

Board of Zoning Appeals

Application #'s VA-20-26, VA-21-04, VA-21-05 & VA-21-06

May 20, 2021

LEGAL NOTICE

Notice is hereby given that the Orange Township Board of Zoning Appeals will hold a public hearing on Thursday, May 20, 2021, beginning at 6:00 p.m. to consider the following application/s:

Variance Application #VA-20-26 Marwan J. Deek & Lora A. Deek,

Seeking a variance to install an in-ground swimming pool that will fail to meet the minimum rear yard setback in Rezoning Case 17677 Wilshire East. The subject property is located at 7526 Hill Gail Ct. Lewis Center, OH 43035 and having parcel number 318-421-02-021-000.

Variance Application #VA-21-04 Sheryl and Donald II Everett (continued from 4/15/21 hearing),

Seeking an area variance from Rezoning Case #13-0302 North Farms to allow for the construction of a fiberglass pool with a retractable safety cover system that will encroach in the rear-yard setback and to allow a fence lower than 5'. The subject property is located at 5255 Loudon Dr. Lewis Center, OH 43035 and having parcel number 318-220- 12-015-000.

Variance Application #VA-21-05 Matthew & Rosalie Fenner,

Seeking an area variance from Orange Township Resolution Section 21.05 a) for the installation of an in-ground pool whose location will be within the 25 ft. setback from the right-of-way of a residential street. The subject property is located at 5681 Hickory Dr. Lewis Center, OH 43035 and having parcel number 318-210-27-020-000.

Variance Application #VA-21-06 Beth Breznicki,

Seeking an area variance from Orange Township Resolution Section 7.06 f) for the installation of an attached garage that will fail to meet the minimum side-yard setback. The subject property is located at 7315 Africa Rd, Galena OH 43021 and having parcel number 318-414-01-021-000.

The hearing will be held virtually using electronic means and can be accessed by the public on the internet on the Zoom application at

<https://us02web.zoom.us/j/87447230660?pwd=UWFodnRVK3IPUUQybkhFHVnlhKzliZz09>

During the hearing the public may submit questions and comments to the Board by sending messages to Senior Zoning Officer, Jeff Beard via the Zoom meeting chatroom.

The application and plans are available for inspection for a period of at least 10 days prior to the hearing by e-mailing Jeff Beard at jbeard@orangetwp.org. The Zoning Office is closed to the public during the public health emergency, however zoning staff is available by e-mail during normal business hours of Monday through Friday, 8 a.m. to 4:30 p.m., except legal holidays.

Following this hearing the Board may meet for general purposes to consider such business as may properly come before it including, but not limited to, consideration and/or approval of minutes, scheduling future hearing dates for this or other applications, and like matters.

The person responsible for the publication of this notice is Jeff Beard, Orange Township Zoning Department.

*Jerry Miller, Chairman
Jeff Beard, Orange Township Zoning Department*

Please publish one time, on or before Saturday, May 8, 2021 in The Delaware Gazette Send

Mr. Miller called the hearing to order at 6:00 p.m.

Roll Call: Jerry Miller, Rick Oster, Punitha Sundar. Aaron Shipley, Kelvin Trefz

Board of Zoning Appeals

54 Township Officials Also Present: Jeff Beard, Zoning Enforcement Officer
55 Michele Boni, Planning and Zoning Director
56

57 Mr. Miller administered the oath to those speaking: Anyone who intends to testify, please raise your right
58 hand to be sworn. Do you solemnly swear that the testimony that you are about to give is the truth, the
59 whole truth and nothing but the truth, and state I do. And when it's your turn to offer testimony, please
60 state your full name, address and affirm that you've been sworn in. Anyone who intends to offer
61 comments or testimony through the online chat room function also needs to be sworn in remotely. Before
62 your initial comment, please type in your name, address and the words "I affirm" to indicate you
63 solemnly swear that the testimony that you are offering is the truth, the whole truth and nothing but the
64 truth.
65

66 **Variance Application #VA-20-26 Marwan J. Deek & Lora A. Deek,**

67 Seeking a variance to install an in-ground swimming pool that will fail to meet the minimum rear yard setback in
68 Rezoning Case 17677 Wilshire East. The subject property is located at 7526 Hill Gail Ct. Lewis Center, OH 43035
69 and having parcel number 318-421-02-021-000.
70

71 Mr. Beard presented the Staff Report and presentation. There are some changes to the Staff Report; as
72 you can see, I've crossed out some of it. The applicant is requesting to install a fiberglass inground pool
73 and is seeking a 9' variance from the current rear yard setback of 35'. The subject property is located on
74 the west side of Hill Gail Court. To the north and south is Single Family Planned Residential District with
75 single family homes; to the east is an empty lot, Wilshire to the west is Single Family Planned Residential
76 District also with single family homes. The pool will encroach 9' into the rear yard setback, and the
77 applicant is requesting a 9' variance. The retaining wall that is shown will not have footers so it does not
78 meet our definition of a structure and since it does not meet the definition of a structure, the setback goes
79 to the pool. This 9' setback will be a 25% variance request from the 35' rear yard setback. If you look at
80 the aerial, the property under question is highlighted is part of Wilshire East. Their rear yard setback is
81 35'. The properties east of them that abut on their rear property line is part of Wilshire Estates. Their rear
82 yard setback is only 30', just to be aware that there is a little difference in the adjoining lots. We received
83 some letters of support from neighbors shown on the map highlighted in green. We did receive some
84 concerns that were passed along in the first meeting and a letter we received today that we passed along to
85 the Board members as well.
86

87 Mr. Miller: Mr. and Mrs. Deek, before you start with your presentation, I would like to make a couple of
88 comments. One thing that I was not personally aware of that with Zoom meetings there can be anywhere
89 from a 2-5 second delay in audio and because of that, I know there were some discussions in what I
90 perceived as being able to talk where some were talking over each other, myself included, so please let's
91 be respectful of the 2-5 second delay in Zoom and try not to talk over each other.
92

93 **APPLICANT PRESENTATION/BOARD QUESTIONS & COMMENT**
94

95 Marwan Deek, 7526 Hill Gail court, Lewis center, Ohio 43035, and I affirm. We embarked on getting a
96 pool like a lot of people in our area once the COVID thing started so our kids would have something to do
97 while they were being home schooled. We were falsely under the impression that our setback was similar
98 to our neighbors' behind us and we came to find out we had 5' less and we developed a plan but for the
99 pool we're trying to get in there, but it would have been very tight and close to the house if we're not able
100 to get a variance. We're not asking for a lot and even on those pictures, by Mr. Beard's assessment, that
101 cone would actually be moved closer to the house in terms of the easement we're asking for, so it would
102 be well within the current patio that we have in place right now. We had a meeting about this a little over
103 a month ago and one of the concerns brought up was drainage. We decided to table this application
104 because I have similar concerns and I've come to find out a lot of the neighbors also were having

Board of Zoning Appeals

105 drainage concerns; however the people who raised the concerns are upstream from where our property
106 sits, so all the water would flow downward, so it's all flowing onto our property. We met with EMH&T
107 architectural firm who originally did the development in that neighborhood, and they assured us that with
108 the proper drainage system on our lot, we would the problems we've been dealing with. They also
109 assured us we wouldn't have any issues, our neighbors wouldn't have any issues with drainage, 1)
110 because our drainage would be better than it currently is right now even though we have French drains
111 and secondly, we're 6' lower in elevation than our neighbors are, so I don't see from a physics aspect of
112 being an obstacle.

113
114 Lora Deek, 7526 Hill Field Court, and I affirm. I just wanted to correct you, Mar; we didn't meet with
115 EMH&T, the original engineer of the development. We talked with them a few times, and reviewed our
116 property and the grading, and he did not see any issues as long as proper drainage was done to our
117 property, and he suggested that outside of the pool drainage that we add some additional area drains
118 which we were planning on doing anyway because of the fall of the water from other properties onto our
119 property. We also talked with Matt Lanum of Delaware County Water & Soil and he basically said the
120 same thing; he did not see any issues with the drainage as long as we put the proper drainage in our
121 property with our pool. I also contacted an outside drainage company, Professional Gutter and Drain, and
122 Dustin Moore came over and walked our lot, and he said pretty much the same thing. We are probably
123 going to work with them or another outside drainage company outside the pool drainage once that's
124 completed just to address any issues we have around our property and outside of the pool. But all 3
125 seemed fine with what we proposed to them of what we were doing as long as we had the proper drainage
126 in our property with the pool.

127
128 Mr. Oster: When we reviewed this before I think our concern with the drainage was pretty much for them
129 to be aware of and to investigate before they invested a lot of money; not so much for us, that was more
130 for you.

131
132 Mr. Shipley: I agree with Mr. Oster, and that letter from Delaware Soil & Water said there wouldn't be
133 any negative impact on drainage, so I don't know drainage is an issue for us.

134
135 Mr. Oster: It's not a concern for us; it's just that sometimes we will say something to someone with their
136 application that you're the one putting all the money into this and I would be sure that you have the
137 drainage that you need.

138
139 Ms. Deek: I was unable to understand everything he said; it was kind of choppy.

140
141 Mr. Miller: We just have a tendency to give some guidance on drainage, etc. Since you have been in
142 contact with Delaware County Soil, etc., really that is not part of our hearing process unless it is a major
143 flooding area or a major topographical issue that can cause flooding, etc., and with the position of your
144 property in correlation with the adjoining properties, this would not be an issue with us.

145
146 Mr. Deek: That was a very big issue for us and it encouraged us to see if it was going to be an issue for
147 us, and we do recall that was a concern of some of our neighbors as well, so the reason I wanted to
148 address that was to assure the neighbors that our project will not make their drainage issues any worse.

149
150 Mr. Oster: If I recall, you were one of the lowest properties and we just wanted to make sure that you
151 were looking out for yourselves if you move forward with this project.

152
153 Mr. Shipley: Are you going to address the privacy concern tonight?

154

Board of Zoning Appeals

155 Ms. Deek: Yes. We want as much privacy as possible on our property so we are going to hopefully do
156 what is sufficient enough outside of our fence along the back of the property and if there's any big gaps,
157 we're going to add additional shrubs. The plan is to make it as private as possible for us and hopefully
158 that gives plenty of privacy to any neighbor around us as well.

159
160 Mr. Deek: We will obviously have the safety fence, the safety cover for the pool as well, so all of the
161 safety concerns are going to be addressed. Aside from that, I think that pretty much covers everything
162 we're asking for with regard to the 9' for the variance.

163
164 Mr. Miller: Just to confirm, your safety cover will be a lockable cover?

165
166 Ms. Deek: Yes. It will be automatic and lockable and with the fence as well.

167
168 Mr. Miller: Are there any other questions from the Board members?

169
170 Mr. Shipley: I've looked through this, it's a 9' variance, Delaware Soil & Water has no issues with the
171 drainage, so the drainage isn't something I'm concerned with, so I have no further questions.

172
173 Mr. Miller: Mr. Oster?

174
175 Mr. Oster: No.

176
177 Mr. Miler: Ms. Sundar?

178
179 Ms. Sundar: No.

180
181 Mr. Trefz: No.

182
183 Mr. Miller: Is there anyone in the chatroom?

184
185 Mr. Oster: There's one person in chat but they say they're in support of the pool.

186
187 **MOTION TO APPROVE VARIANCE APPLICATION #VA-20-26**

188
189 Mr. Miller made a motion to approve Variance Application #VA-20-26, Marwan J. and Lora A. Deek,
190 based on a number of factors:

- 191
- 192 1. The side yard setback of 30'
 - 193 2. The Delaware Soil & Water letter of support
 - 194 3. The neighbors' support
 - 195 4. The design changes made

196
197 Seconded by Mr. Oster

198
199 Vote on Motion: Mr. Oster-yes, Mr. Miller-yes, Mr. Shipley-yes, Mr. Trefz-yes, Ms. Sundar-yes

200 Motion carried

201 Hearing continued with Variance Application #VA-21-04

202
203 At their July 15, 2021 meeting, Mr. Miller made a motion to approve the May 20, 2021 minutes of the
204 Orange Township Board of Zoning Appeals for Variance Application #VA-20-26, Marwan J. Deek and
205 Lora A. Deek as written; seconded by Mr. Shipley.

Board of Zoning Appeals

206 Vote on Motion: Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes, Mr. Trefz-yes
207 Motion carried
208

Board of Zoning Appeals

1 **Application #VA-21-04**

May 20, 2021

2
3 **Variance Application #VA-21-04 Sheryl and Donald II Everett (continued from 4/15/21 hearing),**

4 Seeking an area variance from Rezoning Case #13-0302 North Farms to allow for the construction of a fiberglass
5 pool with a retractable safety cover system that will encroach in the rear-yard setback and to allow a fence lower
6 than 5'. The subject property is located at 5255 Loudon Dr. Lewis Center, OH 43035 and having parcel number
7 318-220- 12-015-000.
8

9 Mr. Beard presented the presentation and Staff Report. The applicant is requesting an Area Variance of 10'6" into
10 the current 35' rear yard setback. The applicant is also requesting a variance for the height of fence around the
11 property for an already installed 4' fence for the 5' fence required by the Orange Township Zoning Resolution.
12 The property is located on the southeastern side of Loudon Drive. To the north, south, east and west is all Single
13 Family Planned Residential District with single family homes. Also, there's HOA open space southeast and then a
14 vacant lot behind them. We're just going to go over the Staff Report and then we'll come back to the fence. The
15 rear yard setback is currently 35'; the pool will encroach 10'6" into the rear yard setback. This will be a 30%
16 request. Last month it was at a 46% size of variance request, so they have decreased it by 16%. Showed exhibit
17 showing updated site plan with the pool 24'6" from the property line. Exhibit 2 shows the neighbor's rear yard.
18 Exhibit 3 is signatures from neighbors that are in support of the project. Have letters of support which are
19 highlighted in green. In your packet you received, there was an updated letter from the HOA. They contacted them
20 and let them know their design had changed, and the HOA's response was they would update their file as the HOA
21 had already approved the original site plan.
22

23 **APPLICANT PRESENTATION/BOARD QUESTIONS & COMMENT**

24
25 Sheryl Everett, 5255 Loudon Drive, Lewis Center, Ohio 43035, and I do affirm. I appreciate the feedback
26 from our previous meeting, and I did contact the pool company and came up with a new plan that will
27 hopefully work out everything. We've lived in this area about 3 years, we love the school district and
28 everything is great. I want to reiterate I did get the HOA approval, and I did contact them and spoke with
29 them about the redesign and they said they would add it to my file, it wasn't an issue. I have also spoken
30 to multiple neighbors. As you can see from the signatures I have gotten, they are in favor of this project,
31 so I'm requesting a 35' x 16' fiberglass pool installation. I decided to go with a concrete apron all around.
32 I'm doing a retractable safety cover system, and an electric water heater pad and a full sump tube
33 watering system to the pool and I did decrease my other variance request and went from a 46% request to
34 a 30% request. After speaking to the pool company, they have a rule where they cannot go less than 10'
35 from the house, so seeing as how I have this L shaped house, I have a morning room with a basement
36 underneath so that's considered to be part of the house, so I have to be at least 10' away from that morning
37 room, so looking at the easements that I have to the left of my property, I can't go too much further that
38 way or I'll encroach on those. I have to get closer to the house because I have to be within that 10' and
39 also looking at this picture that I have, this little tiny deck will be removed and there will be concrete
40 steps coming off the morning room. The design of the steps will create a 5'8" amount of walking space
41 between the end of the steps to the side of the pool, so by design, they put those arrows to the corner of
42 that morning room. If I were to move that arrow over to the corner of the house, it's 5'8". Research has
43 shown that you need 4'6" between 2 adults to pass safely between any passing, so I think having that
44 amount, we talked the last meeting a lot about safety and I think that was my biggest concern going into
45 this project, making sure there was an adequate amount of space stepping out my back door to the pool,
46 so I think I have moved the pool up a substantial amount and knowing I have a lockable safety cover, I
47 feel have met a lot of the standards. I even flipped the pool so the zero entry would be toward the door
48 rather than the other side, so that adds another safety feature that the shallow end is toward the house.
49

50 Mt. Miller: I appreciate the fact that you how you made modifications to your design. Any questions or
51 comments from the Board?
52

Board of Zoning Appeals

53 Mr. Oster: It pretty much looks like you're going to move it up and then there's going to be a patio that's
54 going to go up to the house. That's kind of what I was suggesting originally because I think you had an
55 undeveloped space there that you were leaving before as I recall.

56
57 Ms. Everett: Yes, I had originally locked in my mind to do a deck but when you put in a deck you want a
58 good amount of entertainment space, so with that amount of space with the smaller amount of concrete
59 just didn't make sense in my mind, so given that. I had to do a bit of redesign, so it came down just to put
60 in all concrete and make it level with the house, so now when you step down it's just straight down onto
61 the concrete. I made the steps a little bigger because I love the idea of stepping out of the house into
62 something like you would with the deck but with the steps you at least get a little of space out and then
63 you step out onto the concrete, so I think that was a good idea to make it all just one solid concrete.

64
65 Mr. Oster: I think your plan looks like exactly what I was thinking and I think you'll be happy with it and
66 you shaved off about 6' also. I like it.

67
68 Mr. Trefz: I have no comments; all of mine have been answered.

69
70 Mr. Shipley: I'm good. That 10'6" is extended into HOA space and the HOA has approved it, so I don't
71 have an issue with it at all.

72
73 Ms. Sundar: I'm good; everything seems to be good. There's enough space for safety; everything looks
74 good.

75
76 Mr. Miller: Are there any comments from chat?

77
78 Mr. Trefz: They're all in favor of the pool. There's 5 maybe.

79
80 **MOTION TO APPROVE VARIANC EAPPLICATION #21-04**

81
82 Mr. Oster made a motion to approve Variance Case Application #21-04, Sheryl and Donald Everett, as
83 submitted and revised for the setback of the pool; seconded by Ms. Sundar.

84
85 Vote on Motion: Mr. Oster-yes, Mr. Miller-yes, Mr. Shipley-yes, Mr. Trefz-yes, Ms. Sundar-yes
86 Motion carried

87
88 Ms. Boni: If I could make one comments for all the North Farm residents; they have been with us a
89 couple of evenings this week, so thanks for your time.

90
91 Mr. Shipley: We still need to go over the fence.

92
93 Mr. Miller: Are there any comments either from the chat room or from the Board in regard to the fencing?

94
95 Mr. Trefz: Nothing from the chat.

96
97 Ms. Everett: I did a lot of research after our last conversation, again being very respectful of suggestions
98 of safety, I read a lot about safety covers versus a fence and a 4' versus a 5'. All the research I did cited
99 that the retractable safety cover with a pin number like what we're going to do was by far Number 1 as far
100 as accessing the pool. If it's open, that's a different story but my children and all the surrounding
101 neighbors, their children are in swim lessons which is so important to me. Anyone who knows me knows
102 that with water safety I'm actually a little over paranoid about it in a good way. We're putting security
103 cameras on the back of the house, we're locking that fence and then again that retractable safety cover.

Board of Zoning Appeals

104 With the type of fence we currently have it's very difficult to climb over it. I know anyone could do it. If
105 a 2 year old wanted to they could shove something up there and get it open. It doesn't matter if it's 4' or
106 5'; in my opinion, if they want to get over it they can. I think I've taken a lot of steps to provide safety
107 measures that a lot of counties don't ask for 5; they just ask for 4', so. Mr. Beard I don't know if you have
108 the picture I emailed to you that I'm envisioning with the bushes around just so they could look at what
109 I'm thinking as far as the bushes I want to put up to kind of wall it off, including what exists. I think the
110 only other hardship that I would like to note is that my neighbor to the west of me installed their fence
111 prior to me moving in so as far as adding to it or trying to do a 5' fence off a 4' fence aesthetically didn't
112 make sense, so I want practicality but safety is absolutely my number one concern.

113

114 Mr. Oster: We're probably going to have our Code changed but unfortunately right now it's not changed,
115 but I'm good with it. The hard cover is a big plus.

116

117 Mr. Shipley: I'm in favor also, but when we talk about the fence, Orange Township requires a 5' fence,
118 we don't require a safety cover, so the mitigating factor when we think through this is we have a 4' fence
119 already in place. It doesn't seem to make sense that you would tear out a fence, try and add to it to bring it
120 to 5' when you're going to go the extra step and have that safety cover, and for me, that's kind of the
121 deciding factor. The 4' fence is already in place and you're going to have a controlled and locking safety
122 cover, and I think that just makes sense.

123

124 Mr. Oster: I agree and I think all we need to do is add the verbiage that the hard safety cover that's
125 lockable will be added.

126

127 Mr. Shipley: Right, and that was the point I was making; we just go in that direction for approval based
128 on the safety cover being installed with the 4' fence.

129

130 Mr. Miller: I was almost going on on that same exact direction based on not only County, surrounding
131 townships and towns, the international pool standards, they have much higher credence with the lockable
132 pool cover than the fencing issue. I do agree presently that Orange Township does require a 5' fence but
133 in my opinion that probably will be changing as we move down the road.

134

MOTION TO APPROVE VARIANCE APPLICATION #VA-21-04

135

136
137 Mr. Miller made a motion to approve Variance Application #VA-21-04, Sheryl and Donald Everett, for
138 the 4' fence based on the hard cover with the locking system; seconded by Mr. Shipley.

139

140 Vote on Motion: Mr. Oster-yes, Mr. Miller-yes, Mr. Shipley-yes, Mr. Trefz-yes, Ms. Sundar-yes
141 Motion carried

142

143 Hearing continued with Variance Application #VA-21-05

144

145 Minutes prepared by Cindy Davis, Zoning Secretary

146

147 At their July 15, 2021 meeting, Mr. Miller made a motion to approve the May 20, 2021 minutes of the
148 Orange Township Board of Zoning Appeals for Variance Application #VA-21-04, Sheryl and Donald II
149 Everett, with the following correction:

150

151 Line 120 – "cove" should read "cover"

152

153 Seconded by Mr. Shipley.

154

Board of Zoning Appeals

155 Vote on Motion: Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes, Mr. Trefz-yes
156 Motion carried
157
158

Board of Zoning Appeals

1 **Application #VA-21-05**

May 20, 2021

2
3 **Variance Application #VA-21-05 Matthew & Rosalie Fenner,**

4 Seeking an area variance from Orange Township Resolution Section 21.05 a) for the installation of an in-ground
5 pool whose location will be within the 25 ft. setback from the right-of-way of a residential street. The subject
6 property is located at 5681 Hickory Dr. Lewis Center, OH 43035 and having parcel number 318-210-27-020-000.
7

8 Mr. Beard presented the Staff Report and presentation. The applicant is requesting a 12'8" variance into the 25' setback of
9 the road right-of-way. The subject property is located on the southern side of Linden Street and the eastern side of Hickory
10 Drive. The surrounding area is Single Family Planned Residential District. The front yard requirement is a 10' setback,
11 which they meet. The other section is 21.05, water impoundments, and it's all water impoundments such as ponds, lakes,
12 or swimming pools shall be constructed and developed in compliance with the following standards: a) except adjacent to
13 US Route 23, no impoundment shall be located closer than 25' to the right-of-way of any adjacent improved road, no
14 impoundment shall be located closer than 50' to the right-of-way of US 23. This pool will encroach 12'8" into the right-of-
15 way setback for a 12'8" variance. The request would be approximately a 51% request. The site plan shows the location of
16 the pool, Exhibit 2 is a measurement diagram, the right-of-way starts at the edge of the sidewalk and goes to the pool.
17 Have a site photo which shows the property in blue, the letters of support are in green and the properties that have slashes
18 in them are currently vacant. Have site photos; cone is location of the pool. The right-of-way ends at the edge of the left
19 side of the sidewalk. We have legal counsel present on the call as this permit was originally approved as it's a corner lot
20 with 2 front setbacks, so it met the building setback for the front then it was brought to our attention that the water
21 impoundment section was not met, so we were advised by legal counsel to rescind the application. Since that time Evans
22 Farm has approved their application that was part of the application that they provided and as you saw on the picture they
23 provided over 15 letters of support for this application. The applicant is on here so they can present if they wish.
24

25 **APPLICANT PRESENTATION/BOARD QUESTIONS & COMMENT**

26
27 Matthew Fenner, 5681 Hickory Drive, Lewis Center, Ohio 43035, I affirm, Mr. Beard provided a good
28 synopsis. We're looking to install what we're calling a plunge pool which is a relatively small pool, a 7' x
29 21' and only a 3-1/2' depth. The layout of our property is common for properties in our neighborhood; we
30 actually do not have a rear yard, so small front yards, small side yards if applicable, so given the layout,
31 this is the only place we can put an improvement on the property. We were cognizant when we first
32 started down this path to make sure that we stayed within the build line of the property so we purposely
33 designed a pool and surrounding patio area that would fall within those parameters and we have a good
34 faith from the Township that that would be acceptable and actually had an approved permit but then this
35 other part of the Township zoning came into effect that overruled the parameters, so that's the reason
36 we're here, seeking a variance. From the way we have it laid out, the distance from the road right-of-way
37 that's to our build line, so we're staying within those parameters yet restrained by the roadway easement.
38 Regarding that, as far as I understand, the main purpose of that zoning rule is for safety and for traffic
39 considerations. This is a residential street, so it's not like a thoroughfare or thru-way road, and the way
40 the Zoning Code is it really just differentiates Route 23 and every other road in the Township, so I know
41 further breakdown by road type, it's a residential road, a corner lot, there's a stop sign near our property,
42 so the speed limit is 25, so slow moving residential traffic. Given the size of the pool and the depth, I
43 don't know that that particular spirit of that zoning regulation really makes sense here, but we understand
44 that's how the code is written, so we're submitting a variance application for that purpose.
45 any questions.

46
47 Mr. Miller: Do you consider this a plunge for cooling purposes or an exercise pool?

48
49 Mr. Fenner: It's not an exercise pool, so it won't have a recirculating feature. It's really just a plunge
50 relaxation pool. On one side of the pool we're actually building a bench into it, so the primary reason is
51 floating in it.

52
53 Mr. Miller: And a cover?

Board of Zoning Appeals

54 Mr. Fenner: We are not installing any kind of retractable cover on it. We will be putting a standard 5'
55 fence around the pool area itself, the paver patio and around the paver patio we're putting in a 3'
56 landscape wall around the perimeter.

57
58 Mr. Shipley: I read through this package and the town architect as Mr. Beard stated earlier completely
59 approved the design to the tune of the setback and the variance is in there with the fence piece in there
60 and the amount of support within Evans Farm community with maintaining the urbanism look and feel
61 goes along with that. I think it's well laid out; I don't have any questions.

62
63 Mr. Oster would like to go into private deliberation with legal counsel.

64
65 Ms. Boni: Mr. Betts, do you think we should open it up for everyone else's comments first and then go
66 into it or what would you recommend?

67
68 Mr. Betts: I would recommend opening it up to everyone else's comments first.

69
70 Mr. Trefz: The only thing I have is you have no yard...period.

71
72 Mr. Fenner: Yes, very little yard.

73
74 Mr. Trefz: When I first saw your application, you planned it well, but I was a little shocked that it was
75 approved originally and I now know why it's here. I do understand your concerns; that's all I had to say.

76
77 Dan Griffin, Developer of Evans Farm, and the Fenner's neighbor and I concur that this is not only the
78 landscape design exactly what we're looking for with the new urbanism and the small lots, but the pool
79 being 3-1/2' deep certainly takes it outside the intent of the real estate law side of a water impoundment/
80 pool within 25' of a right-of-way. There's no question there's Chase Law on it. Frankly, that rule was
81 done due to if someone was driving fast and went off the road, they didn't want them to go into a
82 detention basin which we have all over the County anyway within 25' of the right-of-way. The important
83 thing though is to have those fences, landscaping and pillars that stop any vehicle for some reason driving
84 off the road. In this case, the Fenners have stepped up to a new level and it really looks not only safe but
85 architecturally really fits into the community. We are 200% in support of it and so are all the neighbors.

86
87 Ms. Sundar: This is a newer community and I don't know how many lots are similar to this property in
88 dimension?

89
90 Mr. Griffin: Almost all of them. It's a 55' lot and to the west there are 55' lots and then they go all the
91 way down to 40' lots. Then to where the Parade of Homes was in the center, those are 68' wide lots and
92 then as we head east, we get into some of the lots that are not alley loaded and those are 70' all the way
93 up to 100' that back up to Bryn Mawr and Lewis Center.

94
95 Ms. Sundar: So the house sizes are similar to this one?

96
97 Mr. Griffin: The house size is commensurate with the size of the lot. We gave close to 400 acres of green
98 space throughout this entire project when zoning would require 200 and the reason for that is people want
99 to spend more time in a community walking around, doing activities than they would cutting their yard up
100 on Saturday. So there aren't big yards; there are mostly little courtyards in most of the houses until you
101 get over to the far east where the 100' lots allow for more of a significant backyard.

102
103 Mr. Miller: Dan, if you would, you did provide your name; would you also provide your address?

104

Board of Zoning Appeals

105 Mr. Griffin: Dan Griffin, Evans Farm Developer, 5672 Evans Farm Drive, I do affirm.
106

107 Mr. Miller: Any other questions or comments from the Board (none). Anyone else want to provide
108 testimony (none). Mr. Beard, would you take us into private session? Mr. and Mrs. Fenner, what that
109 means is the Board has requested to discuss a couple of things in private with their attorney and we will
110 be coming back to you.
111

112 Mr. Betts: The Board is permitted under law to deliberate in private; they cannot make a decision in
113 private, so they'll be back to make a decision.
114

115 Mr. Beard: Mr. Miller, who do you want in the private deliberation?
116

117 Mr. Miller: The entire Board, Chris and Michele.
118

119 Ms. Boni: Chris, am I able to be part of this deliberation or should staff stay out of this?
120

121 Mr. Betts: They can invite whoever they want, so if they want you to be a part of it, that's fine.
122

123 The Board came back from private deliberations.
124

125 Mr. Miller: We are coming back into the session to continue the discussion of Variance Application #VA-
126 21-05 with the Fenners. One thing I do want to ask again is if there is anybody who has been in the
127 Facebook chatroom or anybody else who would like to make either comments or testimony.
128

129 Ms. Boni: I don't see anyone in the chatroom; if there's any other public comments once we're done, ???
130

131 Mr. Miller: Is there anything the Fenners would like to bring up before the Board's comments?
132

133 Mr. Fenner: The only thing I think I failed to mention that is relative to this is I think the right-of-way is
134 measured from the sidewalk; but the edge of the pool is from the street itself and we're a little over 26'
135 from the street.
136

MOTION TO DENY VARIANCE APPLICATION #VA-21-05

137
138

139 Mr. Miller made a motion to deny Variance Application #VA-21-05, Matthew and Rosalie Fenner,
140 predicated on the definition of a body of water with the location to the right-of-way of a public road;
141 seconded by Mr. Trefz.
142

143 Vote on Motion: Mr. Oster-yes, Mr. Miller-yes, Mr. Shipley-no, Mr. Trefz—yes, Ms. Sundar-yes
144

144 Motion carried
145

146 Ms. Fenner: What is our legal recourse, next steps?
147

148 Mr. Fenner: Do we have any other recourse at this point? We understand the pool is considered a water
149 impoundment by the zoning; that's why we're going through the process, but I'm not sure how to follow
150 it up.
151

152 Ms. Boni: Chris, tell me if I'm wrong, but I believe at this time they would seek legal counsel on that
153 matter.
154

Board of Zoning Appeals

155 Mr. Betts: Yes, but the Board cannot provide legal advice to you at this point so it would be best if you
156 have questions, you're certainly entitled to talk to legal counsel on that.

157

158 Ms. Fenner: Yes, we'll certainly have our attorney contact you tomorrow. Based on your presentation,
159 I'm not sure what the next steps are to appeal your decision in order to escalate that with the past history
160 what's the next steps people take.

161

162 Mr. Betts: There are available appeals out there, but your attorney could advise you on that.

163

164 Hearing continued with Variance Application #VA-21-06

165

166 Minutes prepared by Cindy Davis, Zoning Secretary

167

168 At their July 15, 2021 meeting, Mr. Miller made a motion to approve the May 20, 2021 minutes of the
169 Orange Township Board of Zoning Appeals for Variance Application #VA-21-05, Matthew & Rosalie
170 Fenner as written; seconded by Mr. Shipley.

171

172 Vote on Motion: Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes, Mr. Trefz-yes

173 Motion carried

174

175

Board of Zoning Appeals

1 **Application #VA-21-06**

May 20, 2021

2
3
4 **Variance Application #VA-21-06 Beth Breznicki,**

5 Seeking an area variance from Orange Township Resolution Section 7.06 f) for the installation of an attached
6 garage that will fail to meet the minimum side-yard setback. The subject property is located at 7315 Africa Rd,
7 Galena OH 43021 and having parcel number 318-414-01-021-000.

8
9 Mr. Beard presented the Staff Report and presentation. The applicant is requesting a variance of 17'6" into the
10 current 25' setback. The subject property is located east of Africa Road. The applicant is requesting an area
11 variance for an attached garage that would be within the 25' side yard setback. All surrounding areas to the
12 north, south, east and west are zoned Farm Residential District and have residences on them. The 17'6"
13 variance request would be roughly a 70% request. Exhibit 1 is showing the proposed setback. On the Google
14 map, the circle is where the garage would be located, the green is the letter of support and since then we did
15 receive an email from the other property that abuts in the rear in support of it also. This attached garage will be
16 replacing the car ports that are there. These car ports have been installed for many years. We do not have any
17 records of a permit being pulled for them. Based on our definition of a structure, these would be considered a
18 structure as this car port is anchored with posts into the ground. Based on the application, they're removing
19 this, they're removing the shed that's behind it that is near the property line, then we'll have the attached
20 garage which will be the same footprint as what is already there. They are not encroaching any farther than this
21 car port is but it will have the same footprint.

22
23
24 **APPLICANT PRESENTATION/BOARD QUESTIONS & COMMENT**

25
26 Beth Breznicki, 7315 Africa Road, Galena, Ohio 43021, I affirm, the structure in question is some kind of
27 makeshift cardboard that is not overly aesthetically pleasing nor is the barn behind us, so what we're
28 proposing to do is take all that down and then we would just install a 2 stall attached garage. We would
29 match the slope of the roof of the current structure which is 12:12 and we would just install the garage.
30 On the site plan it would make sense to, because of the setback, put the garage on the left side of the
31 property which would be on the north side, but there is a public sewer line that runs down the side of the
32 house which is the public sanitation, and the entire side of that house would have to be reworked and we
33 would probably be on top of the public sewer line to create that garage so that's why it makes more sense
34 to not disturb that public utility but to just go ahead and ask for the variance for a structure that kind of
35 already exists; we're just going to make it much, much prettier.

36
37 Mr. Trefz: Is there a second home behind yours?

38
39 Ms. Breznicki: There's a cabin and for lack of a better term a she shed. There are 2 cabins in the back of
40 the property I believe the resident who was here before me had his residence or had his business back
41 here. Currently we use it as a wood shop and I let my grandson come out here and use Playdough. But we
42 do need to access it back here because there's gravel but we would have to add more gravel because
43 sometimes the substantial strain that is on the property, it does overflow a little bit and that washes away
44 the drive in the back, so we do need to access back here to get to these buildings and it's too narrow; that
45 is the only access to the back of the property and I would say probably 3/5's of our property is behind this
46 access point of the concrete so anything we would need to do behind the property with any kind of
47 vehicle like a tree fell down and we would need to get that removed, we couldn't access that unless we
48 use that bridge to get to it and then there's no way to make a curve if we would put the garage on the
49 north side of the property to get around and get to this existing bridge that takes us to the back of the
50 property.

51
52 Mr. Trefz: Where does the concrete stop in relationship to the picture we currently have on our screen?
53

Board of Zoning Appeals

54 Ms. Breznicki: In some other pictures of it, there's Exhibit D, it's 120'-ish.

55

56 Mr. Trefz: It's off the back side of the house?

57

58 Ms. Breznicki: Correct. It's almost at the covered porch area and it starts with concrete because when we
59 got here the entire driveway would erode away. The gentleman before us had two 18" culverts for that
60 creek and that just was not adequate, so we hired someone to do this concrete bridge and installed three
61 24" culverts to keep it from eroding away. We had rain less than a month ago and it was pretty
62 substantial, and that rain did not erode it away at all, so that was a huge plus. Where the manhole is on the
63 site for the public sewer in relationship to that curve to get into that concrete area, there's really no
64 leeway. From the site plan from the County, it shows the manhole in the stream but that's not correct; it's
65 in our yard, do that driveway does probably open up wider up at the concrete; it's probably 12' wide, so
66 there's no way to get any kind of larger vehicle around that curve if the 2 stall attached garage was there
67 plus I don't know where that public sewer goes. I'm assuming straight parallel to the street and there's got
68 to be some kind of easement there and we can't build in that.

69

70 Mr. Trefz: I was just curious and trying to get my bearings on your property.

71

72 Ms. Breznicki: I do plan on taking down that little storage thing there.

73

74 Mr. Miller: Any questions from the Board? None. Is there anyone in Facebook chat?

75

76 Mr. Trefz: No.

77

78 Mr. Miller: Is there anyone who would like to testify or make comments? None.

79

MOTION TO APPROVE VARIANCE APPLICATION #VA-21-06

80

81
82 Mr. Miller made a motion to approve Variance Application #VA-21-06, Beth Breznicki, as proposed as it
83 would dramatically increase the aesthetics, property values, and it would prevent flooding; seconded by
84 Ms. Sundar.

85

86 Vote on Motion: Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes, Mr. Trefz-yes, Ms. Sundar-yes

87

88 Motion carried

89

90 Ms. Breznicki: Is there a limit on how long this variance is? With the price of lumber I can't afford to do
91 the garage right now, so I'm hoping maybe I have a year or two.

92

93 Mr. Beard: The variance stays with the property, so the variance is good for the life of the property but
94 when you do, you'll have to apply for a residential permit but they're good for a year as long as
95 construction starts within that year.

96

97 Ms. Boni: The variance is only for the setback; if you go any closer to the property line than what you
98 proposed, you'll have to come back.

99

100 Ms. Breznicki: That's fine because I did propose a 24' x 24' so that's not a problem.

101

102

APPROVAL OF MEETING MINUTES

103

Board of Zoning Appeals

104 Mr. Trefz made a motion to approve the April 15, 2021 minutes of the Orange Township Board of Zoning
105 Appeals for Conditional Use Application #CU-21-02, Joshua J. Morgan, as written; seconded by Mr. Miller.
106

107 Vote on Motion: Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes, Mr. Trefz-yes, Ms. Sundar-yes
108 Motion carried
109

110 Mr. Trefz made a motion to approve the April 15, 2021 minutes of the Orange Township Board of Zoning
111 Appeals for Variance Application #VA-21-04, Sheryl and Donald H. Everett, with the following
112 corrections:
113

- 114 • Line 198: “Mfr.” Should read “Mr.”
- 115 • Line 659: ??? should read “...wood stoop step off...”
- 116 • Line 797: ??? should bread “.....only putting 3’ around the pool...”
117

118 Seconded by Mr. Miller.
119

120 Vote on Motion: Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes, Mr. Trefz-yes, Ms. Sundar-yes
121 Motion carried
122

OTHER BUSINESS

123
124
125 Mr. Miller: I really appreciate that everyone tried to abide by the 2-5 second Zoom scenario. I did not
126 realize there was that much of a delay, and that we were all respectful of not talking over each other and
127 that we stayed on track and there was good dialogue and I appreciate it.
128

129 Ms. Boni: The open meeting act is not being extended due to restrictions being lifted for the pandemic.
130 We legally have to start having in person meetings in July. If the Board has any discomfort with that, feel
131 free to reach out to us but we will do any practices that you wish, social distancing and if we do need to
132 have somewhat of a hybrid approach, w can coordinate that but we do need to start having them in person
133 in July. If anyone has any questions now, but I just wanted to let you all know.
134

135 Mr. Miller: I look forward to it because that way there’s a lot less confusion.
136

137 Mr. Oster: I agree.
138

139 Ms. Boni: You guys will actually be the first Board to have an in person because the Trustees won’t have
140 a meeting until after you. It will be set up like it was before. If we expect a lot of people, we’ll do some
141 social distancing and actually we don’t have any applications for June so we can either have a meeting or
142 take advantage of that open meeting and do the ethics training, so think about that. I’ll have Jeff send an
143 email out and we’ll have to coordinate with our legal counsel. If you recall when we had the first meeting
144 there was discussion about having a second one. And we can do the ethics training in person if that’s
145 something you guys want to do; have more of a round table discussion. We’ll be sending emails out and if
146 you have any concerns, feel free to reach out.
147

148 Hearing adjourned at 8:00 p.m.
149

150 Minutes prepared by Cindy Davis, Zoning Secretary
151

152 At their July 15, 2021 meeting, Mr. Miller made a motion to approve the May 20, 2021 minutes for Variance
153 Application #VA-20-06, Beth Breznicki, as written; seconded by Mr. Shipley.
154

Board of Zoning Appeals

155 Vote on Motion: Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes, Mr. Trefz-yes
156 Motion carried.
157