

Village of Lordstown Board of Zoning Appeals

October 13, 2020

The Lordstown Village Board of Zoning Appeals met in regular session on October 13, 2020 at 5:30 P.M. at the Lordstown Village Administration Building. The meeting was held to hear Case 20-01 Dennis & Lori Beth Atwood. The meeting was called to order by Vice Chairperson Larry Tura followed by the Pledge of Allegiance.

In attendance: Larry Tura, Vice Chairperson
Fred Bencivengo
Bob Bond, Council Member
Paul Dutton, Solicitor
Kellie Bordner, Planning & Zoning Administrator
Denise L. Dugan, Assistant Planning & Zoning Administrator

Also Present: Lori Atwood, Lordstown, Ohio
Dennis Atwood, Lordstown, Ohio
Dee Dee Petrosky, Cortland, Ohio
Don Petrosky, Cortland, Ohio
Diane Dematteo, Lordstown, Ohio
Marilyn Rhinehart, Lordstown, Ohio

MR. TURA: Let's go ahead and call the meeting to order. Welcome to the Lordstown Village Board of Zoning Appeals. I'd like to open with the Pledge of Allegiance. Please join us.

(Pledge of Allegiance to the Flag.)

MR. TURA: Mrs. Dugan, would you give roll call, please.
MS. DUGAN: Yes, sir. Arno Hill? (NO RESPONSE — ABSENT.) Robert Bond?
MR. BOND: Here.
MS. DUGAN: Larry Tura?
MR. TURA: Present.
MS. DUGAN: Fred Bencivengo?
MR. BENCIVENGO: Here.
MS. DUGAN: Paul Dutton?
MR. DUTTON: Present.
MS. DUGAN: Kellie Bordner?
MS. BORDNER: Present.
MS. DUGAN: And I'm Denise Dugan.
MR. TURA: Anybody have a motion to excuse Mayor Hill?
MR. BOND: So moved.
MR. BENCIVENGO: Second.
MR. TURA: Motion by Bond and second by Bencivengo. That motion carries.

APPROVAL OF AGENDA

MR TURA: I'd like to have someone make a motion to approve tonight's agenda.
MR. BOND: I'll make the motion.
MR. TURA: Motion by Bob Bond.
MR. BENCIVENGO: Second.
MR. TURA: Second by Fred. All in favor?
THE BOARD: Aye.
MR. TURA: Opposed? (NO RESPONSE FROM THE BOARD.)

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

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MR. TURA: Motion carries. Little rusty at this.

ELECTION OF OFFICERS

MR. TURA: The next thing on our agenda tonight is election of officers.

MR. BOND: Would you want to hold off on that, so we have everybody present?

MS. BORDNER: You're only missing one person.

MR. BOND: Only missing one, okay.

MR. TURA: Only missing the Mayor, so I'll put it out there if somebody would like to make a motion for a chairperson.

MR. BOND: Motion for Larry Tura to be the chairperson.

MR. TURA: We have a motion by Bob Bond for Larry Tura to be the chair. Do we have a second?

MR. BENCIVENGO: Second.

MR. TURA: Second by Fred. All in favor?

THE BOARD: Aye.

MR. TURA: Opposed? (NO RESPONSE FROM THE BOARD.)

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

MR. TURA: Motion carried. Larry is going to be the chairperson. I'd like to make a motion - put a motion out for Vice chair. Motion, anybody, for vice chair? I'll make a motion for Fred Bencivengo.

MR. BOND: I'll second that.

MR. TURA: We have a second. All in favor?

THE BOARD: Aye.

MR. TURA: Opposed? (NO RESPONSE FROM THE BOARD.)

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

MR. TURA: Motion carries.

APPROVAL OF MINUTES OF May 13, 2019

MS. DUGAN: We have the minutes from May 13, 2019.

MR. TURA: Okay. Next thing on here, we need to make a motion to approve the minutes from May 13, 2019 agenda. If I can have a motion -

MR. BENCIVENGO: So moved.

MR. TURA: From Fred. Do I have a second?

MR. BOND: I was not a member of the committee at time. So if you want to second.

MR. TURA: So noted. All in favor?

MR. BENCIVENGO: Aye.

MR. TURA: Aye.

MR. BOND: Abstain.

(VOTE: 2, AYE; 0, NAY; 1, ABSTAINED.)

MR. TURA: So, we have two in favor, no nays and one abstained. Motion carries.

CASE 20-01 Dennis & Lori Beth Atwood are requesting variances to permit a front yard setback of less than 60 feet from the road right-of-way in an R-1 Residential District which is located at 6550 Woodridge Way, Lordstown, Ohio.

MR. TURA: The Scope and Jurisdiction of the Board is as follows: "To

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hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Zoning Inspector in the enforcement of the Zoning Ordinance.

Authorize, upon appeal, in specific cases, a variance from the terms of the Zoning Ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of this Zoning Ordinance will result in practical difficulties, and so that the spirit of this Zoning Ordinance shall be observed and substantial justice done.

In granting a variance, the Board may impose such conditions as it may deem necessary to protect the public health, safety, and morals and in furtherance of the purpose and intent of this Zoning Ordinance. (1127.04)

Issue Special Use Permits where there is found no justifiable reason not to issue it.

Render an opinion where the Planning and Zoning Administrator has determined that she needs a second opinion or clarification of a portion of the code.

Your statements at this public hearing are not the only basis for determination of this request. This Board represents not only the vocal group at a public hearing, but also those many citizens who do not attend or speak at hearings. The decision of the Board shall not become final until the expiration of five working days from the date of the Board's approval. All speakers are sworn in by the chairperson by affirming the following oath."

Anyone wishing to speak, I'll swear you in after the next statement - any of you wishing to speak, I'll swear you in now. Nobody wishing to speak? Very good -

MS. BORDNER:

They have to speak. So, everybody who is here, just raise your right hand and repeat after Larry.

(All in attendance were sworn in by Mr. Tura.)

MR. TURA:

The procedure for the public comment aspect of our hearing: "All speakers must step up to the microphone" - which we don't have one - "state their name and address for the record. All persons speak in order, one by one, no open discussion and no cross-examination. The appellant makes the first statement. Those in favor speak first. Those against speak next. Any rebuttal is then usually permitted. The members of the Board will ask for clarification or additional information. A last call for new and additional information that has not been previously stated."

Now, I'm going to ask Kellie to bring us up to speed on the case.

MS. BORDNER:

Absolutely. So, Mr. and Mrs. Atwood, Dennis and Lori, are here and they are requesting a variance to permit a front yard setback of less than 60' from the road right-of-way in an R-1 Residential District, which is located at 6550 Woodridge Way here in the Village.

They have submitted extensive documentation, including their appeal form. They submitted a statement. Their letter of intent in support of the request for the variance - I'm going to read it to you. "We, Dennis and Lori Atwood, are requesting a zoning variance to our front setback requirement. We

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purchased and moved into the home in April 2019, which already had an existing small cement porch, which is a 7' x 4' porch, located at the front door by the previous owner. The house was purchased with the intent to extend the existing front porch with a roof to provide the home with greater curb appeal. However, we were not aware of the zoning restrictions when we purchased the property, nor that the existing front porch was non-conforming.

We request that a variance be approved for both the front porch and the roof addition to allow for a new setback of 50' from the road right-of-way.

What we would like to ask the Board to consider is that the proposed variance 1) allows improvement of the property in a manner which is reasonable, customary and consistent with all other properties on Woodridge Way; 2) will not diminish or impair property value within the neighborhood; 3) would be an improvement to the neighborhood and result in an overall increase in property value and tax base created by improvement; and 4) will not be injurious to the area.

Thank you for your consideration." And it is signed Dennis and Lori Atwood.

They also submitted some additional documents and some pictures. You all have that. And then what I did was I used the **Duncan Factors for an Area Variance** to discuss and go over some of the concerns that might be had.

"Number one, whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance. The Appellants' property at 6550 Woodridge Way could be sold and yield a reasonable return. This property is zoned Residential, R-1, and was purchased by Appellants in April of 2019 for \$197,000 from Michael Worringer. Worringer purchased the property in 2005 for \$195,000, with the two-story dwelling having been build that same year. Current comparable values (per zillow.com, realtytrac.com, homesnap.com, eppraisal.com)" - those are just a few that I use to try to figure out comparable values - "revealed the property to have a low value of \$199,000 to a high value of \$238,000, as is. Appellants have offered that creating a front porch as proposed will increase the curb appeal of the dwelling, and thus, the total value of their property.

In as-is condition, a beneficial use of the property without granting a variance can be envisioned. Lordstown Codified Ordinance (LCO) 1137.01 requires the front setback from the road right-of-way be 60' in an R-1 zone district.

Woodridge Way has a 60' road right-of-way. Therefore, any structure would need to be set back at least 90' from the center line of the road. Under LCO 1125.03, no zoning permit is required if a structure is less than 100 square feet upon completion or extends less than six inches from the ground surface. Appellants could lower their proposed cement front porch to less than six inches from the ground surface and the proposed roof overhang could be a retractable awning, neither of which would require a zoning permit. Additionally, Appellants have a rear yard measuring approximately 95' x 96' without any existing structures. As such, they would have approximately 912 square feet of rear

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yard usage allowance within which to create a deck, or a porch or other permissible structure.

Number two, whether the variance is substantial. As stated above, LCO 1137.01 requires the front setback from the road right-of-way be 60' in an R-1 zone district.

Appellants are seeking a variance to allow a front setback of 50' from the road right-of-way to accommodate the addition of a proposed cement front porch, roof overhang and cement steps abutting the front porch, which will mark the nearest point of a structure to the road right-of-way. This would constitute an approximate 17 percent area variance.

Number three, whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a "substantial detriment."

The area in which Appellants reside consists of about 16 homes, including Appellants' dwelling, flanking the east and west sides of Woodridge Way, being a north-south public roadway. Several diagrams have been provided, which include pictures of these 16 homes, property data sheets, a base overview of the roadway and a summary ledger of each address identifying each current front yard setback to its primary dwelling, the home style and the porch type, if any. Neighboring, adjoining property owners have been notified of Appellants' request for a variance and are free to speak as to whether or not they believe they would suffer any substantial detriment if Appellants were to receive same.

It should also be noted that of 16 homes on Woodridge Way, all of them but one (Appellants' dwelling) have porches.

Most of them are recessed porches that are constructed in compliance with the 60-foot front yard setback requirement. The 60' front yard setback on Appellants' property was measured by the Planning and Zoning Office. From the center line of Woodridge Way to the front door, or the foyer area, which juts out a bit from the rest of the dwelling, is exactly 60'. Then Appellants currently have a 7' x 4' stoop in front of the front door, which is not 60' back from the road right-of-way and therefore constitutes a non-conforming use. The Planning and Zoning Office does not have the authority to permit the expansion of a non-conforming use.

Appellants have offered that granting their variance request will improve the character of their home, create uniformity with the other homes on Woodridge Way, and improve the character of the neighborhood as a whole.

Number four, whether the variance would adversely affect the delivery of governmental services. Granting a variance in this case would not have any adverse effect on governmental services as emergency vehicles would still have access to the property if such a need arose.

Number five, whether the property owner purchased the property with knowledge of the zoning restrictions. Appellants purchased the property in 2019. At the time of submitting their applications for zoning permits, Appellants explained that they were not aware of the front setback requirement. They also offered that it was always their intent, at the time of purchase, to create the extended

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porch with roof overhang, and they were not advised that they could not do so. Review of telephone records from February 2019, through April 2019, in the Planning and Zoning Office, did not reveal that any calls were ever received with regards to zoning questions about this property.

Number six, whether the problem can be solved by some manner other than the granting of a variance. As stated under consideration number one above, a cement front porch of less than six inches from the ground surface and a retractable awning were suggested as a possible solution to allow Appellants to construct a front porch and shading to minimize eastern - which is morning sunlight exposure. Appellants can also utilize their rear yard space for a porch, deck, or patio. Appellants have offered that these options would not be aesthetically pleasing and would not allow for the creation of uniformity with the existing front porches on Woodridge Way.

Number seven, whether the property in question has unique or exceptional circumstances or conditions that do not apply to other properties in the vicinity and within the same district. The shape of the subject property is fairly similar to the other 15 properties on Woodridge Way. Appellants have offered that this was the first home built on Woodridge Way and that explains the reason for the lack of a more uniform front porch and the setback error, as there were no other homes to compare it to at that time.

Number eight, whether the variance preserves the spirit and intent of the zoning requirement and whether substantial justice would be done by granting the variance. 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 that the granting of any variance in this case will preserve the spirit and intent of the zoning requirements. Further, substantial justice will be done by considering all of the foregoing factors, along with any other relevant factors in determining whether any variance should be granted. Appellants have offered that granting a variance would in no way be detrimental to the health, safety or welfare of the community and that is what zoning codes are supposed to promote - the community health, safety and welfare."

The only other thing that I want to add to that is that we've had several calls into the office, not one of them was negative in any regard with regards to this request for a variance. They all came in from people that live on the street, some of whom I see are here tonight. Two individuals could not be here and provided us with an email. One was the Ritchie family and the other one was Austin Creer and Cathern Zweifel.

MS. DUGAN:

MS. BORDNER:

They also live on the street and they also sent an email offering their favorable request saying that they have no objection and thought it would, as well, be something that would help to make the street even look better. So, we have no complaints.

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MR. TURA: Thank you for that, Kellie. At this point, I'd like to ask Appellant, Mr. Atwood, or his wife if they would like to address the Board.

MS. ATWOOD: I think Kellie pretty much summed it up for us with a lot of information. And we have spoken to the neighbors. They are for this. They understand it's only going to help the property value of everything on that street. And, at this point in time, we don't feel a retractable awning in that type of neighborhood is acceptable. We hope with that support and the support from you guys, you would accept this.

MR. TURA: The only thing, she did not state her name for the record.

MS. ATWOOD: Lori Atwood, 6550 Woodridge.

MR. TURA: Thank you very much. Would anyone else like to speak in favor? Neighbors? Anyone else? (NO RESPONSE.) Okay. None being heard, is there anyone that would like to make a statement opposing - I'm sorry. Go ahead.

MS. DEMATTEO: I'm sorry. I just wanted to say that I -

MR. TURA: Your name -

COURT REPORTER: Your name, please, and your address.

MS. DEMATTEO: Diane Dematteo, 6560 Woodridge Way, S.W. I think the addition of a porch would be a wonderful, beautiful addition. I think it would make the neighborhood look so nice. And keep the family happy too because they are great neighbors, and we don't want to see them go anywhere. That's what I wanted to say.

MR. TURA: Thank you very much. Is there anyone else that would like to speak in favor? (NO RESPONSE.) Then we're going to move on.

Is there anyone who would like to speak against this zoning variance being approved? (NO RESPONSE.)

I'm going to make a motion to close the public part of the hearing. I'll make the motion.

MR. BENCIVENGO: I'll second.

MR. TURA: Second by Fred Ben -

MR. BENCIVENGO: You can just say Fred B.

MR. TURA: Fred B. How is that? Because I'm not going to say it right. There will be no more discussion from the floor. The only thing that I would say as part of the Board's lecture here is that I actually went through there, and I looked around the houses and looked at the house where the porch is going to be. The only thing I was even curious about was the neighbor directly south of your address. Did they speak about this in any way?

MS. ATWOOD: That's Diane.

MR. TURA: Your house is directly south of hers? The only -

MS. ATWOOD: This is north (indicating). That's south (indicating).

MR. TURA: - I'm sorry.

MS. ATWOOD: Yes. So that would be Diane.

MR. TURA: The only reason I say that is because as you come down the street there and you look at your house, it's somewhat - just slightly protrudes out past her house. So, that was the only thing. So, if she's not worried about it; she's okay with it - I just wanted to bring that up. That's the only thing I seen about it.

MS. BORDNER: There is a slight bend in the road. And I know that the public comment portion is closed, but I can tell you that Mrs. Rhinehart, who is across the street from them, I believe -

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Okay. She also called and she spoke very favorably about the addition of the front porch and certainly didn't have any problem with it coming out farther than the 60' allowance. It's, in her mind, as she said, it was only 10' and not that big of a deal. She was perfectly fine with it. I guess she's directly across the street. So, that was another good one for someone who was going to be directly affected, I believe.

MR. TURA: Okay. That's fine. I just wanted to clarify that since I was on site there and I did see that I figured I'd at least comment on that. Okay. That being said, do we have a motion from the Board in regard to a variance from the 60' setback to a 50' setback?

MR. BENCIVENGO: Motion to approve.

MR. TURA: We have a motion from Fred B. to approve. Do I have a second?

MR. BOND: Yes.

MR. TURA: I have a second from Bob Bond. All in favor?

MS. DUGAN: Actually, I usually have to take roll call now. I'm sorry, Larry.

MR. TURA: I'm sorry. Roll call.

MS. DUGAN: Robert Bond?

MR. BOND: Yes.

MS. DUGAN: Larry Tura?

MR. TURA: Yes.

MS. DUGAN: And Fred?

MR. BENCIVENGO: Yes.

MR. DUTTON: You have to read Arno's name, also.

MS. DUGAN: Arno Hill?

MR. DUTTON: Absent.

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

MR. TURA: So the Board of Zoning Appeals approves the variance of the Lordstown Codified Ordinance, where did I write it -

MS. BORDNER: 1137.01.

MR. TURA: Yes. 1137.01 has been approved.

MS. BORDNER: To allow a 50' setback from the road right-of-way, rather than the 60'. And then that decision does not become effective until five working days. So, once the five working days has passed - and I'm just giving them a little bit of information so that they know what they need to do next - they will come back into the office and remake their re-application for the zoning permits for the porch and the overhang, and we will be able to grant it.

MR. TURA: The next part - I guess I skipped this, but I want to say it after roll call. I was going to say all in favor, and we would have had ayes and no nays. The motion carried.

Now, the part here for a motion to adjourn the case.

MR. BOND: So moved.

MR. BENCIVENGO: Second.

MR. TURA: Moved by Bob Bond; seconded by Fred B. All in favor?

THE BOARD: Aye.

MR. TURA: Opposed? (NO RESPONSE FROM THE BOARD.)

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

MR. TURA: Motion carries.

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PUBLIC COMMENTS

MR. TURA: Are there any public comments?

MS. PETROSKY: Thank you.

MEMBER COMMENTS

MR. TURA: Any member comments? (NO RESPONSE FROM THE BOARD.)

ADJOURNMENT

MR. TURA: Moving right along here. Do we have a motion to adjourn tonight's meeting?

MR. BENCIVENGO: Motion to adjourn.

MR. TURA: Motion by Fred.

MR. BOND: I'll second.

MR. TURA: Seconded by Bob Bond. All in favor?

THE BOARD: Aye.

MR. TURA: Opposed? (NO RESPONSE FROM THE BOARD.)

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

MR. TURA: Motion carried. Lordstown Village Board of Zoning Appeals meeting is now adjourned. Thank you.

(WHEREAS, THE PUBLIC HEARING BEFORE THE VILLAGE OF LORDSTOWN BOARD OF ZONING APPEALS ADJOURNED AT 5:55 P.M.)

Submitted by:

Approved by:

Denise L. Dugan
Assistant Planning & Zoning Administrator

Larry Tura
Chairperson