Regular Meeting Thursday, January 24, 2013 Springview Government Center 3130 E. Main Street Springfield, Ohio 45505

Mr. Jeff Horne, Chairperson of the Board of Zoning Appeals, calls the meeting to order at 2:00 p.m.

Present: Mr. Jeff Horne, Mr. Don Wallace, Mr. Jack Spurlock, Mr. Rick Smith

and Mr. David Minard.

Absent: Mr. Tim Greenwood.

Also Present: Mr. Allan Neimayer, Clark County Community Development and other

interested persons.

Chairperson Horne asks if there are any comments regarding the minutes. Hearing none, he asks for a motion to approve the minutes.

BZA: 1-1-2013: Minutes ~ December 20, 2012

Motion by Mr. Spurlock, seconded by Mr. Smith to approve the minutes as presented.

VOTE: Yes: Mr. Spurlock, Mr. Smith and Mr. Minard.

No: None.

Abstain: Mr. Wallace.

Chairperson Horne explains how the meeting will be held. Everyone will need to sign in that will be speaking. The staff will present the report and the Board will ask questions to the staff. The proponents will be able to speak followed by the opponents. Everyone will be sworn in before they speak. Rebuttal by the Applicant will follow, if desired.

Chairperson Horne asks the Board if anyone needs to abstain. Hearing none, he asks the staff to present the case.

Mr. Neimayer states for the record that Mr. Minard will be a full voting member for this meeting.

<u>BZA-2013-1: Variance Case ~ Kris Brown ~ Located at 104 Stanford Place ~ Moorefield Township</u>

Mr. Neimayer, Senior Planner, presents the staff report and accompanying maps. The subject property is zoned R-1 (Rural Residence District) and located at 104 Stanford Place in Moorefield Township. The Applicant is requesting a Variance to Chapter 8, Section B, 6 (c) to reduce the rear setback from 5 feet to 3 feet for a detached garage, which has already been constructed. The property is located in the western part of Moorefield Township and is south of Rt. 334 and just north of Villa Road where it intersects with Rt. 72. It is also Lot #50, a corner lot, of the Terra Cela Manor Subdivision, No. 2. The subdivision is Zoned R-1.

CLARK COUNTY ZONING REGULATIONS

Chapter 8, Section B, 6 (c)

- 6. Location, Number and Size of Residential Accessory Buildings. [eff: 11-6-08]
 - (a) Unless otherwise permitted by this Zoning Resolution, a lot of less than one (1) acre zoned Residential or used for residential purposes, shall contain no more than two (2) accessory buildings and the sum of their square footage shall not exceed the maximum square footage noted in TABLE 8.1.
 - (b) When two (2) or more accessory buildings are located on a lot utilized for residential purposes, the sum of their square footage shall not exceed the maximum square footage noted in TABLE 8.1.
 - (c) Accessory building development standards shall be based upon the following table and requirements:

TABLE 8.1 - Accessory Building Development Standards [eff: 11-6-08]



LOT SIZE	MAXIMUM SIZE OF ACCESSORY BUILDING(S)	MAXIMUM HEIGHT	SET-BACK FROM SIDE OR REAR PROPERTY LINES (When located in rear yard)
Under one (1) acre	800 square feet	18 feet	5 feet
Equal to or greater than one (1) acre but less than two (2) acres	1,600 square feet	20 feet	5 feet
Equal to or greater than two (2) acres but less than three (3) acres	2,400 square feet	25 feet	10 feet
Equal to or greater than three (3) acres but less than four (4) acres	3,200 square feet	25 feet	10 feet
Equal to or greater than four (4) acres but less than five (5) acres	4,000 square feet	25 feet	10 feet
Five (5) or more acres (non-agricultural)	4,800 square feet	25 feet	10 feet

The Applicant filed a zoning permit application for a 24 ft. by 24 ft. detached garage on July 3, 2012 and on the submitted plot plan the rear setback is shown being five (5) feet from the lot line. The subject property is a corner lot whereby the rear lot line is designated as the north lot line. A Zoning Certificate was issued for the detached garage on July 10, 2012 with the approved rear setback of five (5) feet.

In early December 2012, Code Enforcement received a zoning complaint regarding the detached garage not maintaining the required 5 foot setback to the rear property line. A survey was done by the adjacent property owner. A slide was presented identifying that the detached garage was built on an angle in relation to the property line hence the rear

part of the detached garage has a three (3) foot setback instead of the five (5) foot that was approved on the zoning permit. After investigating the matter, Code Enforcement letter was sent to the Applicant on December 7, 2012 indicating a violation to the zoning regulations. The Applicant then filed this variance application on December 18, 2012.

There were surrounding property owners that did submit letters with regards to the variance request that of which were provided in the agenda packets to the Board members. Two additional letters came in after the agenda packets went out. Copies of those letters were provided to the Board at the beginning of this meeting.

Chairperson Horne asks if the Board has any questions.

Chairperson Horne asks when the permit was issued was everything done in a correct time line as far as when the construction started and when the permit was issued.

Mr. Neimayer responds yes. All of the permits were in place prior to construction.

Chairperson Horne asks if there is record of the name of the contractor who built the garage.

Mr. Neimayer responds that he does not have that information on the variance application. He will defer that question to the Applicant.

Chairperson Horne asks if there would be some responsibility on the contractor to verify and make sure that the setbacks were correct before they started.

Mr. Neimayer responds yes.

Chairperson Horne states that the contractor should have some responsibility and liability along with the Applicant.

Mr. Neimayer responds that it is ultimately the homeowner's responsibility speaking from the zoning point of view. The contractor should have some responsibility in following the plans that were approved by the zoning department.

Chairperson Horne asks if a contractor would normally ask for a survey line to be in place prior to construction.

Mr. Neimayer responds that would depend on the project itself when being built close to a property line and the practices of the contractor.

Mr. Minard asks if there were any complaints during the construction of the garage.

Mr. Neimayer responds that he was not aware of any complaints during the initial construction of the garage.

Mr. Spurlock asks if the zoning permit was applied for by the contractor or the property owner.

Mr. Neimayer responds that he would have to go back to the original zoning application to answer that question.

Mr. Smith asks if there were any building inspections done after construction began.

Mr. Neimayer responds there were various inspections done based on the requirements of the building permit.

Chairperson Horne opens the public hearing at 2:12 p.m. and asks if there are any proponents wishing to speak in favor of the case.

Mr. Kris Brown (Applicant), whose address is 104 Stanford Place, states that he would like to apologize for the situation this has caused. He had no idea he was getting himself into this situation when he hired a contractor to build the garage. Don Messer from Better Built Garages is the one that took the permits out for the project. He was also unaware that the garage was built crocked in relation to the property line. He realizes why the contractor did that and it was to avoid the septic tanks. The reason for building the garage is to park my car inside. His parents visit and they use the garage attached to his house.

Mr. Smith asks for clarification as to why the contractor altered the location of the garage from what was on the original zoning permit.

Mr. Brown responds that the contractor said the right side of the garage was too close to the septic tanks if it were put in straight. If I would have known that then I would have had the septic tanks moved.

Mr. Smith asks if the contractor was aware of where the property line was.

Mr. Brown responds that the contractor may not totally have known. He thought the property line was actually a couple more feet over because when he moved in he was told that the property line was in the middle of the tree and that is where he mows to.

Chairperson Horne asks from where the original plan of where the garage was to be constructed, the contractor did move it after the original plan was laid out.

Mr. Brown responds yes.

Chairperson Horne asks if he was aware of this.

Mr. Brown responds the contractor told him it was fine to move it because he had to dig back into the hill and it would be inspected and that it is in the right place and everything was a go.

- Mr. Wallace asks who inspected it.
- Mr. Neimayer responds the building staff.
- Mr. Wallace asked who was present when it was inspected.
- Mr. Brown responds that Don Messer and his crew were there.

Chairperson Horne asks if he requested that the contractor be here today.

- Mr. Brown responds yes. When I filed for the variance I spoke with him and he said he would be here.
- Mr. Neimayer states that both Mr. Brown and Mr. Messer were in the office when the variance was filed.
- Mr. Spurlock asks if the contractor filed for the original zoning application.
- Mr. Brown responds yes, Mr. Messer did.
- Mr. Wallace comments that according to the letter sent by the Zoning Inspector, there were other issues related to the construction of the garage such as no approval for new electrical and also a gas line that were installed with no inspections.
- Mr. Brown responds that the electrician did pull a permit for the new electrical but could not get an inspection because the garage inspection did not pass. The gas guy also said the same thing.
- Mr. Smith asks Mr. Neimayer that because the contractor moved the building because of the septic system, who would determine what the boundaries are when it comes to being too close to the septic system.
- Mr. Neimayer responds that in order to issue a zoning permit he needs a sign off from the Health District for reasons just as this. In this situation the contractor submitted that application on to the Health District himself. Along with the Health District's application there would have been a location map as to where the garage was being placed and in turn the Health District signs off on that particular location map that was submitted to them. A copy of the signed approval is forwarded to me.
- Mr. Smith asks if there was anything noted as to the clearance between the location of the garage and the septic system.
- Mr. Neimayer responds that would be up to the Health District. Although both departments try to work off of the same location map that is submitted, sometimes that is not always the case.

Mr. Smith asks Mr. Brown if it was the contractor who determined when he was laying the foundation out that the septic system would be too close to the garage. He is trying to understand if the contractor arbitrarily opted to move the garage.

Mr. Brown responds that the contractor stated that the septic pump had to have a 10 foot setback from a garage.

Mr. Wallace asks if he was aware beforehand that the building was going to be angled because of the septic system.

Mr. Brown responds no. It was not until the foundation walls were in place that I could see that it was going to be angled.

Mr. Wallace asks what he thought when he realized that.

Mr. Brown responds that he figured he would have to live with it at that point.

Chairperson Horne asks if there are any other proponents.

There are none.

Chairperson Horne asks for any opponents.

Mr. Adrian Bowen, whose address is 3535 Cambridge Drive, states that he has resided in Terra Cela Manor since 1974 and at that time the Homeowners Association and the neighbors were very close. Abiding with zoning was assumed. In later years as the neighbors left and new ones came they began using their homes and garages as warehouses for stuff. Consequently, cars and trucks are now left parked outside along with trailers and so forth. Garages were supposed to be bridged or attached to the houses. There currently are two houses in the subdivision with detached garages of substantial size and no enforcement. Abide by the rules, enforce the rules and don't approve the three foot setback! The neighborhood and property values are hurt enough because there is little or no enforcement.

Mr. Stephen Mapes, whose address is 3316 Kappel Drive, states that he lives a couple doors down from Mr. Brown. He has done a lot of good things with his property and he has invested a lot of money and time in fixing it up and the neighbors appreciate that. It hap hearted that a lot of the neighbors are here regarding this situation but unfortunately it has come to that. There are covenants in their Association and they say you need to talk about what you want to do with the Board before you do it. He is unaware of any neighbors being contacted prior to the construction of the garage. Mr. Brown did not have his property surveyed prior to constructing the garage so close to the property line. It was his next door neighbor, Mrs. Luking, who paid for a survey to be done out of concern for her property. If a building permit was issued, why did not someone inspect it while it was being built to determine if it was too close to the property line instead of us being here after the fact? There was plenty of time to inspect it and correct the situation during the two months it took to build it. He would like to know what the garage is going

to be used for other than the parking of vehicles when the back of it has a patio door for access and there is a loft inside. Is it going to be used as a rental, house family members or possibly a business? There is a potential fire hazard with this garage being so close to the property line and to Mrs. Luking's house. He asks the Board to vote no for this variance because it sets precedence for the rest of the neighborhood.

Mr. David Laming, whose address is 20 Thomaston Trail, states that he is the past President of the Homeowners Association and the history of the neighborhood dating back to the 1950's was that there were covenants and restrictions recorded in the deeds. Unfortunately, the character of the neighborhood has changed through the years and with that the long time established neighbors are the only viable enforcement tool they have for the covenants and restrictions. They know the Board does not enforce those rules and that violations would have to be settled through the courts. Not many of us have the means to finance a lawsuit but they still care about what their neighborhood is. This is the second infringement upon the covenants and restrictions. The first one did meet all of the zoning and setback requirements and they had very little recourse. This one does not and they look upon it as an opportunity for them to voice their opinion in front of a group that has enforcement power and they ask that the Board vote no in granting this variance.

Mr. Charles Killion, whose address is 3309 Kappel Drive, states that he is concerned about the variance because when he moved into the neighborhood in about 1989, they had their property surveyed so they knew where their property lines were. They had a few issues with a neighbor's fence line and a power pole that was on our property instead of in the easement. They took the initiative in finding out what needed to be done and talked with their neighbors to get the issue resolved. They feel the variance should not be approved because it will set a precedence for other to seek variances. It seems to be a very large building to just be a garage especially when there is a two car garage attached to the house. He states that the garage could have been built smaller or relocated long before this situation developed.

Mrs. Bonita Longo, whose address is 212 Emerald Court, states that many of the neighbors are happy when Mr. Brown did move into the neighborhood and took over a property that sat empty for a long time. When she moved into the neighborhood in 2000, her husband wanted a second garage because he is an antique car collector. Because they wanted to be good neighbors they followed the covenants and made sure their garage was attached to their house and that they followed the zoning regulations. She feels very badly that Mr. Brown has built a building that is in violation, but she is confused as to why the proper inspections did not discover the violation early on. It could have stopped at the footer or foundation inspections that are required. She wonders if the gas and electric that are being hooked up to the garage is for the purpose of it being used as a temporary residence for family members. Is the septic system going to be connected as well?

Ms. Vietta Luking, whose address is 3310 Kappel Drive, states that she bought her property three years ago and the house Kris Brown bought was empty at the time. Through hear say, she was told that the two trees mark their property lines. Her

concern is that if she were going to build anything on her property, she would have verified where exactly her property lines were. When the construction began next door, she did go to the Building Department and discussed where the property lines were and the possibility of putting up a privacy fence at that time the footer was just started. When she saw that construction kept going in October, she had her lot surveyed to see where she stood in relation to what was going on next door. She is also concerned about the garage being on an incline and flooding my back yard when it rains.

Chairperson Horne asks that when she had the survey done was the garage next door completed.

Ms. Luking responds that it had not been completed at that time.

Chairperson Horne asks how far long the garage was at that time.

Ms. Luking responds that she believes they had just started putting the walls up.

Chairperson Horne asks if she had approached Mr. Brown or the contractor and mentioned that they may have built the garage too close to the property line.

Ms. Luking responds no but her surveyor did go over and speak to Mr. Brown. She does not know the extent of their conversation. It was out of courtesy that he did because he did not want any hard feelings between the two neighbors. He was a certified surveyor.

Mr. Stephen Milleck, whose address is 101 Stanford Place, states that he is here on behalf of his mother due to medical problems. He personally has no problem with the garage and the approval of the variance. However, his mother is not for it because she feels that if this variance is approved then others in the neighborhood will follow suit and ask for variances to build the same type of structure.

Chairperson Horne asks Mr. Brown (Applicant) if he had any comments or a rebuttal before the closing of the public hearing.

Mr. Brown states that he realizes the garage is tall but he was only trying to match the height of the house and allow him to be able to park a car and motorcycle and store some things in the loft area of the garage. The reason for the patio door on the rear of the garage is for easy access to the stairway leading up to the loft area.

Mr. Smith asks if the septic system is hooked up to the garage.

Mr. Brown responds no.

Mr. Minard asks if there is any water hooked up to the garage.

Mr. Brown responds no.

Mr. Minard asks if the gas line is to heat the garage.

Mr. Brown responds yes.

Mr. Spurlock confirms that the gas line and electrical inspections have yet to be approved.

Mr. Brown responds that they have not been approved because the building inspection was not approved.

Chairperson Horne closes the public hearing at 2:46 p.m.

Chairperson Horne states that what the Board is seeing here today is not what they are used to. The process would normally be the application for building the garage would come in and it would not have been under construction yet. The Applicant would be asking for a variance because he wanted to be closer to the property line to move away from the septic system or possibly another structure. The other situation they see is that the property owner is building a garage without pulling permits and there is a stop work order issued or has built it on their own. They have to go through the process of asking for a variance and then, if approved, proceeding with obtaining a building permit. This case is unusual and unfortunate because there will definitely be a hardship on the Applicant or possibly the neighbors as to whatever is determined. The question that kept coming up was what are the other intentions for the building being for a residence or such because of the looks of it. Mr. Brown did answer that question but that is not for this Board to get involved with. If such circumstances would come about, such as a use for an apartment or place of business, that would be another case for another Board. He asks if this Board has any questions or comments for the Applicant or for Staff.

Mr. Spurlock asks Mr. Neimayer without the electrical and gas line inspections being approved at this time if the variance was to be granted would that affect the rest of the inspections for the building in any way.

Mr. Neimayer responds that he cannot answer that. He can only say that there are some outstanding items regarding the building permit with the structure that need to be resolved.

Mr. Spurlock asks if there are other issues with the structure itself.

Mr. Neimayer responds that he does not know the specifics of it and do not know if it is just a matter of permits or updated plans or something of that nature.

Mr. Terry Shaffer, Code Enforcement Officer for Clark County Community Development, states that he was not the building inspector for this site. The gentleman that did the building inspection did question Don Messer about the location of the garage. Mr. Messer did point out where the property line was supposed to be. There is an iron pin to the rear of the property that is clearly visible that someone should have picked up on but the inspector was not made aware of that. Mr. Shaffer did take the complaint from the neighbor. When he went to investigate the building was already constructed and

that is why the Applicant is here today. The electric was hooked up by the contractor. Typically the contractor does not do that. It is usually Ohio Edison that comes out to hook up power to a structure. Only in an emergency situation does a contractor hook up the power. The electric was not inspected by our department because of the garage being in the wrong location. The gas line did show that it had been inspected by someone but we show no record of it being inspected by someone in our department. At this point he is unsure of who actually installed the gas line. The only inspection that was done on this site was the footer inspection by one of our building inspectors and the contractor at that time was the one that indicated where the property line was.

Chairperson Horne asks if contractors usually do a little more due diligence than what the contractor (Mr. Messer) had done with this structure.

Mr. Shaffer responds yes they typically do especially when the structure is that close to a property line. The contractor certainly should have identified the property line. He did speak with the surveyor, Mr. Thomas, before meeting with Ms. Luking at her property. That same day is when he took pictures of the building setback violation on the subject property.

Mr. Spurlock asks if there are any issues with the structure itself other than the electrical and gas inspections that he is aware of.

Mr. Shaffer responds that the loft portion of the building was not on the original building plans that were approved.

Chairperson Horne asks how the loft is a conflict with the building and the permit that was approved.

Mr. Shaffer responds that the plans were not reviewed with a loft nor were there plans for stairs submitted with the original building plans. He has not been in the structure personally. He does not know if code wise the trusses are floor system trusses that would support the loft. The loft area will also need to have guard rails around the open sides.

There was discussion regarding height of structure between Staff and Board Members.

Mr. Wallace addresses Chairperson Horne and states that he will need to abstain from this case.

Chairperson Horne asks Mr. Neimayer if this case is not approved what are the consequences to the Applicant.

Mr. Neimayer responds that it would be up to the Applicant to either appeal the Board's decision in court or correct the structure so it complies with zoning whether that means adjusting the structure or something beyond that. Having a fully constructed building is what will make this so difficult.

Chairperson Horne states that he would have felt better having the contractor here to answer some of the questions. He does not know if it changes anything that has happened, but he certainly could have clarified some things for us.

Hearing no further questions, Chairperson Horne asks the Board for a motion.

BZA: 1-2-2013: BZA-2013-1 ~ Variance Case ~ Kris Brown ~ Located at 104 Stanford Place ~ Moorefield Township

Motion by Mr. Minard, seconded by Mr. Spurlock, to <u>Approve</u> the Variance request as presented.

VOTE: Yes: Mr. Minard.

No: Mr. Spurlock and Mr. Smith.

Abstain: Mr. Wallace.

Motion is denied.

STAFF COMMENTS

Mr. Neimayer states there are several cases that have been filed so there will be a meeting next month. The meeting will be on Thursday, February 28, 2013. The election of officers for 2013 will be on the meeting agenda.

ADJOURNMENT

BZA: 1-3-2013 ~ Adjournment

Motion by Mr. Spurlock, seconded by Mr. Smith, to adjourn the meeting.

VOTE: Motion carries unanimously.

Jeff Horne, Chairperson	_

The meeting was adjourned at 3:01 p.m.