

**MONTVILLE TOWNSHIP
BOARD OF ZONING APPEALS MEETING
October 17, 2011**

PRESENT

Allen Biehl, Chairperson
Fran Eden
Terry Hughes
Ron Tanski

ALSO PRESENT

P. Jeffers, Field Assistant
B. Schwehm, Zoning Secretary
S. Hamblin L. Roach

HANDOUTS: Paperwork/Hamblin Variance

- AGENDA:**
1. Approval of Minutes – None
 2. Public Hearing/Variance/4474 Sharon Copley Road/Hamblin
 3. Public Hearing/Variance/7388 Wooster Pike Road/Roach
 4. 2012 Meeting Schedule

The Monday, October 17, 2011 meeting of the Montville Township Board of Zoning Appeals was called to order by Chairperson, Mr. Allen Biehl at 7:03 p.m.

ROLL CALL: Mr. Terry Hughes – “here”; Mr. Ron Tanski – “here”; Ms. Fran Eden – “here”; Mr. Allen Biehl – “here.”

Board Chairperson Biehl asked, “Has the meeting been properly advertised in the newspaper?”

Field Assistant Jeffers responded, “Yes, it has.”

Board Chairperson Biehl asked, “Have the contiguous property owners been properly notified?”

Field Assistant Jeffers responded, “Yes, they have.”

Commission Chairperson Biehl said, “If there is anyone here who wishes to speak on the subjects in question tonight, please sign the witness sheet out in the foyer upon entry, if you have not already done so. Anyone who wishes to speak will be sworn in before their testimony is heard. The official minutes of the meeting are typed; therefore, it is important that all participants state their name clearly, prior to providing testimony. The Board of Zoning Appeals is a quasi-judicial body that bases its decisions on facts and not opinions; therefore, we ask that your testimony also be based on facts and not on personal opinion. The typed minutes are the official documentation of the proceedings.”

1. Approval of Minutes None

Board Chairperson Biehl reviewed the agenda items for the evening and explained that there was not a full, five-person Board in attendance. If a tie vote was taken on an item, it was considered a denial of the request. After being sworn in, the applicant would have the option of requesting a full Board, and the item would be tabled to a future meeting when a full Board would be present. When a full Board was present, a three to two vote in favor of

the request would mean that the variance was approved. He asked the applicants to keep that in mind as the meeting moved forward.

2. Public Hearing: Variance/4474 Sharon Copley Road/Hamblin

Board Chairperson Biehl introduced the agenda item and read the following into the record:

- Application #09-11-030
- Letter dated 09/09/11 from SCHE Corp. addressed to the Montville Township Zoning Office and signed by Mr. Scott Hamblin.
- Medina County Tax Map showing subject property and contiguous properties.
- Aerial view of 4474 Sharon Copley Road
- Four pages of photographs of 4474 Sharon Copley Road

Mr. Scott Hamblin, applicant, and Mr. Paul Jeffers, Field Assistant, were sworn in by Board Chairperson Biehl.

Board Chairperson Biehl asked if there was anything in addition to what was read into the record that Mr. Hamblin would like to present regarding his variance request.

Mr. Hamblin said that the letter he submitted summarized his request. The variance application applied more to building procedures than a variance to allow a residential-based business. Mr. Hamblin stated that he had been at the location and in the facility since 2001 raising his family. He had two little girls. He was currently going through domestic proceedings. He was temporarily not able to be there all of the time. That was why his business operation was brought to the Township's attention.

Mr. Hamblin said that he came and went from the property usually once or twice a day with a truck and trailer. He did small landscaping projects, so he did not have people coming and going like a retail establishment. He was gone all day, so there was probably less traffic than most people had coming in and out of their driveway. He left in the morning and came home in the evening. The main reasons he picked the parcel in Montville Township to put up the building in 2001 was because it was a nice property, there was room to expand, and he could do what he and his family needed.

Board Chairperson Biehl asked if there was anything Field Assistant Jeffers would like to add before opening the item up to the Board for questions.

Field Assistant Jeffers said that paperwork was received from Mr. Hamblin, at Zoning Inspector Emrick's request, in regard to the marital situation and the court proceedings. The paperwork proved that Mr. Hamblin was able to enter and leave the property at certain times. Mr. Hamblin had also turned in a motion for exclusive use of the marital home which had been postponed in the courts until November 21, 2011.

Board Member Hughes asked if Mr. Hamblin had the necessary permits to have the buildings constructed.

Mr. Hamblin responded, "correct."

Board Member Hughes asked why Mr. Hamblin's estranged wife was now saying that he was operating in violation of the zoning regulations.

Mr. Hamblin said that because of their domestic situation, going through a divorce, she did not want him on the property which kept him away from his business and disturbed his income. Three weeks ago the court system granted him access back to his property, but he could not run a business there now. He was currently storing his equipment at a friend's facility. He had access to the property in the mornings and evenings and during certain hours of the day, but he did not want to be in violation of operating a home-operated business and run the business from the property without having the Board's okay. The building was not attached to the dwelling unit; it was an outbuilding.

Board Member Eden said that the code required the supplies to be stored in the home.

Mr. Hamblin said that the zoning text referred to storage in the dwelling unit.

Technically, he could use the garage that was part of the home, but he did not have access to the home at this time because the court had granted her (his estranged wife) possession of the residency until the situation was resolved. Mr. Hamblin said that she did not want the home, but she did not want him to have it either. However, he was fighting to keep his home.

Board Member Eden asked if the Zoning Office was aware that the accessory building was for a business when Mr. Hamblin obtained the permits.

Mr. Hamblin said that they knew the building was for storage – mowers, trucks, etc.

Board Member Eden asked why Mr. Hamblin would not have needed a variance to operate his business using the accessory building at that point in time.

Field Assistant Jeffers did not believe there was any indication in the file that the accessory building was going to be used for a business. It was for the storage of equipment.

Board Chairperson Biehl said a use variance was extremely important as far as the Board was concerned. Typically, the person who operated the business was required to live in the home. At this point in time, Mr. Hamblin was unable to tell the Board for sure that he would ultimately get possession of the home because the courts had not yet ruled.

Mr. Hamblin said that was, "correct." He provided the paperwork showing that the motion was made back in May and the courts kept prolonging it – June, then July, then August and now, it was scheduled to be heard in November. Meanwhile, he was trying to survive.

Board Member Eden asked if Mr. Hamblin's name was on the title to the house.

Mr. Hamblin said his name was on the title and mortgage. When he refinanced the house in 2004, he added her (his estranged wife) name to the deed. He said she had no financial ties to the home, and she did not care what happened to it. The courts allowed her to stay in the home. She was responsible for paying to live there and she had not. Mr. Hamblin said that he made motion after motion to have her removed so he could take over his home and children. He had to wait until November for the decision. Mr. Hamblin said he understood the Board's position because the Board did not want to be legally bound. He provided the paperwork showing that any terms she had filed against him had been released, and he had access to the property. He said this situation had been ongoing for the past year and one-half.

Board Chairperson Biehl asked if the court would make a decision regarding the property at the November hearing.

Mr. Hamblin said, “yes” that it was a divorce hearing,

Board Chairperson Biehl asked if after the hearing, Mr. Hamblin would be able to come back to the Board with the court’s decision.

Mr. Hamblin said that he would like to say a decision would be made at the hearing, but he had an inkling that it may drag on.

Board Chairperson Biehl asked Field Assistant Jeffers what impact it would have upon Mr. Hamblin if the Board tabled the item until after the hearing date.

Field Assistant Jeffers said it put Mr. Hamblin in a situation where he was still not allowed to operate out of the accessory building.

Board Chairperson Biehl said that the scheduled hearing date was about a month away.

Mr. Hamblin said that if the variance was granted, he would be working within the court allotted hours, which had been granted to him to run the business.

Board Chairperson Biehl was concerned that the courts may not rule in Mr. Hamblin’s favor.

Mr. Hamblin said if that was the case, his house would be sold and he would not be living there.

Board Chairperson Biehl said that the question the Board had to discuss was if the Board wanted to consider a variance knowing that other issues were still pending or if the Board wanted to consider tabling the variance until after the hearing date.

Board Member Tanski assumed Mr. Hamblin did not know the end result.

Mr. Hamblin said that was, “correct.”

Board Member Tanski wondered if it would be possible to take the equipment, rent a storage area, and work out of a storage facility.

Mr. Hamblin said that working out of a storage facility would be financially cumbersome at this point in time with all of his other added expenses. The mortgage was not being paid by the other party who had been court ordered to do so. She allowed the home to go into foreclosure.

Board Member Tanski asked how *she* let it go into foreclosure. He thought Mr. Hamblin was financially responsible.

Mr. Hamblin said that Board Member Tanski was correct – he was financially responsible. Mr. Hamblin said that she was ordered by the courts to pay for it. Mr. Hamblin said he cared because it was in his name and was affecting him and his credit. He had paid the mortgage up until May; he had been out of his home since August of last year. However, his attorney advised him to stop paying the mortgage, and go through the proceedings. Mr. Hamblin said she did not want to stay in the home. She did not want the home, but she would not leave the home. She was using the system to reside there at no expense because she knew they were not going to force her out.

Board Chairperson Biehl asked if the landscaping business was Mr. Hamblin’s primary business and only source of income.

Mr. Hamblin said that fourteen years ago he went full time with the business.

Board Member Tanski said he would be concerned about granting the request because the court may not rule in Mr. Hamblin's favor.

Mr. Hamblin said that he had to abide by the court allotted times to be on the property. If he had the variance, then he could go there to operate the business during the allotted times. If he did not get a favorable decision through the courts in November, then everything would be done and he would be gone (from the property).

Board Member Tanski said the house could end up vacant, and Mr. Hamblin could be running a business out of the accessory building with no one living in the house.

Mr. Hamblin said that if the house was vacant, he would take possession of the home and would be living there. He would still be presenting a variance to the Board to operate the business.

Board Chairperson Biehl asked if the variance went with the applicant or the land.

Field Assistant Jeffers said that the variance went with the land, as long as the business remained the same. If Mr. Hamblin sold the property after the variance was granted, another landscaping business could operate out of the accessory building.

Board Member Tanski asked if the Board could put a time limit on the variance in this situation or did the variance have to be permanent. Could a variance be granted for two months?

Board Member Eden wondered about the possibility of granting a temporary variance in this situation.

Board Member Hughes suggested consulting with the Township's law director regarding the possibility of a temporary variance.

Board Member Tanski was concerned that someone could operate a large landscaping business out of the accessory building if the variance was granted.

Board Chairperson Biehl said another landscaping business may not have the same standard of care as Mr. Hamblin. Once a variance was granted, someone else could operate a landscaping business from the accessory building and may do a horrible job maintaining the property.

Board Member Tanski thought the property currently looked okay. Two snowplows were parked against the building in the back, but equipment was not scattered all over.

Mr. Hamblin confirmed that two snowplows were currently stored outside, but he thought the property was not well maintained. Mr. Hamblin said that according to his standards, the property had been neglected for several months.

Board Member Tanski questioned parking business vehicles outside.

Field Assistant Jeffers said that all of the equipment was to be stored inside.

Mr. Hamblin added that the storage area was supposed to be attached to the residential building.

Board Member Tanski said if the variance was granted, Mr. Hamblin would have permission to store the trucks inside.

Board Member Eden asked if Mr. Hamblin was currently working and had an income.

Mr. Hamblin replied, "yes." He was working, but he was not working out of the Sharon Copley address. His equipment was at a friend's shop. The friend made room for Mr. Hamblin's equipment during this situation.

Board Chairperson Biehl asked if Mr. Hamblin's friend would object to him operating out of the facility until after the court hearing.

Mr. Hamblin said that he did all last year and since July, when his business was brought to the Township's attention.

At this point in time, Board Chairperson Biehl and Board Member Eden thought that it might be best to continue using his friend's facility.

Mr. Hamblin said he was looking at getting his equipment ready for snowplowing. He would not be able to bring his trucks into the shop/garage to get them ready for snow season because it would be business oriented. He could not run a business from the property or do business-oriented type of work there.

Board Chairperson Biehl asked if the snow removal part of the operation could be handled out of his friend's facility.

Mr. Hamblin said his friend was limited on space. Right now, he was taking up half of his friend's shop with his lawn mowing equipment. Usually, in the winter time, like he did last year, he brought the lawn mowing equipment back to his location and parked it inside. His friend then had full access to his own shop when he needed it for the winter season.

Board Member Hughes asked if Mr. Hamblin's estranged wife would be evicted from the house upon foreclosure. He wondered if the property was anywhere near foreclosure.

Mr. Hamblin said that the paperwork had been filed through the bank, and he was going through the motions to keep it from going into foreclosure.

Board Member Hughes asked what was keeping Mr. Hamblin's estranged wife in the house. Was the settlement not ready?

Mr. Hamblin said there was not any settlement for her. There was not going to be because of the housing market.

Board Member Tanski would like to see the resolution before voting on the variance. The variance request could be tabled, or the possibility of putting a time limit on the variance could be considered. At the end of the time limit, the variance would either be continued or it would expire.

Field Assistant Jeffers said that he could call the township's legal counsel to inquire about the possibility of a temporary variance or a variance with a time limit.

Board Chairperson Biehl said that a motion could be made to hold an executive session to discuss the matter.

Motion: Board Member Tanski moved to go into Executive Session.

Second: Board Member Eden

Board members agreed to recess for an Executive Session at approximately 7:29 p.m. The Board returned at approximately 7:39 p.m.

Field Assistant Jeffers said that he was unable to consult with legal counsel.

Board Chairperson Biehl said that when any type of variance was granted, the variance went with the land. A future homeowner could use the variance to operate a business. As a means of exercising more control, the Board typically liked to know there was some stability when a variance was granted.

With the unusual circumstances and so many unknowns, Board Chairperson Biehl said that the Board would like to table the variance request for two reasons: 1) for the outcome of the hearing on November 21, 2011; and 2) to ensure that the Township's legal counsel was in attendance to answer the Board's questions.

MOTION: Board Member Tanski moved to table the variance requested for 4474 Sharon Copley Road until December 5, 2011 at 7:00 p.m.

SECOND: Board Member Hughes

ROLL CALL: Ms. Fran Eden: "I approve."
 Mr. Terry Hughes, "Approve."
 Mr. Ron Tanski, "Approve."
 Mr. Allen Biehl, "Approve, tabling until December 5th BZA meeting at 7:00 p.m., and with the tabling, I would like to request that our legal counsel be present at that meeting."

The Board discussed that the December 5, 2011 date would give Mr. Hamblin time to get some answers and explain the ramifications to his legal counsel as far as his business was concerned. Board Member Tanski said it would behoove Mr. Hamblin to keep Field Assistant Jeffers informed about the situation. If the court decided to put the hearing off for another couple of months, nothing could be settled at the December 5th BZA meeting.

Mr. Hamblin said that he completely understood. He thought having access to the property would be enough for the Board. Mr. Hamblin said that the divorce proceedings would begin in November; he did not see that being the end of the situation.

3. Public Hearing: Variance/7388 Wooster Pike/Roach

Board Chairperson Biehl introduced the agenda item and read the following into the record:

- Application #09-11-031
- Letter from Mr. Lloyd H. Roach
- Aerial photograph of the property – Flip Map 2007
- Property map showing existing home, proposed new driveway, proposed accessory building, septic tank, septic drain, and swales.
- Drawing identifying the subject property and showing adjacent property owners.
- Memo from Ms. Judith Emrick, Zoning Inspector, dated October 4, 2011.

Applicant Mr. Lloyd Roach was sworn in by Board Chairperson Biehl.

Mr. Roach had the opportunity to build an accessory building to protect his motor home from the weather and to store a couple other vehicles.

Board Member Eden asked what type of accessory building Mr. Roach planned to build.

Mr. Roach wanted to build a pole barn with two entrances in the front. He needed a fourteen-foot door for his motor home; the other opening would be a lower door for vehicles. He planned to use two-tone siding (similar to a Morton building). He did not have any drawings of the building at the current time. The floor inside the building would be concrete, and there would be a concrete pad outside. His driveway was gravel and was shared with his neighbor.

Board Member Eden asked why Mr. Roach thought he would need a variance for the height.

Mr. Roach said the building height may not exceed the height restrictions of the zoning code; but due to the sixteen-foot wall and fourteen-foot door, he was afraid that it might. He did not know the pitch of the roof.

An architect told Board Member Eden that the usual roof pitch in Ohio was a 4/12 pitch, which would add another five feet to the peak of the building.

Field Assistant Jeffers said that the maximum height of an accessory building with a pitched roof was measured half way up the roof line. He said the peak of the roof may exceed twenty feet, but the halfway point may be less than twenty feet.

Board Member Tanski said it would be necessary to know the height of the building if a variance was granted.

Without spending a lot of money (at the risk of the variance not being approved), Board Chairperson Biehl asked if Mr. Roach could provide more detailed information regarding the building. Typically, the application was accompanied by a draft of the proposed building showing some of the architectural features, siding, height, dimensions, etc.

Board Member Tanski asked where the concrete pad would begin.

Mr. Roach said the concrete pad would probably begin at the front of the house.

Board Member Tanski said the driveway had to be located a minimum of three feet from the side property line. Board Members Tanski and Eden said it appeared that the drawing depicted the driveway closer than three feet from the side lot line, which would also require a variance. The Board discussed that it was difficult to determine the exact setback of the driveway from the side property line on the drawing that was provided.

Mr. Roach apologized for not realizing that the driveway needed to be a minimum of three feet from the side property line. Mr. Roach said the septic tank location and swales on the property influenced the proposed location of the accessory building.

Referring to the aerial photograph, Board Chairperson Biehl identified an area to the rear of the parcel which would increase the side yard setback for the building and asked if it would be a suitable location for the building.

Mr. Roach said that his septic drain ran through the location identified by Mr. Biehl.

Board Chairperson Biehl said that even though there appeared to be a lot of open space on the drawing, the septic system and swale made the areas unsuitable for locating an accessory building.

Mr. Roach said that the accessory building shown on the aerial photograph no longer existed.

Field Assistant Jeffers said that the Board may want to consider that the size of the proposed accessory building was larger than allowed and also required a variance, which had not been advertised as part of the meeting notice for the variance.

The Board discussed that there were several possible variances involved with the proposed building – size, height, setback, and driveway setback.

Field Assistant Jeffers said that the driveway was not included in the variance application and would have to be staked/located three feet from the side property line when the permit was obtained.

Board Chairperson Biehl said that when several variances were needed, it was more challenging for the Board of Zoning Appeals (BZA) to approve the requests. He said that the variance request for the side yard setback was a dramatic request.

Mr. Roach acknowledged that it was and said after looking at the site and trying to lay it out, he could not locate the accessory building on his property according to the zoning regulations.

Mr. Roach said that he was allowed approximately 700 square feet for an accessory building, and he was requesting to build an accessory building with 1,200 square feet.

Field Assistant Jeffers said that Mr. Roach would need a variance for 481 square feet.

Board Chairperson Biehl said that was also a dramatic variance request.

Board Member Tanski said that 1,200 square feet was approximately one-third more than allowed.

From Board Chairperson Biehl's perspective, he thought it would be best to address all of the potential variances at one time. Right now, the height of the building was unknown and a variance for the size of the building was not advertised. The neighbor may not care if the building was located closer to the property line, but the neighbor may be concerned about the size of the building.

Mr. Roach said his neighbor (to the north) planned to attend the BZA meeting but went hunting.

Board Member Eden asked how big Mr. Roach's lot was.

Board Chairperson Biehl said the lot was 470 feet by 153 feet. Field Assistant Jeffers said the lot was approximately 1.65 acres.

Board Chairperson Biehl asked if it was Mr. Roach's goal to construct the building before winter.

Mr. Roach said that he was looking to construct the building in the spring. Without a building, he covered the motor home with tarps for the winter.

Commission Member Tanski asked if the building would have a gravel or concrete foundation.

Mr. Roach said that the building would have a concrete foundation. Mr. Roach had lived on the property for eighteen or nineteen years, but whoever owned the home before him converted the garage (that was attached to the home) into living space.

Commission Chairperson Biehl said there was a lot more room between the house and the south property line, but a swale prevented Mr. Roach from even considering that as a possible location for the accessory building.

Mr. Roach explained that the drain under the road backed up with water because the drain was blocked across the road. Mr. Roach had underground pipe from the lake on his property to the road.

Board Member Tanski pointed out that the water flowed from the pond to the road (west to east).

Board Chairperson Biehl asked Mr. Roach to work with the Zoning Office to ensure any potential variances were included in the application and to provide the following:

- A sketch/drawing of the building including dimensions, height, size, roof pitch, etc.
- Drawing or description of the outside appearance of the accessory building, including exterior siding color, trim, roof color, etc.
- Driveway with side clearance noted.

Even though there was an amendment to the application for the size of the building, Field Assistant Jeffers told the BZA that if the item was tabled, it would not be re-advertised. In addition, contiguous property owners would not be re-notified regarding the size of the building.

The Board and Mr. Roach discussed the meeting schedule for the BZA. Mr. Roach requested that the item be tabled to the BZA meeting in December which would give him time to get the requested drawing and information.

MOTION: Board Member Tanski moved to table the variance request for 7388 Wooster Pike to December 5, 2011 at 7:00 p.m. to allow the applicant to put together a drawing of the structure of the building, and give more details as to what the building would look like, along with showing how the driveway was going to fit.

SECOND: Board Member Eden

ROLL CALL: Mr. Ron Tanski, "I approve."
Mr. Terry Hughes, "Approve."
Ms. Fran Eden: "I approve."
Mr. Allen Biehl, "Approve, tabling to December 5th at 7:00 p.m."

4. 2012 Meeting Schedule

The Board discussed the Board of Zoning Appeals meeting schedule for 2012 and considered scheduling one meeting a month and adding meetings as necessary, or scheduling two meetings per month and cancelling meetings as needed.

MOTION: Board Member Hughes moved to plan on two meeting a month in 2012 and canceling if nothing was on the agenda.

SECOND: Board Member Tanski

ROLL CALL: A collective oral vote was taken with all Board members responding “aye.”

MOTION: Board Member Hughes moved to adjourn the meeting.

SECOND: Board Member Eden

A collective oral vote was taken with all Board members responding “aye.” The October 17, 2011 Board of Zoning Appeals meeting was adjourned at 8:16 p.m.

Respectfully submitted,

Bonnie Schwehm

Signature _____
Chairperson

Date _____