



Scott County Board of Adjustment

November 20, 2013

1st Floor Board Room Administrative Center

Members Present: Dittmer, Gallin, Madden, Winborn

Members Absent: Scheibe

Staff Present: Timothy Huey, Brian McDonough

Others Present: Two (2) members of the public – Applicants Todd and Joy Schmidt

1. **Call to order.** In the absence of Chairman Scheibe, Dittmer served as Chairman and called the meeting to order at 4:00 P.M.
2. **Minutes** – Winborn made a motion to approve the October 23, 2013 minutes. Madden seconded the motion. **All Ayes (4-0)**
3. **Public Hearing – Variance** – Todd and Joy Schmidt of 6470 145th Street, Section 31 of Blue Grass Township.

Planning Director **Tim Huey** presented the case. He explained the nature of the request and the events preceding. He showed aerial photos of the property including surrounding properties and zoning. The existing house is pre-1900, and there was an existing, non-conforming detached garage located just west of the house. The garage was partially located in the property's front yard. Huey explained that the garage was built prior to zoning in Scott County, and therefore it has grandfathered status, until its destruction or removal. In April of 2013 the applicant's contractor applied for a building permit on their behalf to move the old 24' x 22' garage to a new foundation at the rear of the property, and to construct a new 24' x 30' garage in its place, but conforming to current setback requirements. The permit was issued on the basis that the new 24' x 30' garage could not be placed in the same location as the one which was removed, and the contractor was told this on more than one occasion. In order to conform to setbacks the new garage must be built in a side or rear yard established by the front plane of the house adjacent to the road easement. The homeowner was also told this same information when they called regarding potential locations for the new garage.

On August 6th, **Huey** failed a footing inspection for the new garage due to the fact that the footing was dug in the same location as the previous garage, and being partially located in the front yard. At this point the contractor was notified, and the applicant came in to

discuss their options. During that conversation, the applicant's asked if the old 24' x 22' garage could be moved back to its previous location. Staff determined that the new foundation did not constitute more than 60% of the value of the old garage, and therefore it could be moved back to its original location. Huey prepared a letter for the applicants stating that the building permit was amended to allow the old garage to be moved back to its original location and placed on the new foundation, with the condition that the foundation be inspected for compliance with building code requirements, as it was designed to accommodate a larger structure. Huey explained that upon final inspection it was determined that the old garage was not moved back, but rather remained on the rear of the property. Furthermore, a new 24' x 30' garage had been constructed on the new foundation, with partial wall members from the old garage installed to present the appearance that the old garage had been moved back. These wall members did not constitute 60% of the value of the old building. In fact, every aspect of the 24' x 30' garage including: framing, siding, roofing, etc was new except for the few wall boards transferred over from the old garage. At this point Huey recommended the applicants apply for a variance otherwise the department would be forced to issue a certificate of non-compliance against the property.

Huey paused for Board discussion and public comments.

Joy Schmidt (applicant) explained the reason for the variance request. A drainage way, responsible for draining over 100 acres of Ag land, cuts across their property. The location of the water when it floods effectively prevents the new garage from conforming to setbacks. There is also sloping topography immediately behind and north of the garage site where the drainage way begins. She mentioned that a previous property owner grazed cattle on part of their property and mentioned that in times of heavy rainfall the cattle were only accessible by boat. Their property is irregularly shaped, has road frontage on two sides, and is adjacent to a Highway 61 interchange as it passes through Blue Grass. She mentioned that there were communication issues between the department and themselves. They were not aware that the garage could not be located in the previous spot. She stated that the topographical issues and the presence of the drainage way constitute a hardship, and thanked the Board for their consideration.

With no one else from the public wishing to speak, Chairman Dittmer asked for staff's recommendation.

Huey stated that staff recommended approval of the request with no conditions based upon the existence of an unnecessary hardship resulting from the exceptional situation created by the topography and drainage of the property as well as its unique location.

The applicant had no response to the recommendation.

Chairman Dittmer closed the public hearing, and a brief discussion by the Board took place.

Gallin asked about the location of the septic system on the property.

Joy Schmidt responded that it is located on the north side of the house, and not near this project.

Gallin asked about the effects of granting a variance in this case.

Huey explained that once it was discovered that the new garage had been constructed in non-compliance, he informed the applicants that he would file a certificate of non-compliance against the property, but would suspend this action pending their submittal of a variance application. If the Board approves the variance, a copy of the Decision and Order would be sent to the applicants, at which point they could file it with their abstract. He explained that the variance runs with the property and would be valid in a case of change in ownership.

Dittmer asked for a breakdown of the timeline of events.

Huey briefly explained the sequence of events. He explained that the permit was issued in April on the basis that any new garage would have to meet current setbacks. Even though the old garage was moved to a new location on the same property and not destroyed, its grandfathered status at the old location was lost once it was moved. After failing the footing inspection and amending the permit to allow the old garage to be moved back to its original location, it was discovered that only a few wall board members were moved back, and well over 60% of the new 24' x 30' garage was, in fact, new construction. At this point the applicant's options were either to tear down the new structure, deal with the filing of a certificate of non-compliance against their property, or apply for a variance for the structure to remain legally.

Winborn made a motion to approve the variance. Gallin seconded.

Vote: All Ayes (4-0)

Dittmer entertained a motion for adjournment. Winborn moved to adjourn. Madden seconded.

Vote: All Ayes (4-0)

The meeting adjourned at 4:25 P.M.