gate to try to provide as much opening as they can for the homeowners, but they are also trying to follow the direction received from the HOA.

PUBLIC COMMENT:

Rob Jordan, 796 Elderberry Loop, Delaware, OH. Mr. Jordan is the homeowner. He stated he has walked around and talked to a lot of their neighbors. He said he spoke to the neighbor to the west, but did not get their signature on the paper he was holding. Mr. Jordan stated he can obtain a letter from the neighbor to the west.

Mr. Jordan said from where the fence is located at the edge of the easement, there is a steep drop off that goes straight down to the creek. He stated there is only so much space in their backyard where they can get optimal sun. Their current proposal is the only way to get that optimal sun they are looking for.

Ms. Marker asked if the steps shown on the Site Plan already exist. Mr. Griffith said the steps to the existing patio are already there.

Mr. Jordan said in order to add seating area in the existing patio area for the pool, they would have to put “the fence to the back of the house, bring it in, and then have to take the fence all the way around, and put it straight through the patio, which is not optimal.”

Mr. Kammann asked Mr. Jordan what the neighbor to the west said when he spoke to them. Mr. Jordan said, “They said yes you can do it as long you allow us to swim in your pool.”

Mr. Kammann questioned Mr. Jordan why he did not have a letter from the neighbor to the west when their HOA requested it. Mr. Jordan said he misread the document and did not realize he needed a separate letter. He had his neighbors sign a letter approving it.

Mr. Kammann asked if he got the signature on his letter from the neighbor to the west. Mr. Jordan said he did not personally see the letter from their HOA requesting the letter from the neighbor to the west.

Ms. Mount asked Mr. Jordan what is the neighbor’s name to the west. Mr. Jordan said they just recently moved in. “If their address is 883, I had them sign the document. I believe that is who signed it.” Ms. Mount stated that 883 is not on their list of addresses. Mr. Gayetsky said the address to the west is 768 Elderberry Loop.

Mr. Kammann stated if the Board is supportive of this Application, he suggested that the Applicant should continue their Application to a later date so he can procure the letter of approval from neighbor to the west. Mr. Jordan said, “Sure.”

Mr. Griffith said that the journey with the HOA has been very interesting. They have a new set of Board Members. The old Board initially issued a letter of approval that was conditional on them coming before the BZA and receiving a variance. Since then, the current HOA Board has rescinded that letter, and another letter was issued where the homeowner needed to submit a letter of approval from the neighbor. For expediency, the Applicant used the initial letter of approval for their variance application.

BOARD DISCUSSION:

Mr. Margello said the only problem he has with this Application is that it is “quite a variance – 12.5’ in the back of the house.” He knows they are looking for seating area. The pool works where it is located. He wonders if there is any way to correct the seating area without approving this large of a variance. Mr. Kammann believes there is a way. They cannot go south, but they can go further west or they cannot have much of a seating area. The area to the east can be used but will be in the shade.

Ms. Marker stated there are other options here. Even if there was only a minimum 5’ walkway to the north, the Board would be looking at approximately a 7’ variance. She stated they can also do away with the stairs that are going to the front. She does not see the purpose of those stairs since there is no walkway. Mr. Kammann said there is no other way to exit the area. Without the stairs, the Applicant would be looking at perhaps 5’ to 7’ variance, and that area can be used for seating.

Mr. Kammann agrees that there are lots of viable options. He feels there is no way to do the pool the way the Applicant wants to without the 12' variance request.

Ms. Marker stated there is no way to go to the south because of the conservation easement, but she reiterated that there are other design options that can still provide a nice seating area in the 15' before you get to their existing patio area.

Ms. Mount believes the hardship the Applicant faces is that they cannot go to the south because of the drop off and this proposes a problem. She understands they want some lounge area. Ms. Mount is not happy that the Applicant does not have the letter the HOA requested from the neighbor to the west. Mr. Kammann believes that the Board is in agreement that this Application will not be approved without this letter from the neighbor.

Ms. Mount stated that it bothers her that the Applicant does not even know the name of the neighbor to the west. She stated it falls upon the homeowner to read and understand what their HOA letter states.

Ms. Mount agrees with Ms. Marker and she does not know the purpose of the steps going up to the yard.

Mr. Kammann asked Ms. Mount if there was a letter of support from the neighbor to the west, how would you feel about this Application. Ms. Mount said she would approve it.

Mr. House wanted to know the distance from the street to the retaining wall. Mr. Kammann said he would guess it is around 125' to 150'.

Mr. House asked if the maximum the Applicant can go to the west is 25'. Mr. Kammann said, "Right."

Mr. House said if the neighbor to the west approves it, he would be inclined to approve the variance.

Mr. Kammann said if a homeowner is going to spend a lot of money on a pool, the return on their investment of the pool would be diminished to a degree if there was not enough lounge area. Mr. House feels you spend more time outside of the pool than in the pool.

Mr. Kammann asked Mr. Gayetsky how he feels about a conditional approval. Mr. Gayetsky stated that the Board only has done approvals when there has been an HOA approval letter as part of the packet in the past. Mr. Kammann feels the Board does not have that currently, because of the missing letter from the neighbor.

Mr. Gayetsky said administratively, to approve any proposal, they would need an HOA letter of approval. He feels the Board should be consistent. Mr. Kammann feels the Board needs the letter from the neighbor before they can make a ruling because of how that letter from the neighbor may or may not be worded.

Mr. Margello asked if the Board can approve this Application on the condition that the Zoning Department receives the letter of approval from the neighbor to the west. Mr. Kammann personally wants to see how the letter is written.

Mr. Gayetsky stated he wanted to issue a correction regarding the side setback. Because this property is in Olentangy Falls and not Olentangy Falls East, he is seeing a 45' 8" side setback is being proposed to the patio, and 35' is the required side setback for an accessory structure. Mr. Kammann said Mr. Gayetsky's point is that there is not a lot of room to work with on that side.

Mr. House stated because of the Board's schedule and construction schedules, he would be more inclined to make a motion on the conditional approval on receiving the letter from the neighbor to the west. He is also okay if the Board wants to see the letter first if they can get the Applicant back on the BZA schedule soon. Ms. Mount said she wants to see the letter first.

The Board was in agreement that they should have the letter from the west neighbor first before any ruling is made on this Application.

Mr. Kammann told the Applicant that the Board is inclined to support their Application if the Board sees the letter from the neighbor to the west and they are satisfied with the letter. This Application, therefore, needs to be continued to the nearest date. Mr. Jordan asked what specifically the letter should contain from the neighbor to satisfy the Board's concerns and questions. Mr. Kammann said the letter should state that the neighbor acknowledges they have seen the Site Plan and where that puts the Applicant's variance request in relative proximity to their house and their property line, and that they are supportive of the Application they presented to the BZA.

Mr. Griffith asked if the Board can do a conditional approval. Mr. Kammann said, "No."

After some discussion about whether an additional HOA approval letter is needed or not, Mr. Gayetsky stated he will ask the Zoning Inspector to see if an additional HOA approval letter would be needed.

MOTION:

Liberty Township Board of Zoning Appeals Member Becca Mount made a motion to continue **DPV #22-15** submitted by Becky Jordan requesting to amend the Olentangy Falls Development Plan for their property located at 796 Elderberry Loop, Delaware, OH to August 16, 2022 at 7:00 p.m. at Township Hall, 7761 Liberty Road, Powell, OH.

Liberty Township Board of Zoning Appeals Member Christie Marker seconded the motion.

The roll call vote was as follows: Mr. Kammann – Yes, Mrs. Mount – Yes, Mrs. Marker – Yes, Mr. Margello – Yes, and Mr. House – Yes. The motion passes with 5 – Yes and 0 – No votes.

CONCLUSION:

This portion of the meeting concluded at 7:50 p.m.

2. **BZA #22-12** submitted by Juliann and Garth Denlinger for their property located at 1564 Wren Lane, Powell, OH 43065 (aka Lot 495 Westchester) requesting approval for a side yard setback reduction from 25' to 10' for two 16' x 10' accessory buildings. This 1.67-acre Farm-Residence (FR-1) zoned property is located in Range 19, Township 3, Section 4, Liberty Township, Delaware County, OH.

ZONING REPORT:

Liberty Township Code Compliance Officer Eric Gayetsky presented the Staff Report, a copy which is attached hereto and made a permanent part of the record. Mr. Gayetsky stated they did get an e-mail response from the Applicant after the Staff Report was e-mailed to the Board, a copy of which is attached hereto and made a permanent part of the record. The e-mail was read into the record as follows:

The patio extension was just some additional concrete – I have searched the township website for rules on this and all I can find is that the dwelling and patio areas cannot be larger than 25 percent of the gross area of the lot. Please let me know what I am missing and I will submit the necessary permit.

As for the pool fence – there were two different styles (perhaps down at separate points in times). The one part rotted and rusted (chicken wire) away. We are replacing with aluminum fencing. Material and labor were scarce during “COVID” but I did receive some quotes – just a huge backlog to install. Also, since we also will need aluminum fencing attached to my new sheds (which is part of the new fence line) – we were advised to just wait and do as “one job” because we wouldn’t be able to find someone to do the small sections needed between the sheds.

In the meantime, we have the one half of the perimeter secured with construction fencing. The existing fence is our gate out.

As soon as the new sheds are installed, I will re-quote and remeasure and order/install the fencing – with the applicable permits.

Mr. Kammann asked about the fence between the two sheds. Mr. Gayetsky said the fence setbacks are different from the side yard and the Applicant is good as far as that is concerned.

Ms. Marker questioned where is the additional concrete mentioned in her e-mail above. Mr. Gayetsky showed her the aerial pictures, he referred to in his Staff Report, where in 2020, the patio is surrounding the pool, and in 2021, the aerial picture shows the patio extension.

APPLICANT PRESENTATION:

Juliann Denlinger, 1564 Wren Lane, Powell, OH. Ms. Denlinger stated she has a letter from her neighbor in support of their Application.

Mr. Kammann asked if she had anything to say about her Application. Ms. Denlinger said, “No.” Their sheds are now located down a hill. They cannot get any items they put in the sheds up the hill. The septic and drainage are also in the same area as the current sheds.

Ms. Denlinger stated they want the sheds closer to the home. They cannot use the other side of the house because that is their only access to their backyard and it also crosses the septic tanks. The septic tanks run basically from the pool to their current sheds.

Mr. Kammann asked if the sheds can be more centered or more on the west side of their property, which would make them more compliant. He stated they have a lot of land behind the house. Ms. Denlinger said they do not even want the truck that is carrying the new sheds to cross the septic field. She feels they have no other options that would be useable to them.

Mr. Kammann stated that the Applicant needs to help the Board understand why they do not have any other choices. Ms. Denlinger said anywhere on the north side, they have the septic and there is a big drop down to where the current sheds are located. They also have their driveway on the north side.

Mr. Kammann pointed to the septic area on the Site Plan. He then pointed to an area that would not be all septic and asked if that area can be used. Ms. Denlinger said hopefully, "in their very near future, there will be an addition." Mr. Kammann stated, "It is one or the other, most likely." He said the Applicant needs to tell the Board why they cannot comply with the Code, and wanting to build a future addition is not going to be one of those reasons. Their septic field is a valid reason.

Ms. Denlinger pointed out on the Site Plan where their septic and French drains are located. The future addition would not encroach into the septic or French drains. They are trying to fix the sunroom.

Ms. Mount wanted to understand why the sheds could not go behind the house. Ms. Denlinger said she has a drain line in the back. The addition would not as big as where the new sheds would have to "stick out into the property."

Ms. Mount asked if they were going to have a foundation built for the sheds. Ms. Denlinger said they had gravel laid down. She was told not to do concrete. Ms. Mount questioned if they laid the gravel before they got the variance approval. Ms. Denlinger said, "Yes." She said "all of our stuff is just laying on that fence line because we can't get it down into those sheds. Right now, my neighbor is just looking at junk."

Ms. Marker stated, "You have all this space, all this yard, over here, but you are trying to squeeze these sheds right in, right along the property line." Ms. Denlinger said, "Correct." Currently, they have bikes, lawn mower, garden and camping equipment, and canoes that need to be stored.

Ms. Denlinger said she is going to replace her current wooden fence with an aluminum fence. It will have an aluminum gate attached to the shed. They are also using the sheds to store their pool equipment.

Mr. Kammann asked why they are doing two sheds instead of one bigger shed. Ms. Denlinger stated she wants the extra wall space. When you get a bigger shed, you have less wall space.

Mr. Kammann questioned if the Applicant has any correspondence from their HOA. Ms. Denlinger said they have no HOA right now. Mr. Kammann stated, "That's really surprising." Ms. Denlinger said, "We don't. We have a social membership and that's it. No HOA."

Mr. Kammann asked Mr. Gayetsky if that is correct. Mr. Gayetsky stated this property is FR-1. He does not remember looking into Westchester's standards. Ms. Denlinger said she is on their Board for their social membership. They have no HOA.

Ms. Denlinger told the Board that before they moved in, she asked their HOA "what if I want to paint my house hot pink." They said, "It would be super ugly, but go ahead."

Mr. House said he found their website called the Westchester Homeowners Association. Ms. Denlinger says the website is just about the history of the neighborhood.

Ms. Marker asked about the neighbor that is directly adjacent to where the sheds are going to be located. Ms. Denlinger said the adjacent neighbor just has a chicken wire fence. They feel the sheds will provide a noise buffer between the two properties.

Mr. Kammann asked how tall are the sheds. Ms. Denlinger stated they are taller than a 54" fence. Ms. Marker feels they are 10' tall.

Ms. Denlinger passed around the letter she got from her neighbor, a copy of which is attached hereto and made a permanent part of the record.

Mr. Kammann asked Ms. Robinson to read the neighbor's letter into the record, as follows:

David and Sara Ryno
1532 Wren Lane
Powell, OH 43065

To Whom It May Concern:

We are writing in support of a variance for the installation of two sheds along the Denlinger's current fence line. Our property at 1532 Wren Lane is due east of the Denlinger's, and abuts the fence line where the new sheds would be located. The new installation will be similar in function to how the property is currently laid out, and will provide a buffer between their pool/backyard and our pool/backyard, as to be beneficial to both properties. Their current sheds are visible within our site line and the new sheds would provide a better location for both of us.

Please do not hesitate to reach out with any questions, we can be reached at (361) 658-1429 or david.j.ryno@gmail.com. Thank you for your consideration.

Very Respectfully,

Davis and Sara Ryno

PUBLIC COMMENT:

There was no public comment.

BOARD DISCUSSION:

Ms. Marker stated she was happy to see the letter of approval from the neighbor. Her only concern is that these sheds are going to be very close to the property line.

Ms. Mount does not understand how there is room for an addition but not the sheds in that same location. Mr. Kammann said there is not a good reason why they cannot put the sheds over there other than "it is just not a great place." It is inconvenient to the Applicant in numerous ways, as was articulated by the Applicant, but not in ways that are hardships. Ms. Mount states that the Applicant has the land. If they can build an addition on the back on their house, they can put their sheds there.

Mr. House said he appreciated the letter from the neighbor. His biggest concern is that he realizes their HOA is not active, but there has to be a Development Plan and covenants. He believes there are restrictions in both of those documents. He thought Liberty Township would have a copy of the Development Plan. Mr. Gayetsky stated for an FR-1 subdivision, they do not have any Code that is comparable to what is written for a PR district unless there is a DPV that has been approved. FR-1 does not have the same Code standards as a PR district.

Ms. Mount said she does remember there being an HOA for Westchester. Ms. Denlinger stated she is on the Board and they do not regulate anything that anyone does. There are no covenants and no regulations. The website is used to give a history of the area and "they gather some food trucks." Residents can pay an optional \$40, which helps to plant flowers.

Ms. Mount asked Ms. Denlinger if they had officers. Ms. Denlinger said, "No."

Ms. Mount stated she knows of people who attended HOA meetings at Westchester. Ms. Denlinger reiterated that it is a social club.

Mr. House said he is not disputing what Ms. Denlinger is saying. At one time, there could have been an HOA with all of these documents. He knows how when things get transferred in a subdivision, many things can get lost.

Mr. Kammann stated it is plausible they have an HOA that is not active.

Ms. Denlinger said when she mentioned the addition to their house they wanted to do in the future, she meant they wanted to make their existing sunroom a 4-season room. She stated they also have drainage running all through their backyard.

Mr. Kammann asked Ms. Denlinger where they are timewise in rectifying their pool fence situation. She stated they are waiting on the sheds because they want to tie it all together. She has received three quotes.

Ms. Denlinger thought her mechanicals might be in violation. Mr. Kammann asked Mr. Gayetsky if the mechanicals were in violation. Mr. Gayetsky stated he does not have information on it. Mr. Kammann does not believe the mechanicals are in violation.

Mr. Margello stated the Applicant is trying to straighten up an eyesore. He has no problem with the Application.

Mr. Kammann would like the fence violation rectified first before the sheds are installed. Mr. Gayetsky suggested that both the patio and fence be put into any motion as conditions that they both receive permits because they are out of compliance.

In general, Mr. Kammann would be against a variance on a property that was out of compliance. This is a little gray area with this Application because of the need to put the sheds in prior to the fence.

Ms. Marker stated that the Applicant's drawing shows the pool fence and the sheds next to it. She wanted to know if this was a correct depiction. Ms. Denlinger said the brown fence in the drawing will be knocked down. She is hoping to have the sheds delivered the very next day. The sheds will be used as part of the pool fence. Ms. Denlinger will then measure the space between the sheds and have those fence sections ordered. She is hoping the fence sections will be in very soon.

Mr. Kammann asked why the Applicant cannot mark accurately where the sheds will go so, they can bring the fence into compliance. Mr. Margello said one of the workers who installs the sheds can move one of them over a little one way or the way, which can make the measurements she took off and the parts she might have ordered no good because they no longer fit properly between the sheds.

Mr. Gayetsky stated that the Zoning Department cannot approve the zoning permits for the sheds when their fence is in violation, and the Applicant has not yet applied for a fence permit. Ms. Denlinger said she will need to have the space between the sheds remeasured. She believes the fence will be installed within weeks of the sheds being installed. Mr. Kammann stated he would be fine with that. He does not want it going into months.

Mr. Kammann asked Mr. Gayetsky if it would be necessary to state in any motion that their approval is dependent upon the Applicant having a pool fence in "x" amount of days. Mr. Gayetsky stated this would address the safety component by not having a fence.

Ms. Mount would like the Applicant to grant the Zoning Department staff permission to come back onto the property and inspect the fence and sheds to see if everything is in compliance.

Mr. Kammann said he still has a serious issue taking a 25' side setback and reducing it to 10' on a large property with "tons" of alternative locations. There is no hardship to justify the variance.

Mr. Margello feels the Applicant spoke about her hardships. It is the convenient factor of not walking the bikes through the mud or driving the equipment up the steep slope. Mr. Kammann stated those are not hardships, in his opinion.

Mr. Margello asked Mr. Kammann if he would rather have an eyesore than two sheds. Mr. Kammann said, "Yes." Mr. Margello stated the neighbor is happy with the Applicant having two sheds. Ms. Mount agrees with Mr. Margello. She stated the Board has approved accessory buildings so homeowners can get their junk off their property and into a building.

Mr. Kammann said that he is against the Application.

Mr. House asked if there are alternative sizes of sheds that are not 10' deep. Mr. Margello is sure there are smaller and larger sheds available. Mr. Kammann does not feel the Applicant can get much narrower than 10'.

FINDINGS OF FACT: Board of Zoning Appeals Member Vince Margello reviewed the Findings of Fact:

#1 Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance – There can be beneficial use of the property.

#2 Whether the variance is substantial – No.

#3 Whether the essential character of the neighborhood would be substantially altered, or whether adjoining properties would suffer a substantial detriment as a result of the variance – No.

#4 Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage) – No.

#5 Whether the property owner purchased the property with knowledge of the zoning restriction – Mr. Margello does not know.

#6 Whether the property owner's predicament feasibly can be obviated through some method other than a variance – The Applicant does need a variance.

#7 Whether the spirit and intent behind the zoning requirement would be required to be observed and substantial justice done by granting the variance – Yes.

MOTION:

Liberty Township Board of Zoning Appeals Member Vince Margello made a motion to approve **BZA #22-12** submitted by Juliann and Garth Denlinger for their property located at 1564 Wren Lane, Powell, OH for a side yard setback reduction from 25' to 10' for two 16' x 10' accessory buildings. Both the swimming pool fence and patio need to come into compliance with the Liberty Township Zoning Code. The homeowner agrees to give the Zoning Department staff permission to come onto their property and inspect the swimming pool fence and the sheds.

Liberty Township Board of Zoning Appeals Member Christie Marker seconded the motion.

The roll call vote was as follows: Mr. Kammann – No, Mrs. Mount – Yes, Mrs. Marker – Yes, Mr. Margello – Yes, and Mr. House – Yes. The motion passes with 4 – Yes and 1 – No vote.

Mr. Kammann wanted to make a statement that there are other ways to obviate this situation and that a reduction of the side yard setback from 25' to 10' on a 1.67-acre property is inappropriate, and this is why he voted “no.”

CONCLUSION:

This portion of the meeting concluded at 8:37 p.m.

PURPOSE:

- 3. DPV #22-16** submitted by Sean and Elizabeth Trende requesting to amend the Olentangy Falls Development Plan for their property located at 1146 Elderberry Loop, Delaware, OH 43015 (aka Lot 4933 Olentangy Falls) to allow for a fence to be located in front of the furthest forward rear facing wall (one side) of the house to be used as a barrier for swimming pool equipment. This 0.8-acre Planned Residence (PR) zoned property is located in Range 19, Township 3, Section 1, Liberty Township, Delaware County, OH.

ZONING REPORT:

Liberty Township Code Compliance Officer Eric Gayetsky presented the Staff Report, a copy of which is attached hereto and made a permanent part of the record.

APPLICANT PRESENTATION:

Sean Trende, 1146 Elderberry Loop, Delaware, OH. Mr. Trende stated he brought his neighbor to speak regarding his Application and he is also on the HOA Board. He stated there are two reasons they need their fence: The first is aesthetic and the second is a safety issue.

Mr. Trende wanted to take about the aesthetic issue first. He stated they had the pool installed, in large part, due to their older son having severe autism. They wanted something to keep him occupied during the summer. They made it as sensory stimulated as they possibly could. They put in two waterfalls, jets, water slide, and a wide variety of lights. The contractor did not make it clear to them or their HOA the amount of equipment that would be needed for their pool project. They currently have a concrete pad on the side of their house, which measures approximately 10' x 6', that is completely filled with piping, pumps, heating, and other equipment. It is very much an eyesore. Mr. Trende stated they have already put in three arborvitaes to try to block the view from the street. However, their neighbors can still view the equipment from their driveway, backyard, and porch. Their plan is to enclose the fence with arborvitaes, but while the arborvitaes are filling in, the fencing with the black mesh around it, will block the view from the road.

Mr. Trende stated the second, more serious issue, is the safety issue. He reiterated that their oldest son has severe autism. He is hard to keep track of. He has already almost drained the pool once. They have an emergency release valve that looks like a fire hydrant. He thinks “this is the greatest thing on the planet.” The integrity of the pool can be damaged if it is completely drained. In addition, when his son empties the pool, the chemical water flows into the swale, which is located on Mr. Levy’s property.

For the above two reasons, Mr. Trende is hoping their fence variance will be approved to make the neighborhood prettier and their investment safer.

Mr. Margello showed the Applicant a picture of the fence and asked him if this was the fence they will be installing. Mr. Trende said, "Yes." Mr. Margello asked if he will be installing the same type of mesh. Mr. Trende stated they already have the mesh around their pool, and it will be the same thing. They initially wanted to install a privacy fence and their HOA informed them that privacy fences are not allowed. They then switched over to the rod iron fence with the mesh around it to block the view.

Mr. Margello asked how large is the area where all the equipment is installed. The property pad is 10' x 6'. They applied for '13 x 10'. They wanted room to work, if necessary, in that area.

Mr. Margello asked the Applicant if he had any pictures of that side of the house. Mr. Trende showed Mr. Margello pictures of the pool area and all the equipment.

Ms. Mount asked what is the mesh the Applicant is talking about. Mr. Margello stated it is a black mesh that goes on the fence. Some patios on commercial properties use it. The mesh blocks vision.

Ms. Mount said the Applicant had her at "safety." She is for the Application.

Mr. Margello believes the fence with the mesh is excellent. The fence and the trees are not going to hide the equipment. The mesh will hide the equipment.

PUBLIC COMMENT:

Mike Levy, 1168 Elderberry Loop, Delaware, OH. Mr. Levy said he is only here to support his neighbor. He brought pictures of the equipment area from his house next door. They are very close to the Trendes. Mr. Levy stated that Mr. and Mrs. Trende are fantastic. They have been very helpful. Mr. Levy said it is not only an eyesore but it is very loud. Mr. Trende has calibrated the pumps so, they do not hear the pumps much during the day. He runs the filtration pumps at night when they are asleep. Mr. Levy feels the arborvitaes will not cover the pool equipment area, but the black mesh and arborvitaes will provide a noise barrier. He is totally happy with what the Applicant is proposing and they are "super supportive" of it.

Mr. Kammann asked if he was a member of their HOA. Mr. Levy stated that he is the President of their HOA.

BOARD DISCUSSION:

Mr. House, Ms. Mount, Mr. Kammann, Ms. Marker, and Mr. Margello have no concerns with this Application.

FINDINGS OF FACT:

Board of Zoning Appeals Member Mel House reviewed the Findings of Fact:

#1 Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance – The variance is necessary for his Application.

#2 Whether the variance is substantial – No.

#3 Whether the essential character of the neighborhood would be substantially altered, or whether adjoining properties would suffer a substantial detriment as a result of the variance – No. It will improve the character of the neighborhood.

#4 Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage) – No.

#5 Whether the property owner purchased the property with knowledge of the zoning restriction – They were not aware of the zoning restriction.

#6 Whether the property owner's predicament feasibly can be obviated through some method other than a variance – No.

#7 Whether the spirit and intent behind the zoning requirement would be required to be observed and substantial justice done by granting the variance – Yes.

MOTION:

Liberty Township Board of Zoning Appeals Member Mel House made a motion to approve **DPV #22-16** submitted by Sean and Elizabeth Trende to amend the Olentangy Falls Development Plan for their property located at 1146 Elderberry Loop, Delaware, OH to allow for a fence to be located in front of the furthest forward rear facing wall (one side) of the house to be used as a barrier for swimming pool equipment.

Liberty Township Board of Zoning Appeals Member Becca Mount seconded the motion.

The roll call vote was as follows: Mrs. Mount – Yes, Mrs. Marker – Yes, Mr. Margello – Yes, Mr. House – Yes, and Mr. Kammann – Yes. The motion passes with 5 – Yes and 0 – No votes.

CONCLUSION:

This portion of the meeting concluded at 8:52 p.m.

4. APPROVAL OF MINUTES:

Liberty Township Board of Zoning Appeals Member Kelly Kammann made a motion to approve the minutes from **May 17, 2022**. Liberty Township Board of Zoning Appeals Member Christie Marker seconded the motion.

The roll call vote was as follows: Mrs. Marker – Yes, Mr. Margello – Yes, Mr. House – Abstain, Mr. Kammann – Yes, and Mrs. Mount – Yes. The motion passes with 4 – Yes, 1 – Abstain, and 0 – No votes.

Liberty Township Board of Zoning Appeals Member Kelly Kammann made a motion to approve the minutes from **June 7, 2022**. Liberty Township Board of Zoning Appeals Member Christie Marker seconded the motion.

The roll call vote was as follows: Mr. Margello – Yes, Mr. House – Abstain, Mr. Kammann – Yes, Mrs. Mount – Yes, and Mrs. Marker – Yes. The motion passes with 4 – Yes, 1 – Abstain, and 0 – No votes.

CONCLUSION:

This portion of the meeting concluded at 8:58 p.m.

5. ADJOURNMENT:

Liberty Township Board of Zoning Appeals Member Kelly Kammann motioned to adjourn the Board of Zoning Appeals meeting. All say aye.

The meeting was adjourned at 8:56 p.m.

Respectfully submitted:

Liberty Township Board of Zoning Appeals:

By: MB Robinson 8-2-22
Mary Beth Robinson, Zoning Secretary Date

And: [Signature] 8/2/22
Board of Zoning Appeals Vice-Chair, Kelly Kammann Date

MEETING DATE 7-12-22

PLEASE PRINT CLEARLY

PUBLIC COMMENTS/REPETITIVE COMMENTS MAY BE LIMITED BY THE BOARD CHAIRPERSON

THE FLOOR WILL BE OPENED UP FOR PUBLIC COMMENT BY THE BOARD CHAIRPERSON AFTER STAFF AND APPLICANT HAVE CONCLUDED THEIR PRESENTATIONS, AND AFTER DISCUSSION AMONGST THE BOARD MEMBERS.

NAME AND/OR COMPANY

STREET ADDRESS, CITY, ZIP

E-MAIL ADDRESS

Rob Jordan

296 Eldoberg Loop, D11

Jordan.Rob.48@gmail

Julie Deulingen

1564 Wren Lane

Julian.d@hotmail

BRIAN SPITZ

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Sam Jordan

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Miree Leys

1165 Oederberg Loop

myleobed7@yahoo.com

Multiple horizontal lines for additional public comments.

DPV #22-15

Staff Report

TO: LIBERTY TOWNSHIP BOARD OF ZONING APPEALS

FROM: Eric Gayetsky

HEARING DATE: July 12, 2022
Staff report issued: July 8, 2022

APPLICANT: Becky Jordan

LOCATION: 796 Elderberry Loop
Lot 4923, Sec. 1, Olentangy Falls Subdivision

ZONING DISTRICT: Planned Residence (PR)

The home located at 796 Elderberry Loop was built in 2014 and is located on a 0.76-acre lot. The rear portion of the lot features sloping topography which wraps around the lot's southwest side, see aerial map contour overlay in "Exhibit A". The rear-most area of the lot is comprised of a conservation easement, drainage easement, and Natural Green Space. An existing paver patio is located immediately behind the home, and was approved under a zoning permit issued on January 14, 2022. The applicant intends to keep the existing patio which will connect to the new pool area and surrounding patio.

- The Liberty Township Zoning Resolution, Section 7.15.D states in part the following: Fences and walls shall be built at or behind the furthest forward rear facing wall, on each side, of the Principal Building on the lot.

The fence is proposed to begin 12' 6" in front of the forward-most rear-facing wall on the west of the side of the home, and will not comply with the above requirement.

- Section 7.15.C states in part the following:
No fence or wall shall be located closer to any lot line than the minimum setbacks of three feet from the side and rear property lines.

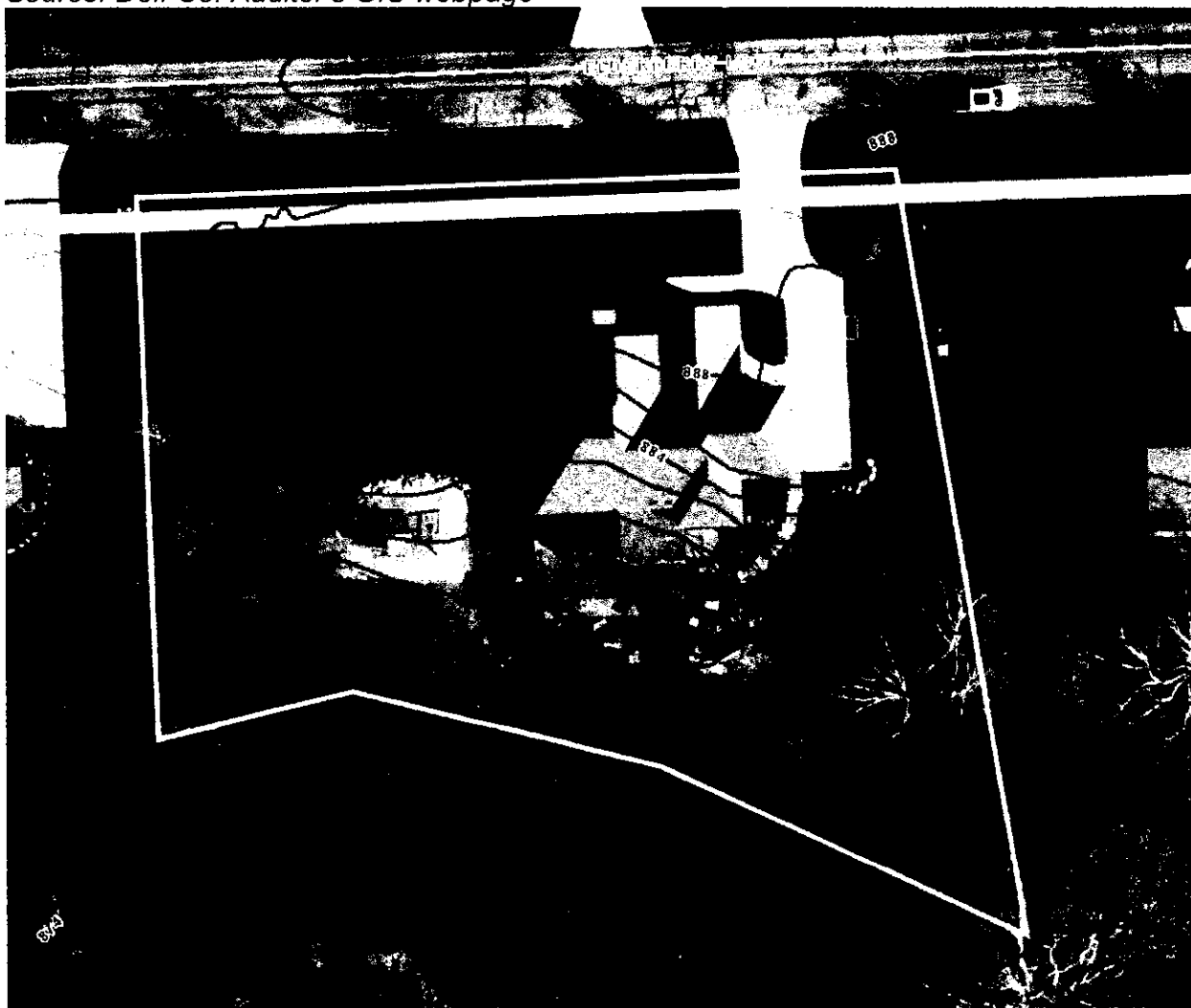
The fence location will comply with the above requirement with the proposed setbacks as follows: 27' feet from the rear property line, 41' 8" from the west side property line, and 112' 7" from the east side property line. The shared drainage and conservation easement extends 24.5' into the rear of the property from the closest point to the proposed fence, therefore, the proposed fence will not encroach into the shared drainage and conservation easement.

A conditional letter of approval from the Olentangy Falls, dated January 10, 2022, is included in the applicant's submission. The letter states "However, consistent with our Bylaws and Schedule "O" the HOA "strongly prefers" that the homeowner install their proposed pool fence at the rear corner of the home...In addition, we would require the

Jordan's to secure a good neighbor letter from the west adjoining property along with a variance approval from the township."

EXHIBIT A

Source: Del. Co. Auditor's GIS webpage



BZA #22-12

Staff Report

TO: LIBERTY TOWNSHIP BOARD OF ZONING APPEALS

FROM: Eric Gayetsky

HEARING DATE: July 12, 2022

Staff report issued: July 11, 2022

APPLICANT: Juliann and Garth Denlinger

LOCATION: 1564 Wren Lane
Lot 495, Westchester Subdivision

ZONING DISTRICT: Farm Residence (FR-1)

REQUEST: Area Variance: To allow two proposed 10' x 16' accessory buildings to be encroach 15' into the required 25' side yard setback.

The home located at 1564 Wren Lane was built in 1977, is 2,668 square feet in size and located on a 1.67-acre lot. The property dimensions are approximately 190' wide by 373' deep on the east side, and 394' deep on the west side. A zoning permit for swimming pool with 5' fence was issued in 1983. Two 10' x 16' accessory buildings (sheds) are being proposed 10' away from the east side property line. These will be located between the edge of the patio surrounding the pool and side property line.

Liberty Township Zoning Resolution Section 8.07.C.2 – Side Yard Setback states the following: No building or other structure shall be located closer than twenty-five (25) feet to any side lot line, except as provided for under Section 7.13.

- The proposed accessory buildings will be located 10' from the side property line on the east side of the property, encroaching 15' into the required 25' side yard setback.

Note: GIS imagery shows a wooden fence was added immediately around the pool by 2002, but removed by 2021. No fence is visible on the property as-of 2021. Furthermore, GIS imagery shows the existing patio surrounding the pool was extended between 2020 and 2021. There is no record of a permit for the patio extension. The property owner was contacted on July 8, 2022 regarding the patio extension and pool without fence, but to-date, our office has not received a response.

The applicant has included renderings of the proposed shed structures in your packet. Also included in your packet are site photos of the building site with approximate property line depicted for reference, as well as the wooden fence that had been removed.

DPV #22-16

Staff Report

TO: LIBERTY TOWNSHIP BOARD OF ZONING APPEALS

FROM: Eric Gayetsky

HEARING DATE: July 12, 2022
Staff report issued: July 8, 2022

APPLICANT: 1146 Elderberry Loop

LOCATION: 1146 Elderberry Loop
Lot 4933, Sec. 1, Olentangy Falls Subdivision

ZONING DISTRICT: Planned Residence (PR)

The home located at 1146 Elderberry Loop was built in 2011 and is located on a 0.79-acre lot. A swimming pool with 54" black aluminum fence and self-closing gates was installed on the property in 2020, and the Certificate of Pool Compliance was issued on July 31, 2020, see site photos from the compliance inspection in "Exhibit A". The applicant is requesting to add a fence around the pool equipment area on the side of west side of the home. The applicant had stated that the dimensions of the area to-be fenced in will be 10.3' x 13.67', which includes 42" of spacing from the front edge of the pad, and 18" on the side and rear.

- The Liberty Township Zoning Resolution, Section 7.15.D states in part the following: Fences and walls shall be built at or behind the furthest forward rear facing wall, on each side, of the Principal Building on the lot.

The fence is proposed to begin approximately 1/3 the distance of the side of the home towards the front, and will be located in front of the forward-most rear-facing wall on the west of the side of the home, therefore, it will not comply with the above requirement.

A conditional letter of approval from the Olentangy Falls, dated January 18, 2021, is included in the applicant's submission. The letter states "After discussing options with the board, they are willing to allow a fence around the pool equipment with some additional request;

- Fence must match existing fence
- Fence must be approved by Orange Township (note: "Orange" was referred to in-error)
- Fence needs to be hidden by Arborvitae
- They are requesting this be completed in a reasonable amount of time"

Exhibit A

