

1 BEFORE THE ORANGE TOWNSHIP BOARD OF ZONING APPEALS

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3 IN RE: :

4 VA-CU-21-15. :

VA-21-16. :

5 VA-21-17. :

6 - - -

7 TRANSCRIPT OF PROCEEDINGS

8 - - -

9 TAKEN ON THURSDAY, DECEMBER 9, 2021, AT 6:00 P.M.

10 ORANGE TOWNSHIP HALL

11 1680 EAST ORANGE ROAD, LEWIS CENTER, OHIO

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13 MEETING HELD BEFORE:

14 Mr. Jerry Miller, Chairman.

15 Mr. Rick Oster, Member.

16 Mr. Aaron Shipley, Jr., Member.

17 Mr. Kelvin Trefz, Member.

18 Ms. Punitha Sundar, Member.

19

20 ALSO PRESENT:

21 Mr. Jeff Beard, Senior Zoning Officer.

22 Mr. Brett Wiemken, Zoning Inspector.

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2 P R O C E E D I N G S

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4 CHAIRMAN MILLER: Good evening. I would like
5 to call to order the Board of Zoning Appeals for Orange
6 Township. We'll have roll call first.

7 MR. BEARD: Mr. Miller?

8 CHAIRMAN MILLER: Yes.

9 MR. BEARD: Mr. Oster?

10 MR. OSTER: Yes.

11 MR. BEARD: Mr. Shipley?

12 MR. SHIPLEY: Yes.

13 MR. BEARD: Mr. Trefz?

14 MR. TREFZ: Yes.

15 MR. BEARD: Ms. Sundar?

16 MS. SUNDAR: Yes.

17 CHAIRMAN MILLER: If those in the audience
18 would make sure that your cell phones are turned off,
19 please. And we'd like to have swearing of the
20 witnesses. Anyone who intends to testify, please raise

21 your right hand and be sworn.

22 Do you solemnly swear that the testimony you
23 give shall be the truth, the whole truth, and nothing
24 but the truth state "I do." And when it's your turn to
25 offer testimony, state your full name, address, and

4

1 affirm that you've been sworn in.

2 (Witnesses were sworn.)

3 CHAIRMAN MILLER: Our first hearing will be
4 the continuation of VA-CU-21-15. And, by the way,
5 Brett and Jeff, if you would also affirm.

6 MR. BEARD: I affirm.

7 MR. WIEMKEN: I affirm.

8 MR. BEARD: I don't know what you want
9 covered since we heard it last month, but the Applicant
10 is here.

11 CHAIRMAN MILLER: If she would like to come
12 forward.

13 State your name, please.

14 MS. BENDER: Jennifer Bender, 187 Oak Street,
15 Columbus, Ohio 43205.

16 CHAIRMAN MILLER: And if you would affirm
17 that you've been sworn in.

18 MS. BENDER: I have.

19 CHAIRMAN MILLER: Thank you. The floor is

20 yours.

21 MS. BENDER: We are back here today while
22 legal was considering whether or not --

23 CHAIRMAN MILLER: Is that microphone on?

24 MR. WIEMKEN: It is hooked up.

25 CHAIRMAN MILLER: Try again, please.

5

1 MS. BENDER: We are back here today to -- we
2 are giving legal an opportunity to consider whether or
3 not a new sign would be considered an extension of a
4 non-conformed use, and it is not. So I have brought
5 with me an image that shows staggered -- and I'd like
6 to point out that this image was supposed to have a
7 pole cover on it. The pole would be covered. This is
8 simply to show height.

9 The full height was 17 foot. That's the one
10 of the back there. That was 213 percent, I believe,
11 above the allowable 8 foot, which is code. The one in
12 front of that is at 14 foot. That is 175 percent
13 allowable code. And the shortest one is 12 foot and
14 that is 150 percent allowable code.

15 I personally believe that the 12 foot one
16 will -- with the larger vehicles as you can see with
17 the SUV behind it, I think you still have a visible

18 issue.

19 The owner of the property was very much
20 concerned that putting a sign here was allowable by him
21 only as it doesn't cause a safety issue on his
22 property. So he wanted people to be able to see around
23 the corner, see what was going on and have a full view
24 of the lot as the people who are perusing in their cars
25 the car lot that is shared by Crash Champions.

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1 I think if we were going to make an exception
2 it would probably have to be the 14 foot, and so I
3 propose a 14 foot version of this sign with a pole
4 cover.

5 MR. OSTER: It was my understanding that we
6 don't allow pole signs and you were requesting a
7 monument sign?

8 MS. BENDER: The pole cover makes it a
9 monument sign.

10 Jeff, can you show them that sign?

11 MR. OSTER: No, it doesn't. It doesn't meet
12 the base requirement.

13 MR. TREFZ: That's an exception.

14 MR. OSTER: That's not a monument zoning.

15 MS. BENDER: I believe that was part of the
16 variance is to make -- the part of the variance that we

17 were requesting, a use variance, was that the base of
18 the sign is smaller than what -- is narrower than the
19 width of the sign.

20 MR. OSTER: The base actually has to be as
21 big or bigger than the sign.

22 MS. BENDER: That was part of the use
23 variance request. I'm sorry, that was the area
24 variance request. Am I right here, Jeff?

25 CHAIRMAN MILLER: Yeah, the area variance.

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7

1 MR. BEARD: You will be asking -- the request
2 is for a variance for the height because they're a
3 monument sign and for the width of the base, which is
4 the area variance.

5 MR. OSTER: So, in other words, we're kind of
6 getting back to a pole sign that we don't allow.

7 MR. BEARD: I mean, this is what the sign
8 would be with that cover, which would make it a
9 monument sign. Per legal this would be considered a
10 monument sign.

11 MR. OSTER: With a variance on the base.

12 MR. BEARD: Yes, for the width of the base.
13 Not for the type of base but for the width of the base.

14 MR. OSTER: Right. Well, that's what I'm

15 saying. Everybody else has had to conform to the base.
16 This would be the first one I know of that would be
17 considered a monument sign without that base footprint,
18 which puts it back really at a pole sign.

19 MS. BENDER: We had originally wanted a
20 sign -- can you show them the sign that has Nissan
21 and --

22 MR. OSTER: We know --

23 MS. BENDER: -- Crash Champions on it.

24 MR. OSTER: You're talking about the whole
25 big --

8

1 MS. BENDER: That would be considered a
2 monument sign.

3 MR. OSTER: Yeah.

4 MS. BENDER: But the owner of the property,
5 the owner of the parcel that all three companies sit on
6 was against having a sign that has a width that would
7 be difficult to see around. He believes that it will
8 create a liability for both himself and the people who
9 are driving, zigzagging through the car lot while
10 they're looking at cars that are for sale at Nissan
11 Used Cars.

12 MR. OSTER: He's got one like that across the
13 street.

14 MS. BENDER: It's actually much closer to the
15 street. It's not in the parking lot and it's actually
16 in an island in between an ingress/egress.

17 MR. SHIPLEY: That's what he stated the last
18 meeting. He said that his concern was if this sign is
19 approved, the sign would actually be in the parking lot
20 amongst people traveling around. They were trying to
21 reduce the visual impairment of the sign, the width.

22 Mr. Oster: That's what he said. I don't
23 know that I agree with that but -- and he wasn't
24 willing to give up any of his sign or space or anything
25 for this leased vehicle coming in.

9

1 MS. BENDER: He has -- He has his own
2 contracts with Nissan and one of the things that was
3 proposed was the possibility that one of the Nissan
4 signs would have the sign head and put a larger sign
5 head up that had both Crash Champions and Nissan. I
6 don't believe that's right for Orange County -- or
7 Orange Township, I'm sorry, and I don't believe it's
8 right for any of the businesses. And I honestly don't
9 believe Nissan will allow it. I am familiar with their
10 brand package. Not their sign company but their brand
11 package and they are very strict about how they allow

12 their signs to be --

13 MR. OSTER: So are we.

14 MS. BENDER: Crash Champions is stuck between
15 a rock and a hard place.

16 MR. OSTER: Well, I mean like I said, I'm
17 used to that body shop. They've just taken over Auto
18 Body North and Auto Body North didn't have this either.

19 MS. BENDER: Auto Body North had an awning
20 sign that was much larger than what the code allows and
21 had been there a very long time. You could very well
22 see that sign from the street.

23 The building sign proposed for this building
24 is to code. I don't think it's going to be very
25 noticeable from the street.

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1 If the -- There's so much going on in this
2 property that the cars -- There's so much going on that
3 cars will pass it and they'll be all the way up in the
4 apartment building and trying to turn around and have
5 to cross 23 before to go back.

6 MR. OSTER: I don't agree with that. Nobody
7 in this day and age takes off and goes somewhere based
8 on signs. Everybody's got a cell phone in their
9 pocket. Everybody has Google. It tells them where to
10 go to, where to turn.

11 I just don't think that's a very good
12 argument, let me put it that way, or a very strong
13 argument that people are going to need their sign to
14 figure out where they're going and see where they're
15 at.

16 CHAIRMAN MILLER: Part of the challenge that
17 I look at this as well, if another sign is added in
18 there over and above what's there today what we're
19 looking at is opening the door to look like Las Vegas.
20 I mean, you can only have so much signage in a given
21 square footage and it's just adding more and more and
22 more to it.

23 I understand your concern for safety, but
24 again, driving through the parking lot at three, four
25 miles an hour, five miles an hour it's not like driving

11

1 45 miles an hour up and down 23.

2 MS. BENDER: My question is how well will
3 they do without street representation.

4 CHAIRMAN MILLER: How well have they done in
5 the past?

6 MS. BENDER: They don't know.

7 CHAIRMAN MILLER: Well, we can't control that
8 aspect.

9 MR. OSTER: That's why I said Auto Body
10 North. Most people that are going to go there they're
11 going to know that that is the body shop location from
12 before. You know, whether it's people that's been
13 there insurance-wise. You know, I don't know who they
14 are as far as the preferred -- if they're a preferred
15 vendor for anybody. Everybody knows where that body
16 shop is.

17 CHAIRMAN MILLER: And when customers do call
18 or have various conversations, I'd just about bet a
19 dime for a donut that they say we're in the Nissan
20 North parking lot.

21 MR. OSTER: Or we took over the old Auto Body
22 North location.

23 CHAIRMAN MILLER: Is there anything you would
24 like to add, ma'am?

25 MS. BENDER: No, I don't think so.

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1 CHAIRMAN MILLER: Any other comments from the
2 Board or questions?

3 Ms. Sundar?

4 MS. SUNDAR: No.

5 CHAIRMAN MILLER: Mr. Trefz?

6 MR. TREFZ: No.

7 CHAIRMAN MILLER: Mr. Oster?

8 MR. OSTER: No.

9 CHAIRMAN MILLER: Mr. Shipley?

10 MR. SHIPLEY: No. I think there was a good

11 discussion the last meeting. We're waiting on the

12 legal reasons. I don't have anything.

13 CHAIRMAN MILLER: Orange Township wants to

14 work with all of its businesses, but in the same vein

15 we have to abide by the rules, guidelines and policies

16 that have been implemented for Orange Township and for

17 the county and with the large signage that you want to

18 put in there it makes it challenging for us, very

19 challenging.

20 MR. SHIPLEY: That's what it looked like

21 before. Are those the same signs?

22 MR. BEARD: Which signs?

23 MR. OSTER: Yes. Yep. I think he's got four

24 of those that go down in the front.

25 MS. BENDER: The awning has been removed from

13

1 the building and that is closer to what the building

2 looks like right now.

3 There is a sign that will go in that pink

4 area at this point about 15-feet high and it's to code

5 whatever it is but I don't recall what it is.

6 MR. SHIPLEY: The sign is above the vehicle
7 sitting in the lot?
8 MS. BENDER: It is above the vehicle.
9 CHAIRMAN MILLER: Does anybody want to make a
10 motion for or against, either way?
11 MR. TREFZ: I move to deny.
12 MR. OSTER: I'll second that.
13 MR. TREFZ: Jeff, do you need more detail or
14 is that --
15 MR. BEARD: Do you want the findings of fact?
16 MS. BENDER: Thank you for your time. I
17 appreciate it.
18 MR. TREFZ: Can I give them to you by the
19 numbers or do you want me to read the text?
20 MR. BEARD: Since there's three actual
21 requests, we would probably want to read the three
22 motions, or you can make one for -- if denied, all
23 three, then you can make one motion to deny all three.
24 MR. TREFZ: If we deny the first one I
25 thought at least one of them wouldn't be --

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14

1 MR. BEARD: Right.
2 CHAIRMAN MILLER: One motion should cover all
3 three since all three are being denied predicated
4 whether it be a use variance or area variance.

5 MR. BEARD: Well, it's an area variance, but
6 yeah. So we would want the basis of the facts of why
7 you're making the motion at this time.

8 MR. TREFZ: The VA-21-15 variance request for
9 the sign base, that would be the first one, right,
10 Jeff?

11 MR. BEARD: Yeah. You can do the variance
12 and then read the conditional use.

13 MR. TREFZ: Whether the property in question
14 would yield reasonable return. Yes, I think it would,
15 which is one of the negatives coming out.

16 Whether the variance is substantial. It is
17 in all cases. So that's a negative.

18 Whether the essential character of the
19 neighborhood would be changed. That's kind of a
20 toss-up in my mind.

21 So 3 and 4 didn't go negative, but 5 and 6
22 went negative again, which are property only purchased
23 with the knowledge of the zoning restrictions and the
24 property owner's predicament obliterated -- thank you.
25 Couldn't read, or some other than the variance.

↑

15

1 And then whether it was in the spirit of the
2 zoning requirement. Again, that's questionable but I

3 put it in the positive category.

4 So that gave me four negatives and three

5 positives and that's why I moved to deny.

6 MR. OSTER: I would agree. And I would also

7 just point to that there was a body shop there with

8 signage that was just on the sides of the building

9 there that worked, and just because the owner is

10 changing didn't hold a lot of weight with --

11 MR. TREFZ: Do you need the next one also?

12 MR. BEARD: No, I think we're good. That

13 covers all of it.

14 We had a motion to deny made by Mr. Trefz for

15 Variance VA-CU-21-15 based on four of the seven factors

16 of not complying. Seconded by Mr. Oster.

17 Those voting. Mr. Oster?

18 MR. OSTER: Yes.

19 MR. BEARD Mr. Miller?

20 CHAIRMAN MILLER: Yes.

21 MR. BEARD: Mr. Shipley?

22 MR. SHIPLEY: Yes.

23 MR. BEARD: Mr. Trefz?

24 MR. TREFZ: Yes.

25 MR. BEARD: Ms. Sundar?

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16

1 MS. SUNDAR: Yes.

2 MR. BEARD: Okay. Motion carries.

3 CHAIRMAN MILLER: The second item will be

4 VA-21-16.

5 Is the Applicant here? Please provide your

6 name.

7 MR. BEARD: Do you want me to provide the

8 staff report first?

9 CHAIRMAN MILLER: Yes.

10 MR. BEARD: All right. So we have Variance

11 Case VA-21-16. The applicant/owner is Joseph Suarez.

12 He resides at 7840 Overland Trail, Delaware, Ohio

13 43015. Parcel ID number 318-233-05-012-000. And

14 that's zoned Single Family Planned Residential

15 District.

16 The request is an area variance from Rezoning

17 Case 10745 North Orange for the replacement of an

18 existing patio that encroaches the side and rear

19 setbacks.

20 The Applicant has requested for a residential

21 patio that encroaches six feet and seven inches into

22 the twelve feet, six inches side yard setback and 31

23 feet into a 35 foot rear yard setback.

24 The property is located west of Overland

25 Trail. The site is currently owned by the Applicant,

1 Mr. Suarez.

2 A little bit of history of the patio. We
3 received a complaint regarding the construction of a
4 retaining wall at this property. Staff contacted other
5 entities, including Delaware County Building and Safety
6 Department, Delaware County Soil and Water Department,
7 and the EPA regarding the retaining wall. All of the
8 entities stated it was not a structure and they had no
9 concerns with it. Since it does not meet the Zoning
10 definition of a structure, there was no violation for
11 the retaining wall.

12 We then received a complaint about a concrete
13 patio being constructed within the retaining wall
14 location. Upon review we witnessed a concrete patio
15 and started a violation due to no zoning permit filed
16 with the township.

17 We received a call and an email from the
18 property owner regarding the violation letter stating
19 that there has been a patio on the site since before he
20 bought it in 2016.

21 Upon review of the property we had found a
22 new build residential permit approved in 2005, which
23 does not show a patio on the plans. However, looking
24 at the Delaware County Auditor's site there's been a

25 patio and a retaining wall on the property since 2006,

18

1 as there are no images available in 2005. We
2 researched the zoning records and we did not find any
3 permits for this patio from 2005 to present, which is
4 why the violation was started.

5 We contacted the Delaware County Building and
6 Safety Department and they have no issues with the
7 concrete patio and they stated that they do not require
8 a permit for it.

9 The surrounding areas it's all zoned Single
10 Family Planned Residential District. To the north is
11 open space owned by the HOA and then a single family
12 residence. South is Quarter Way and a single family
13 residence across that. And to the east is Overland
14 Trail, a single family residence. To the west is a
15 single family residence.

16 I provided you with a zoomed out aerial of
17 the site, and then we also provided you with a zoomed
18 in aerial of the site.

19 The Staff Review, Variance Request No. 1,
20 the rear yard setback. Area Variance from Rezoning
21 Case 10745 North Orange SFPRD and has a rear yard
22 setback of 35 feet.

23 The proposed patio would encroach 31 feet

24 into the 35 feet rear yard setback. This is roughly an
25 89 percent variance request from the rezoning case.

19

1 Exhibit 1 is the site plan showing the
2 proposed patio dimensions.

3 And then Exhibit 2 are some site photos
4 showing the corner of the property, roughly, and
5 there's some site photos showing the deck. The patio,
6 not the deck. Sorry.

7 If you want we can go on to the second
8 variance request or we can just look at that one or if
9 you want to do both and then we can discuss it.

10 CHAIRMAN MILLER: I have a quick question.
11 It's noted here he said 89 percent variance request and
12 in the board analysis it states that there is a
13 60 percent request.

14 MR. BEARD: That's for a request to --

15 CHAIRMAN MILLER: I'm sorry. I see.

16 MR. TREFZ: I have just a clarification
17 question.

18 The patio concrete that's shown next to the
19 retaining wall in the picture, is that the new one or
20 the old one?

21 MR. SUAREZ: That's the new one. The old one

22 was plain concrete and this is color stamped concrete.

23 CHAIRMAN MILLER: Could you state your name
24 and address first.

25 MR. SUAREZ: Sorry. Joseph William Suarez,

20

1 7840 Overland Trail, Delaware, Ohio 43015.

2 CHAIRMAN MILLER: Thank you. And do you
3 affirm?

4 MR. SUAREZ: Yes.

5 CHAIRMAN MILLER: Sorry. Go ahead.

6 MR. TREFZ: That's okay.

7 I just wanted to make sure that -- so
8 everything we have in here is completely done?

9 MR. SUAREZ: Obviously landscaping is not
10 done yet. But, yeah, the patio is done.

11 MR. TREFZ: Okay. And can you give me a
12 dimension on the width between the patio and the inside
13 of the retaining wall, roughly.

14 MR. SUAREZ: Okay. Well, the inside it's
15 three feet. It's three feet all the way around for the
16 width.

17 MR. TREFZ: Okay. Without having something
18 to judge I wasn't sure.

19 MR. SUAREZ: Yeah, I made it all the same all
20 the way around.

21 MR. SHIPLEY: And just so I understand. You
22 said existing patio?

23 MR. BEARD: There has been a patio on this
24 site since at least 2006.

25 MR. SHIPLEY: The same size?

21

1 MR. SUAREZ: It was a little bit smaller than
2 this one.

3 MR. SHIPLEY: What's a little bit?

4 MR. SUAREZ: That one was -- I think it was
5 roughly 20 wide, 25 long, but it was pushed away from
6 the house. Where mine goes against the house, this one
7 does, and comes out. So it was a little bit further
8 out, and then I just made the retaining wall a bit
9 bigger to extend it just a little bit longer.

10 MR. TREFZ: So the retaining wall is new with
11 the patio?

12 MR. SUAREZ: Well, there was already a
13 partial retaining wall and I just added to it to make
14 it just a little bit longer. But the previous owner
15 already put a retaining wall in.

16 MR. SHIPLEY: And that was there when you
17 purchased the home?

18 MR. SUAREZ: Yes, in 2016.

19 MR. TREFZ: And did it have a footer or not?

20 MR. SUAREZ: I never dug down to the -- I
21 don't like to dig down.

22 MR. OSTER: There is a picture of it in there
23 and it looks like it's just a timber -- yeah.

24 MR. SHIPLEY: Which is primary. It is not
25 considered a structure.

22

1 MR. OSTER: Right. They just did that to get
2 the level.

3 MR. TREFZ: That's why I was asking the
4 question. Had it had a footer it should have been a
5 structure.

6 CHAIRMAN MILLER: Mr. Beard, if you could
7 back up to the overhead. Where does it show the patio
8 on here in the first place? It doesn't show a patio.
9 Can you zoom that in, please?

10 MR. BEARD: I can in a minute.

11 MR. SUAREZ: I actually have a photo of that
12 same thing if you'd like to look at a legit photo of
13 it.

14 MR. OSTER: Yeah, that would be nice because
15 these photos that are in here you can't see that there
16 was anything in there.

17 MR. SUAREZ: Yeah, let me pull that up.

18 CHAIRMAN MILLER: If you do provide that
19 photo, we would need to keep that as an exhibit.

20 MR. SUAREZ: And that's fine. It's saved on
21 my computer.

22 MS. SUNDAR: Jeff, do you have any letter or
23 something from the HOA?

24 MR. BEARD: Yeah. In the application there
25 was a letter of approval from the HOA.

↑

23

1 MS. SUNDAR: And a complaint was from the
2 neighbors?

3 MR. BEARD: It was anonymous. I'm not sure.

4 MS. SUNDAR: Oh, I see.

5 CHAIRMAN MILLER: Was that on both
6 complaints, both the patio and the retaining wall?

7 MR. BEARD: Originally it was the retaining
8 wall, and at that time there was -- the patio wasn't
9 there so there was no violation with the retaining wall
10 after reviewing that and taking pictures and providing
11 it to all of those entities. And then the patio was
12 installed and that's when we got another complaint
13 about the patio.

14 MR. OSTER: This shows the patio?

15 MR. SUAREZ: Yeah, it's in there. You might

16 have to look at it on a computer and zoom out when you
17 get on a computer.

18 MR. OSTER: Isn't it back here in this
19 corner?

20 MR. SUAREZ: Yeah, it's in the same location.

21 MR. OSTER: I don't see anything there in the
22 photos as far as prior existing. It's kind of like
23 this photo. I mean, it's zoomed in a little bit. But
24 from this HOA layout, the line art, man, it looks like
25 your -- How far are you from the line there in the

24

1 other people's property line?

2 MR. TREFZ: Well, there's no one directly
3 behind him.

4 MR. OSTER: Yeah, to the side. He's right
5 beside this house here. That's the real issue. The
6 back, that's a wooded area.

7 MR. SHIPLEY: Even at that it's by the
8 property line.

9 MR. OSTER: Exactly. That is concerning too.
10 I mean, that is less than, you know, with a building
11 beside it.

12 MR. SUAREZ: The side is five feet from the
13 property line if you -- just the concrete, not the
14 retaining wall.

15 CHAIRMAN MILLER: So from the edge of the
16 patio to the property line is five feet?

17 MR. SUAREZ: Yes, to my neighbor, that's
18 correct. And the rear is -- would be 4.4.

19 MR. TREFZ: On a different picture I'm
20 looking at, what is the height of the retaining wall?
21 That would be looking at the back, the right back
22 corner.

23 MR. SUAREZ: Oh, you mean beside my
24 neighbor's house?

25 MR. TREFZ: No, on the opposite side.

25

1 MR. SUAREZ: Oh, on the woods side?

2 MR. TREFZ: Yeah.

3 MR. SUAREZ: I think it's around five feet.

4 MR. TREFZ: Okay.

5 MR. OSTER: So your retaining wall, is it
6 right on your line?

7 MR. SUAREZ: No. The back it's in from the
8 property line. I had to make sure that it was not
9 encroaching their property so I kept it in -- it fell a
10 foot in from the back. And from the side it's about
11 the same and a little back.

12 MR. OSTER: So the retaining wall is a foot

13 in?

14 MR. SUAREZ: Yeah. So I made sure I didn't
15 get into anyone's property lines.

16 And with the side of my neighbor's, I just
17 went straight. I just followed the old one that was
18 there, the pre-existing, to make sure I was in mine
19 where I needed to be.

20 And there was a property stake from the
21 builder from 2005 so it gave me -- I was able to
22 actually see it. They saw the stake too. It's been
23 there since 2005. So that actually helped me do this
24 to make sure I stayed within my boundaries.

25 MR. OSTER: So, Jeff, can you state that

26

1 again. When they went out to look at this retaining
2 portion, that was all okay with them that that could be
3 that close to the lines?

4 MR. BEARD: Yes.

5 MR. OSTER: Okay. Because basically I'm sure
6 it was just being used to level out the yard so it
7 could be used for a patio, a nice flat patio.

8 And really in my opinion most of this stuff,
9 what do I want to say, the visual and the look from the
10 neighbor or whatever is going to be that retaining wall
11 really, not the patio that's up here now flat on the

12 top of it. Okay?

13 MR. SHIPLEY: It wasn't that they would say
14 that they were okay with that being that close to the
15 property line. They were saying that it was a
16 structure so that wasn't a concern of theirs.

17 MR. BEARD: Correct. We reached out to Soil
18 and Water and the EPA because of that creek back there,
19 an easement or anything. They both said there was no
20 issues. They had no issues with the retaining wall.
21 It wasn't a structure. And the patio was not a
22 structure so they had no issues with it, and then we
23 received the second complaint when the patio was
24 installed. Then when we started looking back there,
25 there's been a patio since 2006, but the Auditor's site

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1 it's hard to tell the size of it.

2 Like this photo here you can see the
3 retaining wall in some of them, you can see the patio
4 in some of them. In other ones you can't because of
5 the leaves that fell off the trees. But there has been
6 a patio there since 2006. And there are other
7 properties in that neighborhood that are probably in
8 the same boat that we are investigating.

9 CHAIRMAN MILLER: And regardless of the

10 retaining wall or the retaining wall --

11 MR. SUAREZ: Patios.

12 MR. BEARD: Patios and other structures that
13 are in the setbacks or could be in the setbacks.

14 So we found some that had their original
15 house permit was approved and then the final plans were
16 approved with the patio on it that wasn't on the
17 original permit. But we have to be able to see it from
18 the right-of-way to be able to enforce the thing.

19 CHAIRMAN MILLER: Is that what you see in
20 this type of timeframe?

21 MR. BEARD: Yeah. Most of these houses were
22 built around the same time.

23 The building department said that they don't
24 consider the patio a structure so they had no concerns
25 with the patio.

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1 CHAIRMAN MILLER: Yeah. But if the patio is
2 a concrete patio, then it is considered a permanent
3 structure. A retaining wall --

4 MR. OSTER: Concrete is.

5 MR. BEARD: No. For zoning the way our
6 zoning is it would be considered a structure under
7 zoning. But under the building department, the
8 building code, it is not a structure.

9 MR. SHIPLEY: The only question is, is the
10 patio itself for our purposes only. The retaining wall
11 has no -- is not a discussion.

12 MR. BEARD: We had a discussion with the EPA
13 and Soil and Water and they have no concerns with the
14 location or anything with that creek there.

15 CHAIRMAN MILLER: Well, I don't have an issue
16 with the retaining wall because it's not of concrete.
17 It's of timber. It's not a permanent structure, per
18 se.

19 MR. OSTER: I think it's more permanent than
20 the patio, actually, because it is holding all the
21 earth in place to make that backyard possible.

22 MR. SHIPLEY: What was the patio made of
23 before?

24 MR. SUAREZ: It was concrete. It wasn't
25 decorative stamped concrete, which is like the new

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1 trend right now. It was concrete. It was cracked.

2 MR. SHIPLEY: You busted that up?

3 MR. SUAREZ: Yeah, I got rid of it.

4 And with my yard if you were to see -- I
5 think there's some pictures of my yard, and my house
6 goes straight down to the woods. So I don't really

7 have a living space like normal people. I don't
8 have -- like I can't put a swing set back there or a
9 kiddie pool out there for my kids. I have to use that
10 patio. So the thing is the patio is like my only true
11 living space for me to be able to actually use my
12 backyard. I have probably one of the worst lots,
13 honestly, to tell you the truth.

14 MR. OSTER: I get you because, you know, in
15 my area they tell you, oh, you can't change the grade
16 at all and then that's exactly what you did to get you
17 more yard, which I find acceptable because what are you
18 going to do with --

19 MR. SUAREZ: Yeah, I have woods, a creek and
20 a hill. That's all I've got.

21 MR. OSTER: If they're okay with your
22 retaining wall not being a structure -- you know, I
23 kind of think in my opinion that's kind of a saving
24 feature or saving grace on this deal because it's a
25 built up area, pretty high. How high is that?

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1 MR. SUAREZ: The back of the woods is five
2 foot. It goes with the grade. So it's smaller on my
3 neighborhood's side and goes down in the woods with the
4 grade.

5 CHAIRMAN MILLER: Any other questions or

6 comments?

7 Ms. Sundar?

8 MS. SUNDAR: No.

9 CHAIRMAN MILLER: Mr. Trefz?

10 MR. TREFZ: No.

11 CHAIRMAN MILLER: Mr. Oster?

12 MR. OSTER: Not really. I mean --

13 CHAIRMAN MILLER: Mr. Shipley?

14 MR. SHIPLEY: No.

15 CHAIRMAN MILLER: I'll make a motion to

16 approve both entities. And my basis is two-fold: One,

17 it's replacing and upgrading the existing structures

18 based on both the retaining wall and the patio. It's

19 to enhance, beautify and protect it.

20 MR. OSTER: I would second that. He's just

21 making use of what he's got.

22 MR. SHIPLEY: I think it's also important to

23 state that there was a patio there. It is a

24 significant replacement. It's a significant variance

25 and part of the problem with me is that it was already

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1 existing there. It is of the same material.

2 MR. OSTER: But in the future I would tell

3 you, if you go to move, you go somewhere else or

4 anybody else, you should always check that kind of
5 stuff before you buy something because you're going to
6 inherit possibly somebody's problem.

7 MR. SUAREZ: Yeah. My last house that I
8 built when I was younger and so I don't have to worry
9 about that. And I didn't even think about that. I saw
10 a patio there and I was just going to replace it there.
11 I didn't -- honestly didn't --

12 MR. OSTER: It's very common. That's your
13 saving grace.

14 MR. SUAREZ: Well, the next house I'll
15 replace it.

16 MR. OSTER: Well, you know, it both had the
17 retaining wall and the patio and as far as I'm
18 concerned, the look and the optical of the whole thing
19 is the retaining wall, not that, and the patio. And
20 you're lucky it's a patio off the ground in my opinion.
21 I mean, you know, it's just --

22 MR. SUAREZ: You can't really see it that
23 much in the summer. It's just because it's winter.
24 Most of it is pretty hidden. So right now obviously
25 it's -- you can see it plain as day.

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1 MR. BEARD: All right. We have a motion to
2 approve Variance Case VA-21-16 for both requests, for

3 the setback and the rear yard setback. So to have a
4 new setback which is 34 feet, and then for the side
5 yard setback it will encroach seven-and-a-half feet.
6 It will be a five feet setback. Made by Mr. Miller.
7 Seconded by Mr. Oster.

8 Those voting. Mr. Oster?

9 MR. OSTER: Yes.

10 MR. BEARD: Mr. Miller?

11 CHAIRMAN MILLER: Yes.

12 MR. BEARD: Mr. Shipley?

13 MR. SHIPLEY: Yes.

14 MR. BEARD: Mr. Trefz?

15 MR. TREFZ: Yes.

16 MR. BEARD: Ms. Sundar?

17 MS. SUNDAR: Yes.

18 MR. BEARD: Motion carries.

19 CHAIRMAN MILLER: Enjoy.

20 MR. SUAREZ: All right. I appreciate it.

21 Thank you very much.

22 CHAIRMAN MILLER: The next application is

23 VA-21-17.

24 MR. BEARD: All right. The next case is

25 Variance Case number VA-21-17. The Applicant is Jacob

1 Basnett from Landscape Design Solutions. The owners
2 are Kiplin and Renae Frost. The site is 1800 Little
3 Bear Loop. The parcel ID is 318-314-19-006-000. Zoned
4 Single Family Planned Residential District.

5 They are seeking an area variance from
6 Rezoning Case 18609 Little Bear Village for a structure
7 that encroaches the rear yard setback.

8 The Applicant they're requesting to allow a
9 pergola to encroach 14 feet and 9 inches into the 35
10 foot rear yard setback.

11 The subject property is located on the west
12 of Little Bear Loop. The site is currently owned by
13 Kiplin and Renae Frost. Once again, they're asking for
14 a 14 feet and 9 inch rear yard setback.

15 To the north is Single Family Planned
16 Residential District, a single family residence.

17 To the south is Single Family Planned
18 District with another single family residence.

19 To the east is also Single Family Planned
20 Residential District, Little Bear Loop, and then a
21 single family residence.

22 To the west it's also zoned Single Family
23 Planned Residential District and there is a golf course
24 to the west of this property.

25 We provided a zoomed out aerial of the site

1 and then also a zoomed in aerial of the site.

2 For the Staff Review the area variance for
3 Rezoned Case 18609, Little Bear Village, a rear yard
4 setback 35 feet. The proposed pergola would encroach
5 14 feet, 9 inches into the 35 foot yard setback. This
6 is roughly a 42 percent variance request and
7 rezoning case.

8 Exhibit 1 is the site plan showing the
9 proposed pergola and setback distance.

10 Then Exhibit 2 is site photos. The cone
11 marks the corner where the pergola will be.

12 That is all I have. And the property owner
13 is here if the Board has questions. We'll swear him in
14 since he was not here.

15 CHAIRMAN MILLER: Okay. And state your name
16 and address. Well, we need to swear you in first, sir.

17 MR. FROST: I don't swear.

18 CHAIRMAN MILLER: Anyone who intends to
19 testify, please raise your right hand and be sworn.

20 Do you solemnly swear that the testimony you
21 shall give shall be the truth, the whole truth and
22 nothing but the truth, state "I do." And when you're
23 ready to offer testimony, state your full name and
24 address and affirm that you've been sworn in.

1 MR. FROST: Kip Ross, 1800 Little Bear Loop.
2 My wife is Renae. I have been fully sworn in. Is that
3 it?

4 CHAIRMAN MILLER: State your case, please.

5 MR. FROST: All right. We built our house in
6 2008. We were going to do the patio and all that stuff
7 way back then, but as you know, the market kind of
8 crashed and every home in our area basically declined
9 about 30, 40 percent.

10 Production Builders came in and they reduced
11 our value to about \$150,000 to \$200,000. So we had the
12 land held up before we added any more money to the
13 house. So that's the reason we're doing something a
14 little more luxury type with the pergola, with the fire
15 pit and the other portion of that on the other door.
16 So I did that part of the back of the house.

17 The pergola I understand is encroaching into
18 the setback 35 feet. So there's nothing back there but
19 a golf course and there are neighbors on either side.
20 But we're not extending it past that setback. We're
21 just taking it back towards the golf course, which is
22 rough. And the only thing we're really encroaching on

23 is probably the hill that people get lost in.

24 To me it's a very good improvement to the
25 property, to the actual golf course itself and to the

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1 neighborhood, because a pergola does add a lot of value
2 to a house and to the neighborhood esthetics.

3 Obviously I could have built one without
4 footers but I preferred to save some money and sink the
5 hole and put it in that way.

6 And Jacob is not here. He had to go
7 somewhere with his son, so it's just me.

8 MR. OSTER: So is the house actually built on
9 the 35 foot easement line?

10 MR. FROST: When we built the house we pushed
11 the limits and I didn't realize at that point the
12 easement or whatever. But, you know, it's -- we
13 designed our house with Truberry. It's a custom house
14 and we designed it to fit into that space the way it's
15 designed. And we have a three-car garage. It extends
16 all the way to the side. We utilized the space the
17 best we could.

18 CHAIRMAN MILLER: I'm very familiar with the
19 situation here you encountered. I also did a custom
20 build by Silvestri in Little Bear.

21 MR. FROST: You look familiar.

22 CHAIRMAN MILLER: I was the president of the
23 HOA.

24 MR. FROST: That's right.

25 CHAIRMAN MILLER: I don't live there anymore

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1 so I don't have to recuse myself.

2 MR. TREFZ: Well, speaking of that, I live
3 there but he's over 300 feet from me.

4 CHAIRMAN MILLER: And you're in the condos --

5 MR. TREFZ: Correct.

6 CHAIRMAN MILLER: -- and not in the single
7 family, so you don't have to recuse yourself.

8 MR. TREFZ: Just so everybody knows, that's
9 what's happening.

10 MR. FROST: Well, there's no money under the
11 table right now.

12 CHAIRMAN MILLER: And there won't be.

13 I also put a pergola in mine. I lived right
14 off of Little Bear as well and it does make a
15 difference as far as not only esthetics but just to
16 live there. I didn't have to worry about golf balls
17 hitting my house, because we certainly saw all the
18 people diving out in the ponds and stuff.

19 Do you plan on having an open pergola or are

20 you going to put a roof on top?

21 MR. FROST: No, we're going to leave it open.

22 I don't want to cover anything just because I don't

23 think it's necessary. It's Ohio. So basically you're

24 going to use that just basically the pergola to kind of

25 define the space as well as it gives a little bit of

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1 shade. Maybe hanging some blinds -- not blinds, the

2 outdoor type of screens. That's pretty much it. We're

3 not going to cover or enclose it at all.

4 CHAIRMAN MILLER: Have you requested it from

5 your neighbors, the HOA approval or --

6 MR. FROST: Got it yesterday.

7 CHAIRMAN MILLER: You got it from?

8 MR. FROST: The HOA.

9 CHAIRMAN MILLER: What about your neighbors?

10 MR. SHIPLEY: He has no neighbors.

11 CHAIRMAN MILLER: There's neighbors on either

12 side.

13 MR. FROST: I didn't know I had to go talk to

14 them.

15 MR. OSTER: You don't. We sent out notices

16 to them.

17 MR. BEARD: We received a few phone calls but

18 none of them have had any issues with it. They asked

19 what it was. We told them. We explained what it was
20 and some of them we just provided the plans to them.

21 CHAIRMAN MILLER: Well, it looks like the
22 house next door already has one.

23 MR. FROST: Yeah, something.

24 CHAIRMAN MILLER: A patio of some sort and a
25 retaining wall or whatever but just around it.

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1 MR. FROST: Yeah. The way I understand it is
2 we have an exemption or variance if we did the same
3 footer. So that's been --

4 CHAIRMAN MILLER: The concrete footer, if you
5 just dig holes and put concrete in those holes for the
6 posts, but since you're putting in a concrete footer in
7 the way you explained the designs, the issue --

8 MR. OSTER: You're just putting in posts?

9 MR. FROST: Yeah. We're not doing footers.

10 MR. OSTER: He's not doing a complete
11 32-inch or whatever foundation footer.

12 MR. FROST: No. It's strictly just to keep
13 the pergola from blowing away.

14 MR. OSTER: Yeah. Well, it helps for almost
15 anything. Concrete likes to move along with the ground
16 and the water. It will definitely be worth your

17 trouble.

18 MR. FROST: Yeah, I agree. It was much more
19 expensive to put posts up and then try to firm them up
20 with stone around them.

21 MR. OSTER: And even if you were going to do
22 more -- but your patio is going to be like a block laid
23 patio?

24 MR. FROST: Yeah. Yeah. The surface is
25 stepping stones. It's going to be cut stone, so it's

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1 going to be not the paver type.

2 MR. OSTER: Stacked?

3 MR. FROST: Yeah. When the wall -- I took
4 away the seating area. The walls and so forth there
5 would be more pavers. The middle part is going to be
6 crushed gravel. So we'll put the fire pit in the
7 middle. Then the other side by our other door will
8 have more of that cut stone for the base.

9 MR. OSTER: It looks nice.

10 MR. FROST: Yeah, looking forward to it.

11 CHAIRMAN MILLER: Any other questions from
12 the Board?

13 Ms. Sundar?

14 MS. SUNDAR: No. I would make a motion.

15 CHAIRMAN MILLER: Okay. Please do.

16 MS. SUNDAR: I make a motion to approve the
17 Variance Case VA-21-17 requesting the variance for --
18 to allow for a pergola to encroach 14 feet and 9 inches
19 into the 35 feet rear yard setback.

20 CHAIRMAN MILLER: I'll second that.

21 MR. BEARD: Motion made by Ms. Sundar to
22 approve Variance Case VA-21-17 to allow the structure
23 to encroach the rear yard setback 14 feet 9 inches.
24 Seconded by Mr. Miller.

25 Those voting. Mr. Oster?

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1 MR. OSTER: Yes.

2 MR. BEARD: Mr. Miller?

3 CHAIRMAN MILLER: Yes.

4 MR. BEARD: Mr. Shipley?

5 MR. SHIPLEY: Yes.

6 MR. BEARD: Mr. Trefz?

7 MR. TREFZ: Yes.

8 MR. BEARD: Ms. Sundar?

9 MS. SUNDAR: Yes.

10 MR. BEARD: Motion carries.

11 CHAIRMAN MILLER: Enjoy.

12 MR. FROST: Oh, thank you very much.

13 CHAIRMAN MILLER: You're welcome.

14 MR. FROST: Have a good night.
15 CHAIRMAN MILLER: The next item is the
16 calendar?
17 MR. BEARD: The next item would be the
18 minutes. It would be the October 14th minutes.
19 CHAIRMAN MILLER: I read through them quickly
20 and did not see anything.
21 MR. TREFZ: Likewise. I had no corrections.
22 MR. OSTER: Yeah, he is on his game.
23 MR. TREFZ: It doesn't mean there aren't some
24 in there but --
25 MR. BEARD: On the Variance Case VA-21-13,

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1 Line 26 it says it should be -- this is a meeting that
2 I was not present at, actually. I was given these.
3 Line 108 on Page 2 it says be (inaudible) Mr. Wiemken.
4 108, Page 2 it should be Mr. --
5 MR. OSTER: 108, the second page. It's on
6 that VA-21-13. On 46 what was the correction?
7 MR. BEARD: There is no correction.
8 MR. OSTER: Okay.
9 MR. BEARD: And then on the VA-CU-21-14 there
10 was no corrections. We just had the one on the second
11 page or on the second hearing.
12 MR. SHIPLEY: I'd like to make a motion to

13 approve the Board of Zoning Appeals minutes on --
14 October 14, 2021 minutes as amended.

15 MR. TREFZ: I'll second.

16 CHAIRMAN MILLER: Do we do them both
17 together?

18 MR. BEARD: We'll do it for both cases, yes.

19 Motion made to approve the October 14 minutes
20 as amended by Mr. Shipley. Seconded by Mr. Trefz.

21 Those voting. Mr. Oster?

22 MR. OSTER: Yes.

23 MR. BEARD: Mr. Miller?

24 MR. MILLER: Yes.

25 MR. BEARD: Mr. Shipley?

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1 MR. SHIPLEY: Yes.

2 MR. BEARD: Mr. Trefz?

3 MR. TREFZ: Yes.

4 MR. BEARD: Ms. Sundar?

5 MS. SUNDAR: Yes.

6 CHAIRMAN MILLER: Now we're on the calendar.

7 I'll make a motion to approve the 2022 Orange
8 Township Board of Zoning Appeals schedule.

9 MS. SUNDAR: I'll second.

10 MR. BEARD: Motion made by Mr. Miller to

11 approve the 2022 BZA Orange Township calendar.
12 Seconded by Ms. Sundar.
13 Mr. Oster?
14 MR. OSTER: Yes.
15 MR. BEARD: Mr. Miller?
16 MR. Miller: Yes.
17 MR. BEARD: Mr. Shipley?
18 MR. SHIPLEY: Yes.
19 MR. BEARD: Mr. Trefz?
20 MR. TREFZ: Yes.
21 MR. BEARD: Ms. Sundar?
22 MS. SUNDAR: Yes.
23 CHAIRMAN MILLER: That concludes the Board's
24 business. Meeting adjourned. I hope everybody has a
25 Merry Christmas, and let's not all forget the true

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1 meaning of Christmas.
2 - - -
3 (Thereupon, at 7:00 p.m. on Thursday,
4 December 9, 2021, the meeting was adjourned.)

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CERTIFICATE

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I do hereby certify that the foregoing is the

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transcript of the proceedings taken by me in this

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matter before the Orange Township Board of Zoning

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Appeals, on Thursday, December 9, 2021.

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Diane L. Schad, Court Reporter

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