

Village of Lordstown Board of Zoning Appeals

May 13, 2019

The Lordstown Village Board of Zoning Appeals met in regular session on May 13, 2019 at 5:30 P.M. at the Lordstown Village Administration Building. The meeting was held to hear Case 19-01 Lawrence and Jacquelyn Tura. The meeting was called to order by Mayor Arno Hill followed by the Pledge of Allegiance.

In attendance: Arno Hill, Mayor, Chairperson
Larry Tura, Vice Chairperson
Bill Pugh
Fred Bencivengo
Paul Dutton, Solicitor
Kellie Bordner, Planning & Zoning Administrator
Denise L. Dugan, Assistant Planning & Zoning Administrator

Also Present: Jacquelyn Tura, Lordstown, Ohio
Alan Tura, Southington, Ohio
Juliana Carrier Queen IV, Southington, Ohio
Donna Schrader, Lordstown, Ohio
Kay Arlow, Lordstown, Ohio

PROCEEDINGS

Lordstown Village Board of Zoning Appeals Meeting

(WHEREAS, the Lordstown Village Board of Zoning Appeals meeting commenced on Monday, May 13, 2019, at 5:30 p.m. and proceedings were as follows:)

MAYOR HILL: I call the meeting to order. Please stand and join us for the Pledge of Allegiance.

(Pledge of Allegiance to the Flag.)

MAYOR HILL: Roll call, please.
MS. DUGAN: Yes, sir. Arno Hill?
MAYOR HILL: Present.
MS. DUGAN: Robert Bond? (NO RESPONSE - ABSENT.) Larry Tura?
MR. TURA: Present.
MS. DUGAN: Bill Pugh?
MR. PUGH: Present.
MS. DUGAN: Fred Bencivengo?
MR. BENCIVENGO: Present.
MS. DUGAN: Paul Dutton?
SOLICITOR DUTTON: Present.
MS. DUGAN: Kellie Bordner?
MS. BORDNER: Present.
MS. DUGAN: And I'm Denise Dugan.

APPROVAL OF AGENDA

MAYOR HILL: I'll entertain a motion for approval of the agenda.
MR. TURA: I'll make a motion to approve the agenda.
MAYOR HILL: Motion by Larry Tura. Second?
MR. BENCIVENGO: Second.
MAYOR HILL: Second Bencivengo. Comments? (NO RESPONSE FROM THE BOARD.) All in favor?
THE BOARD: Aye.
MAYOR HILL: Opposed? (NO RESPONSE FROM THE BOARD.)

(VOTE: 4, AYE; 0, NAY; 0, ABSTAINED.) Motion carried.

ELECTION OF OFFICERS

MAYOR HILL: We'll now have election of officers. Anybody want to step up

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to the plate for chairman?
MR. TURA: No, but I'll make a motion that Arno Hill be the chairperson.
MAYOR HILL: Motion by Larry Tura. Is there a second?
MR. PUGH: Second.
MAYOR HILL: Any other motions? (NO RESPONSE FROM THE BOARD.)
Do we have a motion to close the nominations?
MR. TURA: I'll make a motion to close the nominations for chair.
MAYOR HILL: Motion by Larry Tura to close the nominations. Second?
MR. BENCIVENGO: Second.
MAYOR HILL: All in favor for me as chairman?
THE BOARD: Aye.
MAYOR HILL: Opposed? (NO RESPONSE FROM THE BOARD.)

(VOTE: 4, AYE; 0, NAY; 0, ABSTAINED.)

MAYOR HILL: Motion carried. I'll now entertain a motion for vice-chair. I'll
nominate Larry Tura. Is there a second?
MR. PUGH: Second.
MAYOR HILL: Second by Bill Pugh. Comments? (NO RESPONSE FROM
THE BOARD.) Any other nominations? (NO RESPONSE
FROM THE BOARD.)
MAYOR HILL: I make a motion that nominations be closed. Is there a
second?
MR. BENCIVENGO: Second.
MAYOR HILL: Second by Fred Bencivengo. All in favor for Larry Tura as
vice-chair?
THE BOARD: Aye.
MAYOR HILL: Opposed? (NO RESPONSE FROM THE BOARD.)

(VOTE: 4, AYE; 0, NAY; 0, ABSTAINED.)

MAYOR HILL: Motion carried. Larry, you're back again.
MR. TURA: Thank you.

APPROVAL OF MINUTES OF AUGUST 10, 2015

MAYOR HILL: Approval and correction of the minutes of October 9, 2018.
I'm sure everybody had a copy of that. I'll entertain a motion to
accept them if nobody has a problem with them.
MR. TURA: I'll second that.
MAYOR HILL: You'll have to make the motion.
MR. TURA: I'll make a motion to approve the minutes.
MAYOR HILL: Motion by Larry Tura. Is there a second to the motion?
MR. BENCIVENGO: Second.
MAYOR HILL: Second by Fred Bencivengo. Comments? (NO RESPONSE
FROM THE BOARD.) All in favor?
THE BOARD: Aye.
MAYOR HILL: Opposed? (NO RESPONSE FROM THE BOARD.)

(VOTE: 4, AYE; 0, NAY; 0, ABSTAINED.) Motion carried.

**CASE 19-01 Lawrence L. And Jacquelyn A. Tura are requesting variances to permit
a wind turbine that exceeds the maximum height of 50 feet and to permit a wind
turbine and a utility building closer to the street than the principal structure for
property, which is situated in an R-1/B-1 Zoning District, which is located at 6840
Tod Avenue, Lordstown, Ohio.**

MAYOR HILL: Kellie, do you want to bring us up to speed?
MS. BORDNER: Absolutely. On April 2, 2019, Lawrence L. Tura and Jacquelyn

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A. Tura filed an Application for a Zoning Permit at the Planning and Zoning Office for a wind turbine 15 feet wide, 15 feet in length, and 100 feet high. We had to deny that permit because it did not meet the height requirement for an accessory structure in an R-1 zone, which is where he wanted to put it in that section that is R-1 on his property. It's allowable to have a 50-foot height with a 25-foot rear and side yard setback.

On April 10, Mr. and Mrs. Tura then filed an appeal under the Zoning Ordinance and were assigned Case 19-01, seeking, as you said, a request for a variance to permit the wind turbine with a height of 100 feet and 25 foot setback. They also requested that an accessory structure - the accessory structure was also closer to the street than his single family residence because of the way the property is designed. So, he is seeking a variance on that count, as well.

On April 16, we took a look at the Duncan Factors, which are required for the consideration of an area variance. And I can run through those factors - there are seven of them - and just let you know what the results of our investigation were.

Duncan Factors

1. Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance or variances.

Without the variance or variances, appellants' real property at 6840 Tod Avenue could be sold for a reasonable amount; however, it should be noted that this parcel has a very unique shape, thereby making construction design of any type difficult. Appellants were granted a waiver by the Lordstown Planning Commission in August of 2008 to allow for an 80 foot frontage on Tod Avenue. This property is zoned General Business, B-1, for approximately 500 feet west of Tod Avenue; and Residential, R-1, for the remainder of the 13.534 acre parcel. The property was purchased in December of 1995 by appellants for \$140,445 when it encompassed approximately 86 acres of land. The parcel was subsequently subdivided and current online comparable property values (per zillow.com, realtytrac.com and xome.com) for this parcel revealed a low of \$178,000 to a high of \$250,000. The only construction on the 13.534 acre parcel other than the single family dwelling, which has a south facing front and a north facing rear from Tod Avenue, was that of an in-ground swimming pool. All structures received Zoning Permits. Given the uniquely situated direction of the single family dwelling, it would be difficult for appellants to fairly use their property in constructing any accessory structure and in meeting the requirements set forth in Lordstown Codified Ordinance 1141.04(a).

2. Whether the variance is substantial.

A. In Section 1141.04(a)(3) of the Lordstown Codified Ordinances, it provides that an accessory building in a residential district - which is primarily what appellants' property is zoned - not exceeding 50 feet in height may occupy not more than ten percent of the required rear yard when the lot size is over five acres, provided there is at least a 25 foot side and rear lot setback.

Appellants are requesting that they be permitted to place the

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wind turbine, which is 100 feet in height, on their property with what is identified as a 25 foot side yard setback from the property line shared in common with Martin J. Milner at 6850 Tod Avenue, S.W. (if calculating setback in accordance with how the front of the single family dwelling is situated).

Appellants are seeking a variance to allow an additional 50 foot in height for the wind turbine, which is a 100 percent area variance. It should be noted that appellants' frontage for their property is technically the 80 foot frontage on Tod Avenue, which stretch of land extends back approximately 400 feet on the Milner south property line. Therefore, a well-reasoned argument could be made that the proposed location of the wind turbine provides for more than adequate side and rear yard setbacks; and, as such, only a variance for the requested height of the wind turbine should be considered.

B. Section 1141.04(a)(4) of the Lordstown Codified Ordinances provides that no accessory building or accessory structure shall be located closer to the street than the principal building, and in no event shall any accessory building or accessory structure be located closer to the street than the front yard setback required for the principal structure in the district in which such accessory building is to be located.

Appellants are requesting a variance from this requirement for the following accessory structures:

1. The wind turbine, as already mentioned above, which is proposed to be 425 feet west of Tod Avenue, and;
2. A proposed future detached 30 foot by 40 foot accessory building/garage, which is proposed to be located approximately 582 feet west of Tod Avenue, also being approximately 122 feet west of the Dairy Queen property, owned by David Gwara.

Again, the notes above regarding appellants' technical frontage location and the confusion of setback determinations, the side, front and rear yard characterizations, along with the uniqueness of the property layout should be considered with regards to these variance requests.

3. Whether the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a substantial detriment.

The area in which appellants reside is flanked to the north, west and southwest by residential property; but it is also adjacent to general business, B-1, properties along the length of Tod Avenue to the east, southeast and northeast of appellants' single family dwelling. The character of this area is varied as a result. Thus, based upon the nature of appellants' requests for the height and accessory structure location variances, it does not appear that the essential character of the neighborhood would be substantially altered.

Neighboring, adjoining property owners have been notified of appellants' requests for the within variances and are free to speak as to whether or not they believe they would suffer any substantial detriment if appellants were to receive same.

4. Whether the variance would adversely affect the delivery of governmental services.

Granting a variance or variances in this case would not have any adverse effect on governmental services, as emergency

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vehicles would still have access to the property if such a need arose.

5. Whether the property owner purchased the property with knowledge of the zoning restrictions.

Appellants purchased the property in question in 1995; and, as stated above, have built a single family dwelling, subdivided the property, and built an in-ground pool since such purchase. The Zoning Ordinances as they exist today are those which are being applied to appellants' request for a Zoning Permit for the wind turbine and will likely remain unaltered in content at the time appellants seek a Zoning Permit for a 30 foot by 40 foot detached garage. Appellants have been advised of the requirements in the Codified Ordinances. And, as such, seek the assistance of this Board in being permitted to effectively utilize and enjoy their property.

6. Whether the problem can be solved by some manner other than the granting of a variance.

A solution other than granting a variance or variances in this case would be rather harsh to appellants and others as it may include, but not be limited to, abandoning the purchase and removal of the wind turbine from Lordstown Village property, and/or appellants seeking to relocate their family to another residence upon which property is not as uniquely situated.

7. Whether the variance or variances preserves the spirit and intent of the zoning requirement and whether substantial justice would be done by granting the variance or variances.

Hearing the concerns of, or substantial detriments to, any neighboring, adjoining property owners and considering the foregoing, should provide sufficient information to determine whether or not the granting of any variance in this case will preserve the spirit and intent of the zoning requirements. Further, substantial justice will be served by considering all of the foregoing factors, along with any other relevant factors in determining whether any variances should be granted. That concludes the Duncan Factors.

MAYOR HILL: Does anybody on the Board have any questions for Mr. or Mrs. Tura? They are here and present today.

SOLICITOR DUTTON: For the record, Larry has to identify who he is and identify that he is one of the applicants and that he has an obvious conflict. And indicate for the record that he left the dais and is sitting in the audience.

MAYOR HILL: Okay. Larry, do you want to announce who you are and what your intentions are.

MR. TURA: Larry Tura, 6840 Tod Avenue, Lordstown. I have to recuse myself from the meeting tonight because I have to present my case on the two variances I have requested.

SOLICITOR DUTTON: And you've left the dais.

MR. TURA: And I've left the dais.

MAYOR HILL: Larry, do you have anything you want to say before we open up with questions from the Board?

MR. TURA: No. I think Kellie had quite a lot of information there, so I don't think I really need to add to that.

MAYOR HILL: Does anybody from the Board have anything for Mr. Tura?
(NO RESPONSE FROM THE BOARD.)

Hearing none, is there anybody who would like to speak for

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this request? (NO RESPONSE.) Seeing none, is there anybody who would like to speak against this request? (NO RESPONSE.) Once again, seeing none, would anybody like to make a motion to address the two variances Mr. Tura is requesting?

MS. DUGAN: Do we vote on them separately?
MAYOR HILL: Yes. The first one, I believe, is we have a height variance from 50 to 100 foot?
MS. BORDNER: That is correct.
MAYOR HILL: Anybody like to make a motion for or against that?
MR. BENCIVENGO: For it.
MAYOR HILL: Motion by Fred Bencivengo to grant the 100 foot height for the wind turbines. Is there a second to that motion?
MR. PUGH: I'll second that.
MAYOR HILL: Second by Bill Pugh. Comments or questions on the motion? (NO RESPONSE FROM THE BOARD.) Hearing none, can we have roll call, please.
MS. DUGAN: Yes, sir. Arno Hill?
MAYOR HILL: Yes.
MS. DUGAN: Bill Pugh?
MR. PUGH: Yes.
MS. DUGAN: And Fred Bencivengo?
MR. BENCIVENGO: Yes.

(VOTE: 3, AYE; 0, NAY; 0, ABSTAINED.)

MAYOR HILL: Motion carries to allow the 100 foot height for the wind turbines. I believe the second one requested to have an accessory building closer to the road than the principal structure.
MS. BORDNER: Correct.
MAYOR HILL: Is there a motion for or against that somebody would like to make?
MR. BENCIVENGO: Motion for it.
MAYOR HILL: Motion to permit by Fred Bencivengo. Is there a second to that motion?
MR. PUGH: Second.
MAYOR HILL: Second by Bill Pugh. Are there any comments or questions on that motion? (NO RESPONSE FROM THE BOARD.) Hearing none, can we have roll call, please.
MS. DUGAN: Yes, sir. Bill Pugh?
MR. PUGH: Yes.
MS. DUGAN: Fred Bencivengo?
MR. BENCIVENGO: Yes.
MS. DUGAN: And Arno Hill?
MAYOR HILL: Yes.

(VOTE: 3, AYE; 0, NAY; 0, ABSTAINED.)

MAYOR HILL: Motion carries 3:0. Larry, you do have your variance requests.
MR. TURA: Okay. I'll be coming to see you, Kellie.
MAYOR HILL: Five days; correct, Kellie?
MS. BORDNER: Yes, sir.
MAYOR HILL: You can come in five days and pick up your permits.

PUBLIC COMMENTS

MAYOR HILL: Are there any public comments this evening? (NO

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RESPONSE.)

MEMBER COMMENTS

MAYOR HILL: Hearing none, are there any member comments this evening? (NO RESPONSE FROM THE BOARD.)

ADJOURNMENT

MAYOR HILL: Hearing none, I'll entertain a motion to adjourn.

MR. PUGH: Motion to adjourn.

MAYOR HILL: Motion by Bill. Second?

MR. BENCIVENGO: Second.

MAYOR HILL: Second by Fred. Comments? (NO RESPONSE FROM THE BOARD.) All in favor?

THE BOARD: Aye.

MAYOR HILL: Opposed? (NO RESPONSE FROM THE BOARD.)

(VOTE: 3, AYE; 0, NAY; 0, ABSTAINED.)

MAYOR HILL: Motion carried. Meeting adjourned. Thank you for coming, everybody.

MR. TURA: Thank you.

(WHEREAS, THE PUBLIC HEARING BEFORE THE VILLAGE OF LORDSTOWN BOARD OF ZONING APPEALS ADJOURNED AT 5:45 P.M.)

Submitted by:

Approved by:

Denise L. Dugan
Assistant Planning & Zoning Administrator

Arno Hill
Chairperson