

**MINUTES**  
Cascade Charter Township  
Zoning Board of Appeals  
Tuesday, September 13, 2016  
7:00 P.M.

**ARTICLE 1.** Chairman Berra called the meeting to order at 7:00 P.M.  
Members Present: Berra, Casey, McDonald, Milliken, Pennington  
Members Absent: None  
Others Present: Community Development Director, Steve Peterson and those listed on the sign in sheet.

**ARTICLE 2. Chairman Berra led the Pledge of Allegiance to the flag.**

**ARTICLE 3. Approve the Agenda.**

**Motion was made by Member McDonald to approve the Agenda. Support by Member Pennington. Motion carried 5 to 0.**

**ARTICLE 4. Approve the Minutes of the August 9, 2016 Meeting.**

**Motion was made by Member McDonald to approve the Minutes as presented. Support by Member Pennington. Motion carried 5 to 0.**

**ARTICLE 5. Acknowledge visitors and those wishing to speak to non-agenda items.**

No visitors who were present wished to speak about non-agenda items.

**ARTICLE 6. Case #16:3328 Steven Wessell**

**Public Hearing**

**Property Address: 3150 Thornapple River Dr.**

**Requested Action: The applicant is requesting approval from the Zoning Board of Appeals to demolish the existing home at 3150 Thornapple River Dr. and leave the accessory buildings on the property, before a new home is constructed.**

Director Peterson stated the Applicant is requesting a variance of Section 4.09 of the Zoning Ordinance. This section requires a principal structure (a home) on the property before an accessory building. The number of accessory buildings are then limited based on the size of the property. The variance request is the result of the applicant wanting to remove the home in order to construct a new home and leave the accessory building. Unless the applicant builds a new home that does not include an attached garage, they would only be permitted one accessory building since they are under 3 acres. The lot currently has two accessory buildings and the township only has record of the larger building being permitted.

The Zoning Ordinance actually requires that the home be at least 50% complete before an accessory building can be built.

Director Peterson stated that similar past cases were granted variances with the condition that a performance bond be provided to allow the township to remove the accessory building if the property did not come into compliance.

He also presented findings of fact to be sure this request meets the ordinance requirements. He feels this request does meet those requirements.

Director Peterson recommends approval of the variance with the following conditions:

- (1) The home is at least 50% complete (rough-in) within 1 year.
- (2) Provide a performance bond for the removal of the accessory buildings if the home is not at least 50% complete within one year. The amount of the bond will be at a minimum of \$10,000.
- (3) If the home includes an attached garage, one of the accessory buildings must be removed.

Chairman Berra asked if anyone would like to come forward.

Mr. Wessel, applicant, came forward and made brief comments. He also stated his preference to keep the second accessory building.

**Member McDonald made a Motion to open the Public Hearing. Supported by Member Milliken. Motion carried 5 to 0.**

Chairman Berra asked if anyone would like to come forward to speak on this issue.

Chairman Berra read two memos for the record from neighbors. The first from Rob Beahan, stating that any issues he had with the project had been resolved and supported the project. The second from William and Carol White supporting the project.

Another neighbor, Mr. Ron McCollum came forward. He supports the project and let the Board know that he would like the Board to let the Wessels keep the second accessory building.

**Member Casey made a Motion to close the Public Hearing. Supported by Member Milliken. Motion carried 5 to 0.**

**Member McDonald made a Motion to approve the variance with Staff conditions listed above.**

**Supported by Member Milliken. Motion was carried as stated 5 to 0.**

**Case #16-3325 Ron McCollum**

**Public Hearing**

**Property Address: 3010 Thornapple River Dr.**

**Requested Action:** The applicant is requesting an appeal of an administrative action. This appeal involves allowing an accessory building on a lot without a home.

Director Peterson stated that this request is necessary due to the removal of the home at 3010 Thornapple River Dr. The applicant has already removed the home and now wants permission to leave the accessory building standing.

Rather than apply for a variance, the applicant chose to apply for an appeal to an administrative decision, essentially he argues that the ordinance does not apply to him because they are not building a new building, but rather simply removing the existing home and leaving the accessory building.

The applicant also states that others in the township have done the same and no enforcement action was taken. This seems to imply that the ordinance does apply in this case, and that we should not enforce it. Director Peterson let the Board know that he has researched the last 10 years of demolition permits, including the property that he indicated, and found nothing to substantiate the applicant's claim. Even if there was an enforcement issue, or lack thereof, with the cases, that would not justify ignoring this case.

If we follow the logic of the applicant, anytime someone demolished or split property they could leave a building on a vacant property. That is contrary to the intent of the rule to have a principal building on the property. As a matter of fact, we also require that the home is built at least 50% (rough-in) before you can start an accessory building.

The very fact that a detached garage is classified as an accessory structure indicates that they have to have a principal building on the property. With no home you violate the very definition of accessory structure.

We have had similar variance requests that we have approved. In these cases, the home was being built along with the accessory building and we had a performance bond to ensure that we could remove a building if no principal structure was built.

This is not a variance application. The Board needs to use standards for an appeal from an administrative action.

Director Peterson feels that the impact of a decision to agree with the applicant would have a detrimental impact on the ordinance. A decision to agree with the applicant would permit anyone to avoid the rule of having a principal structure simply because they were not building it. This would impact demolish permits as well as splits. A ruling to avoid the removal of the accessory building on a vacant lot would be to negate this portion of the ordinance.

Given that we have been without compliance for some time and a lot of that time the applicant was aware of the non-compliance, I would suggest that you make a condition of your approval to uphold the staff interpretation of the ordinance that the applicant have the accessory building removed within the next 30 days.

Chairman Berra asked if the applicant would like to come forward.

Mr. Ron McCollum came forward and presented a copy of his application. He noted that he had checked the box for a variance and another box to request a review of the ordinance by the township attorney. Along with that application he also gave a check to

the township. He stated he doesn't understand why this is an appeal of an administrative decision and not a decision for a variance like he originally asked for.

Mr. McCollum gave a little history. He went through the correct process to demolish the home which took place in April of 2015. At that time, he stated he was not informed that the building also needed to be demolished.

He read from a letter from Stephanie to his realtor. In it, he read - the ordinance states that "No accessory building shall be constructed . . ." Mr. McCollum noted that (1) the building will not "be constructed" as it is and was already there, and (2) the building, as was the home, were all built in the 1970's before this ordinance went into effect. As such, he feels the ordinance does not apply to him and only covers new construction.

The property is currently up for sale and Mr. McCollum would like to keep that building like it is. He has been letting the fire department use the building for practice and has had a request from a potential buyer that they wanted the building. The building, he feels, is an asset to the property, not a detriment.

Discussion followed between the Board and the applicant. Discussed was whether this was an administrative appeal of the ordinance interpretation or a variance. Staff states it is an appeal because applicant stated the ordinance did not apply to him. Applicant says it is a variance request. It was stated that this is an appeal of an administrative decision and the applicant has the option of asking for a variance after this action has been decided upon. Legal review of the ordinance was discussed. The applicant wants a review of the ordinance by the township attorney. The Board felt that is the applicant's responsibility to hire his own attorney. Peterson indicated that the ZBA is the legal process that the township has for residents who disagree with staff or want an exception to the rules.

**Member Casey made a Motion to open the Public Hearing. Supported by Member McDonald. Motion carried 5 to 0.**

Mr. Jeff Dionne came forward to state that as a licensed builder the ordinance is not clear on this particular issue. The first case today was a great example of how the issue should be handled. Mr. McCollum's issue was not. The ordinance needs to clarify how accessory buildings should be handled at the permit stage. That if a home is being demolished it should state that all existing accessory buildings be demolished also unless a variance is requested. It does not right now.

**Member Pennington made a Motion to close the Public Hearing. Supported by Member McDonald. Motion carried 5 to 0.**

**Motion was made by Member McDonald to deny the applicant's request for an appeal of administrative decision, which upholds the ordinance based on the documented criteria in the ordinance today and staff's recommendation. Applicant has 60 days to remove the accessory building, unless otherwise approved in a variance.**

**Supported by Member Pennington. Motion carried 5 to 0.**

**ARTICLE 7. Any other business.**

Member McDonald made a request that the Planning Commission review that portion of the ordinance and see if the language should be clarified with respect to what happens to accessory buildings when a principal building is removed.

**ARTICLE 8. Adjournment**

**Motion was made by Member Pennington to adjourn. Support by Member McDonald. Motion carried 5 to 0. The meeting was adjourned at 8:00 p.m.**

Respectfully submitted,  
Tom McDonald, Secretary