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Lyndhurst, Ohio  
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The Board of Zoning Appeals of the City of Lyndhurst met in Regular Session on Monday, July 10, 2017 at 7:30 p.m., in the Council Chamber of the Lyndhurst Municipal Center, 5301 Mayfield Road.

Members Present: Lesley Gordon, Chair  
David Bader, Frank Novak,  
Russell Warren

Member Absent: Kimberly Colich

Others Present: Ray Schmidlin, Assistant Law Director  
John Maichle, Building Commissioner  
Clarice J. White, Acting Secretary

It was moved by Mr. Warren, seconded by Mr. Novak that the reading of the minutes of the Regular Meeting held December 12, 2016, copies of which were mailed to all members, be dispensed with and said minutes stand approved as circulated.

The question was put to a voice vote and passed unanimously.

Motion carried.

Mr. Schmidlin gave an overview of proceedings.

**Case No. 2017-01**

**Request of Mr. Edward Arushanyan of 5275 Thornbury Boulevard, for a variance from the provisions of Chapter 1329.03 of the Building Code to permit a six (6) foot high solid vinyl fence along the south side of his property, in lieu of required fifty (50) percent open, board of board type fence.**

Grounds for appeal and Chapter 1329.03 were read by Mr. Bader, Secretary.

Letters of invitation were sent to all pertinent property owners, a copy of which is made part of the permanent file.

Mr. Maichle stated no letters were received in answer to the notification sent; however one letter from an abutting property owner was submitted with the application.

Mr. Bader read the letter from Robert Basso, 5271 Thornbury Boulevard, which stated that he has no objection to the granting of the variance; in fact it would be beneficial to him as well, due to noise and trespassing factors.

The following witnesses signed the register and were sworn in by Mr. Schmidlin:

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Edward Arushanyan, Appellant, 5275 Thornbury Bl.  
Robert Basso, 5271 Thornbury Bl.

Mr. Robert Basso, 5271 Thornbury Bl., testified that he is present to help Mr. Arushanyan due to the language barrier. He testified that both properties, his and Mr. Arushanyan's abut Lyndhurst Park, and that a solid fence is desired due to the noise from the pool and the park. He further testified that any type of fence would deter trespassers, but the solid fence would help in the reduction of the noise.

In answer to Ms. Gordon's questions, Mr. Basso testified that the proposed fence would extend from the rear of the existing house to the rear of the property. He then testified that the existing power pole designates the rear property line.

In answer to Mr. Bader's question, Mr. Basso testified there is not an existing fence at the rear property line, and there is no intention building a fence at the rear property line.

Mr. Bader stated that City Council had devoted a lot of time and effort into this newly passed ordinance which prohibits solid fences in a residential district, and he would be quite hesitant to grant a variance. He further stated that the height of the proposed fence, which is six (6) feet, is allowed.

Mr. Novak stated that he feels this property is unique due to the fact that it abuts a public park and pool, which creates noise, and is generally not an issue with most other properties in the city.

Discussion continued regarding the amount of noise a solid fence versus a fifty (50) percent open fence would inhibit.

## **FINDINGS**

The Board finds:

1. There were no objections from abutting property owners; in fact one neighbor signed a letter of support and attended the meeting.
2. Special conditions exist; the property in question abuts a public park and pool.
3. The proposed fence would only be erected along the south side of the property in question, not the entire rear property.
4. A solid fence would provide a better noise barrier.
5. Safety forces would still have access and visibility into the rear yard of the property in question.

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It was moved by Mr. Novak, seconded by Mr. Warren that recommendation be made to Council to confirm the decision of the Board to grant requested variance based on the above findings.

Roll Call: Yeas: Gordon, Bader, Novak, Warren  
Nays: None.

Motion carried.

**Case No. 2017-02**

**Request of Mr. & Mrs. Steven Newcomer of 5593 Kilbourne Drive for a variance from the provisions of Chapter 1160.04 (6) (A) and (E) of the Planning and Zoning Code, to erect a twelve (12) foot by eighteen (18) foot (216 square foot) shed on a gravel base, in lieu of the permitted one hundred twenty (120) square foot shed erected on a four (4) inch concrete pad.**

Grounds for appeal and Chapter 1160.04 (6) (A) and (E) were read by Mr. Bader.

Letters of invitation were sent to all pertinent property owners, a copy of which is made part of the permanent file.

Mr. Maichle stated no letters were received in response to the notification sent, however two letters signed by neighbors were submitted by the appellant.

Mr. Bader read the letter which states the location and size of the proposed shed, were signed by the owners of 5585 Kilbourne Drive and 5592 Kilbourne Drive, stating they had no objection to the variance request.

The following witness signed the register and was sworn in by Mr. Schmidlin:

Stephen Newcomer, 5593 Kilbourne Road

Mr. Newcomer, 5593 Kilbourne Drive, appellant, testified that he would like to build the proposed shed for storage of yard equipment, and to conduct his woodworking hobby. In answer to Mr. Schmidlin's question regarding the want for a six (6) inch gravel base instead of the required concrete base, he testified that he is trying to keep the cost down and further, he feels that the gravel base would be more comfortable.

In answer to Ms. Gordon's question, Mr. Newcomer testified that eventually he would like to install electricity in the proposed shed.

Mr. Maichle read section 102.10 of the 2013 Residential Code of Ohio regarding structures, which states structures that do not have to be code compliant and when they do have to become code compliant, which in this case states that "structures used as tool and storage sheds cannot exceed two hundred (200) square feet maximum or they have to correspond with the code in all aspects in regards to the foundation and structure." He then asked the appellant if he would be willing to reduce the size of the proposed shed from two hundred sixteen (216)

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square feet to two hundred (200) square feet, so that many aspects of the code would not have to be adhered to.

In answer to Ms. Gordon's question, Mr. Newcomer testified that he would revise his application to request a two hundred (200) square foot or less shed.

The request will be amended to show that the proposed shed will be twelve (12) feet by sixteen (16) feet and be one hundred ninety-two (192) square feet. Mr. Bader stated that this revised request is a seventy-two (72) square foot variance, plus the slab.

Mr. Bader highly recommended adding the required concrete slab in lieu of the requested variance of six (6) inches of gravel, due to small animals burrowing into the shed.

Mr. Newcomer testified that the proposed shed will be built on site, not dropped in place.

In answer to Ms. Gordon's question, Mr. Newcomer testified that if a gravel base is approved, then the proposed shed would have a wood floor, if a concrete slab is required, then no additional flooring would be included and the shed would be attached to the concrete slab.

Mr. Warren recommended that separate findings be made as to the size of the proposed shed and for the requested gravel floor.

Mr. Maichle stated that although two (2) neighbors signed letters stating they had no objections to requested variance, Mr. Newcomer did not disclose in that letter that he is also requesting a variance for base of the proposed shed to be gravel instead of the required concrete.

## **FINDINGS**

In regards to the size of the proposed shed, the Board finds:

1. There were two (2) letters submitted stating no objection to the size of the proposed shed.
2. There were no objections from abutting property owners.
3. The size of the property, which is an acre and a quarter, is substantially larger than the typical property in Lyndhurst.
4. The back yard abuts a wooded area.
5. The requested variance has been modified, the proposed shed is one hundred ninety-two (192) square feet, and will be twelve (12) feet by sixteen (16) feet.

It was moved by Mr. Novak, seconded by Ms. Gordon that recommendation be made to Council to confirm the decision of the Board to grant requested size variance based on the findings above.

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Roll Call: Yeas: Gordon, Bader, Novak, Warren  
Nays: None.

Motion carried.

In regards to the variance request for a gravel base, the Board finds:

1. There is no practical difficulty shown for the requested gravel base.
2. The letter signed by two (2) property owners, stating no objection, did not disclose that the proposed shed would have a concrete base.
3. The size of the property in question does not have any bearing on the foundation of the proposed structure.

It was moved by Ms. Gordon, seconded by Mr. Bader that recommendation be made to Council to confirm the decision of the Board to deny requested foundation variance, and require a four (4) inch concrete slab, based on the above findings.

Roll Call: Yeas: Gordon, Bader, Novak, Warren  
Nays: None.

Motion carried.

### **Case No. 2017-03**

**Request of Acacia Signature Homes for a variance at 570 Eagle Point from the provisions of Chapter 1161.11 (o) of the Zoning Code to permit a deck in the rear yard to encroach sixteen (16) feet into the rear yard setback in lieu of the permitted minimum forty (40) foot rear yard setback requirement.**

Grounds for appeal and Chapter 1161.11 (o) were read by Mr. Bader.

Letters of invitation were sent to all property owners, a copy of which is made part of the permanent file.

Mr. Maichle stated that no letters were received in answer to the notification sent.

The following witnesses signed the register and were sworn in by Mr. Schmidlin:

Pat Perrino, 6163 Mayfield Road, Mayfield Heights  
Virginia Ellen Mattingly, 410 Acacia Circle  
Kathleen Pullella, 590 Eagle Point Dr

Mr. Pat Perrino, President of Signature Homes, testified that most homeowners on this side of the development have decks, however, when this particular deck was built, it was realized

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that the plans for the deck were not approved, due to the fact that the plans for the deck were not on the original plans, and subsequently, not approved in the original permit.

Mr. Maichle stated that the site superintendent did not realize that the deck was not on the original plans and had it built; by the time the Building Department was called for an inspection, it was already complete, and the Building Department explained the process of the Board of Zoning Appeals.

In answer to Ms. Gordon's question, Mr. Perrino testified that most decks in the development required variances.

Mr. Novak asked if the back of the house, excluding the deck, extends past the site lines of the neighbors' homes. Mr. Perrino testified that he does not believe so; most homes are staggered.

Virginia Mattingly, 410 Acacia Circle, testified she is not an abutting neighbor; there is not yet a homeowners' association, but she is chair of the homeowners' committee. She wanted it known that the neighbors directly next door, (The Reardons) of the property in question, are in the process of building, and it was important to Mrs. Reardon that the Board know that she and her husband have no objections to the deck. She then stated that she and other neighbors have repeatedly asked the city and the Board, to think about the impact on the Acacia Estates community when a variance is granted. She then testified that many variances have been considered with no notice to neighbors in this development. She then testified that virtually all requested variances asked of this board have been recommended to grant, even though neighbors had not been notified.

Mayor Ward explained the notification process and the confusion with mailing out notices to property owners, citing a number of reasons why those people did not receive the notification sent. He then stated that he personally sent the notification for this meeting to Mrs. Mattingly knowing that she would email the information to all homeowners in that development.

Kathleen Pullella, 590 Eagle Point Drive, testified that she has no objection to the variance being granted. She then testified that her neighbors directly next door had a variance granted for a deck, she did not receive notification, and the deck is intrusive to her.

Mr. Bader stated that he is very disappointed that the Board has been put in this position, primarily by the builder.

Mr. Perrino accepted fault for the deck being built without a permit. He testified that it was a mistake, and was not trying to intentionally skirt the issue.

Mr. Novak stated that if the Board is inclined to grant this particular variance, any future construction without the proper permits, or not following proper procedures for variance requests will be corrected at the developer's expense.

## **FINDINGS**

The Board finds that:

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1. There were no objections from abutting property owners.
2. The hardship condition was created by action of the applicant.
3. The deck is above grade, not sitting on the ground, it is not creating a large area of impermeable surface.
4. The existing house has a walkout basement under the deck, onto grass, not a hard surface.
5. Although there have been no objections to individual decks being built, it is a general concern with the homeowners about the way the development is progressing.

It was moved by Mr. Bader, seconded by Ms. Gordon that recommendation be made to Council to confirm the decision of the Board to grant requested variance based on the above findings.

Roll Call:      Yeas: Gordon, Bader, Novak, Warren  
                     Nays: None.

Motion carried.

It was moved by Mr. Bader, seconded by Ms. Gordon that the meeting be adjourned.

The question was put to a voice vote and passed unanimously.

Motion carried, meeting  
adjourned at 8:50 p.m.

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Lesley Gordon, Chair

Approved: \_\_\_\_\_

Attest: \_\_\_\_\_