

PLAINFIELD BOARD OF ZONING APPEALS
March 20, 2017
7:00 p.m.

CALL TO ORDER

Mr. Monnett: I will now call to order the Plainfield Board of Zoning Appeals meeting for March 20, 2017.

ROLL CALL TO DETERMINE A QUORUM

Mr. Monnett: I will now ask our Board Secretary to have the roll call for determination of a quorum.

Mr. Klinger: Ms. Duffer- here
 Mr. Monnett- here
 Mr. Cavanaugh- here
 Mr. Philip- here
 Mr. Slavens- here

Everyone is present and accounted for.

PLEDGE OF ALLEGIANCE

Mr. Monnett: Would you all please rise for the Pledge of Allegiance.

APPROVAL OF MINUTES (February 23, 2017)

Mr. Monnett: I will now entertain a motion for approval and or amendments to our meeting minutes from February 23, 2017.

Mr. Slavens: Motion to approve.

Mr. Philip: Second.

Mr. Monnett: I have a motion and second, all in favor say aye, thank you.

Ms. Duffer: Please let the record show that I abstained from voting since I was absent at the last meeting.

OATH OF TESTIMONY

Mr. Daniel administered the Oath of Testimony.

PUBLIC HEARINGS

Mr. Monnett reviewed the Guidelines Governing the Conduct of Public Hearings.

PETITIONS FOR PUBLIC HEARING

Mr. Monnett: Our first petition tonight is BZA-17-002.

Mr. Berg: We are looking at a variance of Development Standards to allow structures to project in the front and side yard setback. At 227 Hancock and Franklin, Main will be up here. When this was built the setbacks for the

front were less than 25, then as times changed and the ordinance has changed setbacks have gotten greater making this a legal non-conforming use. What they are looking to do is add a roof over that, also over here they've got a shed which is in the setback about 3'. Both of these were constricting the front yard setback, it was constructed before the current owners of the property so they haven't created the situation they kind of inherited it as they purchased. We are looking to also remove this part of the shed here that is part of the garage addition. That keeps them under the lot coverage amount, so they have avoided 3 variances. Most of the houses in this area if you are looking at them at a side gable they are adding a cross gable here which they won't conflict with the other residents. You can't read it on here but it looks like the sign has been replaced. Again the look is intended to compliment and not contradict with the nearby homes. Side view, you can kind of see the structure how it will come out and cover the deck area. From the rear this is what you see here, you won't see it as much because that will be pushed back, existing garage addition, the shed that will remain, and that is the shed that part will be removed. I mentioned earlier that the applicant did not cause the legal non-conforming status. It was also mentioned in the conditions that a building permit is required for this work. I think they have already talked to Ed and Jake in the building department about that. Also any work to enclose, they haven't said they were going to do this but just kind of a FYI, if they were to enclose that deck to make it into a 3 season or anything like that would also require an additional permit. Conditions, we are looking for substantial compliance with the site plan that you have in the packet. Again the building permit requirement for this and for any potential work. I know the applicant is here and if you have any questions for me I will answer them otherwise I will turn it over.

Mr. Monnett: If the petitioner is here if you would like to come forward please.

Mr. Brickey: Good evening, David C. Brickey I currently live there, 227 Hancock road. Eric kind of covered what we are trying to do, obviously we are trying to upgrade the house a little bit. In the warm weather obviously nice having the porch. The side of the garage is pretty cut and dried, just more or less an area for things to put in there for myself for our lawn furniture and stuff.

Mr. Monnett: Do you know how long the garage has actually been there?

Mr. Brickey: I was told that that neighborhood was built in the 50's for the CSX and I was told a gentleman actually stopped by one day when I was in the garage, which he was up in the years but he claims he had built it sometime in the 50's back then.

Mr. Monnett: Which would have been what, County zoning, Mr. Daniel back then?

Mr. Daniel: Well the 50's was prior to Town then. I think the first County zoning was '58 but I could be wrong.

Mr. Monnett: So you are proposing the wooden shakes on the very front and then the top is like a vent?

Mr. Brickey: Yes.

Mr. Monnett: Okay, because the residence is vinyl, correct?

Mr. Brickey: It is vinyl now, yes.

Mr. James: Wooden shakes or vinyl shakes?

Mr. Brickey: Right now it is vinyl, shakes are vinyl. The new ones would be a vinyl upgraded shake, yes.

Mr. Monnett: I have no further questions.

Mr. Cavanaugh: Mr. Brickey your intent for the garage addition is just for additional storage space? Could we talk you into taking the rest of that shed roof down?

Mr. Brickey: That was the reason we moved it back 2 feet so we could meet that variance so we wouldn't have to have that third variance so we moved that back 2 feet.

Mr. Cavanaugh: You are taking part of this shed roof there north of the garage, you are taking part of that off, are you still going to use the rest of that?

Mr. Brickey: Yes.

Mr. Cavanaugh: I don't have any further questions right now.

Mr. Monnett: If there is anyone here for or against this petition please come forward at this time. Seeing none I will close it to the public and I will open it up to our board for any discussions and or a possible motion.

Mr. Cavanaugh: I think it is a reasonable request and not a condition caused by the owner and well suited for a variance. Unless there is other discussion or questions I'm prepared to make a motion. I move that the Board of Zoning Appeals approve BZA-17-002, as filed by David Brickey, requesting a Variance of Development Standards to allow structures to project into the front and side setbacks subject to the following conditions:

1. Substantial compliance with site plan submitted site plans dated February 21, 2017.
2. An approved building permit will be required prior to the construction of the roof structure or garage addition.
3. Should enclosure of the porch space be desired, an approved building permit will be required prior to construction.

Ms. Duffer: I will second.

Mr. Monnett: I have a motion by Mr. Cavanaugh and a second by Ms. Duffer. Mr. Klinger would you poll the board?

Mr. Klinger: Ms. Duffer- yes
Mr. Monnett- yes
Mr. Cavanaugh- yes
Mr. Philip- yes
Mr. Slavens- yes

BZA-17-002 is approved 5-0.

Mr. Monnett: Our next petition tonight, BZA-17-003.

Mr. James: Good evening Mr. Chairman and members of the board. This request is a variance to allow a storage shed to encroach 2' into the south yard setback at 5965 Pennekamp Court. It is in the Glen Haven plan unit development. A Shed has been in place since 2009, the violation was reported last year. Glen Haven PUD requires an 8' side yard setback with a 20' aggregate. The shed complies with the rear setback and is out of the 40' drain easement landscaping per the site plan. There is no easement in that south side yard. The PUD zoning commitment does not allow storage sheds, it does not allow out buildings. Here is the site, Center Ridge over here zoned R-3. Here is aerial view with the MGIS, the plot line is a little off just to give you the dimensions of the lot and the shed is right there. The shed at one time was right on the lot line with no setback but it has been moved back about 6'. Here is a site plan that shows as it exists today. It abuts right up to their deck so it can't be moved anymore out of the setback. The dimensions of the lot was plated and it shows a 40' drainage and landscape easement back here and there is no easement in the south part of the lot. Photo of the shed after it has been moved, I am not sure if that fence is on the property line or not, but I think it is about 6' away. Here is tape measurer showing the distance from the fence. A building permit is not required for a structure less than 200 square feet that is not on a foundation and a shed is 168 square feet, so these are difficult to enforce. You usually don't hear about them until after the fact, after they have been there for a while and somebody reports them. On Pennekamp Drive alone almost 40% of the lots have an accessory structure and most are in violation of a side yard or a rear yard setback. So they are in violation of that zoning commitment that you can't have an outbuilding. The shed was moved 6' and now encroaches only about 2'. It can't be moved any further back because of the deck. It does comply with the aggregate side yard setback which I think the aggregate now is about 22' so does this justify the variance and to make all existing sheds legal in Glen Haven the legal conforming, the PUD would have to be amended by removing the no out building restriction and all homeowners in the PUD would have to be noticed. If you see fit to grant this the variance could be granted with the condition that the PUD is amended. With that I will have a seat and the petitioners are here in case you have any questions for them.

Mr. Monnett: If the petitioner would like to come forward please.

Mr. Mikesell: My name is Michele Mikesell, I live at 5965 Pennekamp Dr. I don't really know what else to say that he didn't already cover. The shed has been there I thought since 2011, it may have been 2000. So it has been there about 10 years. It was in a nice spot in between the 2 yards when we first brought the shed home, we had to side it, paint it, and roof it to match the house according to the Home Owners, which we did. We never had a problem with the way it looked or where it set. It is a nice looking shed, none of the neighbors ever said anything to us or we never thought it was an issue until now when it brought to our attention of the setback lines and of course when you bring a shed to the neighborhood you are not made aware of the setback line. So we didn't know at the time that we brought the shed home even that those were in existence until just September of 2016. At that point it was getting ready to be bad weather so we had to wait a little bit and it took a lot of effort to move the shed because it is 12' X 14' so we had to add some metal to the front and back and strategically move it over as far as we could. We have since we brought the shed home built a deck on the back of the house, so where the deck is even, this is my house, the back of

the deck is even with the back of the house so the shed is now moved right up against the deck, which in my opinion looks silly where it is at. It doesn't look as good as it did prior to moving it. I don't know what else we could do at this point besides ask for a variance.

Ms. Duffer: I have a question for you. Did you have to petition your HOA to bring the shed into the neighborhood?

Ms. Mikesell: No we just told them that we were bringing a shed home and what their reply to us was that it had to be sided and painted to match the home.

Mr. Cavanaugh: Do you have an active HOA now?

Ms. Mikesell: Yes we do.

Mr. Cavanaugh: Is it made up of residents or is it a management company?

Ms. Mikesell: It is a management company.

Mr. Cavanaugh: So even though there is a zoning commitment against having sheds anywhere in the neighborhood they told you it was okay.

Ms. Mikesell: And the other people too. It is in our covenants that your sheds have to match your home that is how it is stated. So of course as just a homeowner you know well I need to bring a shed home so I can put my mower and stuff, we put seat cushions and that stuff in there, mowers, weed eaters the normal stuff.

Mr. Monnett: When did you put the deck on?

Ms. Mikesell: We added the deck in...

Mr. Monnett: After the barn?

Ms. Mikesell: It was much after the barn.

Mr. Monnett: Did you pass the homeowners, did you have to go through them for the deck?

Ms. Mikesell: Yes we did.

Mr. Monnett: If there is anyone in the audience that would like to speak for or against this petition please come forward.

Mr. Mikesell: I am Andrew Mikesell, I'm her husband. I am the one that brought the shed over there. On this variance that we are asking for we moved the barn all the way to the deck and it has created another problem because now the water runs off the roof of the barn and now we have a covered part where chairs and stuff is, so now when the rain comes all the water just rushes on the deck, so in the variance I am asking that we could move the barn. We moved thought putting the barn we were going to try to live with that being the way that it would be if we didn't have the option, but it has caused, now that that problem is there, so now we want to try to move the barn a little bit away from it because I had a gutter on both sides, I did the barn nice it is finished inside and out, electric and everything I just wanted to have a little bit of space for when the rain comes down it doesn't

run on the deck. I wanted to try and see if we could maybe split the difference because there is a privacy fence on the right side of the barn, so when you are looking at it I don't see any reason what a problem for anybody if it is centered in between the 2 like we had it before, or just part of the way over if that is possible.

Ms. Duffer: I have a question for you. There seems to be a cable or wire coming out of the ground then it goes out to the shed, is that electricity?

Mr. Mikesell: Yes I just ran a UF wire it actually runs underneath the barn.

Ms. Duffer: And you connected it in from the electrical box that is at the front of the property?

Mr. Mikesell: No it is just from the deck, it is a weather proof extension cord.

Mr. Cavanaugh: To make sure that I am understanding correctly the petition we have in front of us is to allow 2' encroachment into the side yard setback and now you are asking to move the barn further back towards the privacy fence which will increase the encroachment into the setback. Are you wanting to put it back where it was?

Mr. Mikesell: I'm not asking to put it back where it was I am asking to move it enough away so that the water if you can see in the picture.

Mr. Cavanaugh: So if you are asking to move it here this evening instead of having to move it 6' like it is now you would end up with it being moved 3'?

Mr. Mikesell: Yes, right now as it stands I am just under 8' from the actual fence to the shed. I am 6' on the property line to the barn and then there is another 2', so there is basically 8' almost between the barn and the shed now.

Mr. Cavanaugh: So you want to go back about ½ way from where you are now?

Mr. James: What is the minimum?

Mr. Mikesell: I would want to keep it as close as I can and not have any problems, but I just want to move it away enough because then I am going to have to get between there to maintain whatever grass grows in between there, I just don't want that to create another problem. Right now I have space between the shed and the wall where the overhang comes down, I wish I had a better picture of that.

Mr. James: You got a gutter?

Mr. Mikesell: Yes I had it on all sides but I took the other gutter off to actually gain that 5" to move it closer to the deck thinking I might get enough to meet the requirements.

Mr. Philip: Do you still have the gutter?

Mr. Mikesell: I destroyed it. I would like to put another one back on.

Mr. James: That will help the water right?

Mr. Mikesell: Yes but I can't because there is posts that come up so you can't put the gutter on right now, it is too tight.

Mr. Philip: So if you move 2 feet and put the gutter back you think you would be in decent shape?

Mr. Mikesell: If I had a couple feet I would be fine.

Mr. Monnett: Any further questions for Mr. Mikesell at this point? If there is anyone else that would like to come forward.

Mr. Kaiser: Hello, my name is Raoul Kaiser I am at 5967 and I am the owner of the privacy fence. So to be honest I really don't know if I for or against the variance. One I don't really see the shed, but the ordinance does say 8' and that is what I was standing by. I just wanted the variance to come before and go through the proper process and not just be handed to him and say hey you can do whatever you want. My only concern with where it is at now is I believe it is a fire hazard. The reason why I say that is there is a grill on the back yard on the deck, there is a clay oven on the deck and there is electricity going into that shed. When you look at that shed and see that wire, the top of that wire looks exposed. I can't tell for sure because I don't go on their property. Now since he owns 3 businesses and he runs it out of his house, construction there is a lot of flammable materials that he stores or could possibly store in that shed, that is concern. Also the fact that when it was close he stored all of his trash and extra wood in everything in between that little area and that was only a foot. If that wasn't enough he would put it behind my fence. Several times my wife had to go back there and move it out of the way, several times we have asked him not to do that and it continued to be there along with trash and everything else that comes along with it. That is one of the reasons I don't want it right next to the fence. I don't want that to come back and build up again. With all of that trash that was there when it rained, it came down and what trash and bacteria and stuff rushed into my yard.

Mr. Monnett: I understand your concern but we are actually here for the variance on the property line, what you are talking about I totally understand but that is something you should probably talk to your Home Owners Association about.

Mr. Kaiser: About the fire hazard?

Mr. Monnett: No about the trash and things.

Mr. Kaiser: Excuse me let me clarify that, the only reason I didn't want to go back is because of that trash. The trash is done he stores it behind his shed now. If something was to catch on fire that is close to his deck so his deck and that shed are about a foot away from all of those trees. If those two go up it is going to hit those trees and go straight down the line that is my only concern. If you guys are comfortable with that and you guys sign off on the variance, great you won't hear another word from me, if you don't you still won't hear another word from me. It is your guys' decision. I am just concerned about the fire hazard in that place. That is all I have.

Mr. Doebler: Good evening my name is David Doebler, I live at 5962 Pennekamp Court. I would like to clarify a few things and I apologize this is not meant as disrespect towards the Council. First of all I talked to Terry in the Board of Zoning and he told me that sheds were allowed south of Pasco as

long as they have 8' between the property line and the shed. North of Pasco it is 6' and then there are duplexes way in the back in the very north but it is closest to the Police Academy where they are not allowed to have at all. That is the only area that Terry told me where sheds were absolutely not allowed. Mine is actually only at 6' and I will be moving it even without you asking me to because frankly when I had it put in it was professionally installed by Lowe's and they told me that the zoning rule was 6'. So there has obviously been some confusion because north of Pasco has 1 set of rules, south of Pasco has another. This is the point where I hopefully you will understand. I would like everything that is being told said here today about the fire hazard, the trash and the storing of flammable materials to be taken with a grain of salt. First of all Andy is very kind to me, I destroyed my edger earlier this year I've been using his edger. I've been in that shed probably 15-20 times and there is a small one gallon can of gas, there is nothing else flammable in there except for the gasoline that is actually in the machines, there are not that many machines it is well kept and it is not so full that it is a hazard. I would also like you to take notice of the fact that Mr. Kaiser began this with a complaint with the home owners association regarding Mr. Mikesells trucks. I would have you know that recently I took 2 days off of work to testify in a court case because Mr. Kaiser had gone so far as to take this to court and force the home owners situation to take it to court. Then after that there was a disagreement about a Suburban which was legally parked in running condition, tagged and insured. It was partly on the Kaiser property and partly on the Mikesell property. Mr. Kaiser called the Board of Zoning several times to complain until Terry came out and said there is nothing wrong it is legally parked. When that happened Andy moved that vehicle and since then since October there has been a silver minivan there that is not legally tagged, it wasn't at first but it is now legally tagged. I am sure it is insured, but I want to point out that it has not been moved for the 5 or 6 months that we are talking about because this personal vendetta between these two.

Mr. Monnett: I understand your dilemma but we have nothing to do with that right now.

Mr. Doeblner: I'm just asking you to take that with a grain of salt.

Mr. Monnett: I know but I just need to tell our board that has nothing to do with what is in front of us. It is important what you are saying but it has nothing to do with our decision.

Mr. Doeblner: With respect there would have never been a complaint by Mr. Kaiser if there was a little bit more maturity was being shown, sir. Thank you.

Mr. Monnett: It is a personal matter.

Mr. Doeblner: Yes it is a personal mess.

Mr. Klinger: Joe are you looking at the PUD?

Mr. Monnett: That is what I was going to ask you.

Mr. James: The additional commitments they apply to both section A and B. Mikesell's property is in area A but they apply to both sections, the way I read it.

Mr. Monnett: If there is anyone else that would like to come forward please do. Seeing none I will close it to the public and I will open it up to our board for further discussion and maybe a possible motion. Our dilemma as a board. Okay that was put there, we have no control over these covenants, they are more strict than a lot of the ordinances we have in Plainfield. Then the deck was there, well that is why you have Home Owner's association where you pay your dues and that is why you actually have a covenant, you've hired management which is out of our control. Some of their stuff I understand that gentleman was concerned with, but is something you talk to your homeowners that is not what is in front of us. What is in front of us is a little bit of a dilemma because we have what, 38.8% of other homes in that area have some type of outbuilding, correct?

Mr. Daniel: Yes I looked at this pretty quickly but I don't see any distinction here between sections A, B, or C. The commitment section doesn't seem to make any distinction it just says no out building shall be allowed. So that we don't get things confused these are not the home owner's restrictions, these were the commitments that were made when this PUD was approved by the Plan Commission. So that is a zoning commitment that was agreed to and approved when that plan unit development was approved by the Town.

Mr. Slavens: So then the covenants is then going against...

Mr. James: Yes that is correct, the covenants are not consistent with the zoning commitments.

Mr. Daniel: Are you talking about the homeowners covenants?

Mr. James: Yes.

Mr. Klinger: Have you looked at those, Joe?

Mr. James: I have not.

Mr. Philip: So what we have been told, so what we have been told of the covenants has been consistent with the zoning?

Mr. Daniel: If I may add a little bit, I mean we started talking here about setbacks and what one says, if it is not allowed there is not a setback requirement, it is not a matter of if it is a setback of 6', 8' or whatever else, if there is a covenant when the PUD was approved of no buildings then there is no setback that applies to this particular building as far as the setbacks are concerned. I will just add one more thing while we are talking and Kevin has already raised this. This was noticed for public hearing asking that he be allowed to be able to leave it where it is now. So the board, you can change that based upon legal notice if it is stricter, but what you can't do is when you have given legal public notice do something is less than what you published in the public notice.

Mr. James: So the correct thing to do would be to continue it and re-notice it for a less setback?

Mr. Daniel: Well 2 or 3 things here Joe, that doesn't solve the commitment problem.

Mr. James: Right.

Mr. Daniel: But to the extent that the zoning board would consider allowing him to go forward with this and give him a variance, if he wants a variance different than what he has asked for here, it would have to be re-noticed.

Mr. Cavanaugh: I think it would be fair to have some input from the petitioner then prior to having any further discussion?

Mr. Monnnett: Yes.

Mr. Cavanaugh: Mr. Mikesell and Mrs. Mikesell do you understand what we are talking about by re-noticing? Stop me if I get it wrong. This is advertised to the public so everybody has an opportunity to see what the variance request is for. Right now it is to allow you to have 2' projection into the setback area. What you have asked for this evening is to move the building back closer to the privacy fence thereby making the incursion and setback greater, say 4-5'. So the notice that was sent out to tell people what we are talking tonight would be incorrect if you went ahead and voted on that, perhaps. So the option is that we go ahead and we vote and whatever way that would be or we can decide to continue that if you really want to move the building that closer to the fence it will have to be re-noticed and we would have to continue here this evening because you need to be properly noticed for the public.

Mr. Mikesell: I understand what you are saying. The reason we moved the barn all the way over is because I didn't want to move it until we had this meeting, I just did that thinking if we moved it all the way over it was going to help solve some issues. I am trying to solve the issues and not have to take the barn out or whatever. I didn't realize my wife and I talked about it when we moved it over I didn't realize until these last few storms the problem that I have with the water. So we went ahead and moved it over trying to not have any problems with anybody, I thought I will just move it as far as I can and I was going to leave the gutter on it but I still had that space between, so I thought if I got a little bit closer just take the gutter off maybe this will help. So that is why I did that. Doing the variance itself, I understand if I have to move it a little further over that is fine. I just want enough so that I can have the space to take care of the weeds, I take very good care of my grass I try to make sure it is treated so I want to make sure I keep everything looking nice, that is why I am trying to get it a little farther, I mean I don't really care how far you guys are allowing me to move it back, just enough so I don't have the issue with the water problem is all I am trying to solve.

Mr. Cavanaugh: Right, I understand that.

Mr. Mikesell: I understand if we have to redo this if that is what I need to do then I will notice it if I need to do that and pay more fees.

Mr. Cavanaugh: I think the only thing we can do tonight is vote on as submitted.

Mr. Daniel: That is correct.

Mr. Cavanaugh: So if we were to vote tonight and say grant that variance then your shed has to stay where it is. So if you want to come back and re-notice it for a different location that is what it will take.

Mr. Mikesell: I would rather come back, I don't think anybody that has a house would want to live like that and create the problems that I've got.

Mr. Cavanaugh: I don't disagree with that.

Mr. Monnett: If we did go forward and vote would we also have to put in there that we would want to amend that PUD zoning commitment or is that totally different?

Ms. Duffer: Totally different.

Mr. Daniel: That is totally different.

Mr. Monnett: That is what I thought.

Mr. Daniel: If he is asking this to be continued you grant it or you don't and he amends his petition regarding what Mr. Cavanaugh was talking about.

Mr. James: We will need a condition to amend the PUD. If they chose to grant...

Mr. Daniel: Well Joe you can't put a condition because a PUD to be amended has to go to a public hearing, so this board cannot in advance amend the PUD without prior to the public hearings.

Mr. James: Eric is checking on the notice to see exactly how it was worded.

Mr. Klinger: The amendment to the PUD would seem to be the way to resolve issues.

Mr. Daniel: We may need to talk about that at some length.

Ms. Duffer: So we are holding until Mr. Berg gets back with the notice.

Mr. James: Yes.

Mr. Philip: So Mel if we are aware that the home owners association is not administering to the zoning.

Mr. Daniel: They should be put on notice that they are violating zoning every time they approve one.

Mr. Monnett: So they should be put on notice for each...

Mr. Daniel: Well they should be told period that they cannot give anybody permission to put an accessory building on that property.

Mr. Philip: They would be called in a Plan Commission not to here.

Mr. Daniel: Right.

Mr. Philip: Basically what we could do is put them on notice to cease and assist basically.

Mr. Daniel: Yes.

Mr. James: Eric says it is still printing. It doesn't give a certain distance, it just says to allow a storage shed within a side yard setback. So that may give you flexibility.

Mr. Slavens: Would it appropriate to ask for a copy of the covenants? Because it seems we have conflicting...

Mr. Daniel: Although the Towns policy has always been that they do not knowingly violate covenants but here we have just the opposite. We have covenants that violate the zoning commitments on this so the real issue will be they should be put on notice that they should not be granting anybody because of the covenants. That management company should be on top of this but obviously not.

Mr. Mikesell: If we have a homeowners association if they are saying you can't have barns in here, period, why is the home owner's association allowing people to bring these in here.

Mr. Daniel: There is nobody here to answer that. When the zoning was approved it was approved with a commitment that there would be no accessory building. I've put buildings in the neighborhood and I have never had a problem and they have never said anything.

Mr. Daniel: But you are talking about the homeowners and not this board here.

Mr. Cavanaugh: It seems fair to presume that the restriction commitment never got incorporated in the covenants. Typically when that is being developed the developer is going to have that responsibility and those covenants are going to be set up and recorded by the developer as lots are sold and we have enough population base they are going to create the homeowners association or have a management company take over the covenants.

Mr. Klinger: It will be interesting to see if there were subsequent amendments to the covenants that allow even though it wasn't originally allowed.

Mr. Daniel: The notice says the variance with development standards to allow a storage shed within the required side yard setback and of course there is no required yard setback because it is not allowed at all. That is not a reflection on the staff that is because of the situation we have here. So as far as the 2' or 4', I don't think that is significant tonight.

Mr. James: In the zoning ordinance there is no side yard setback for an accessory structure.

Mr. Daniel: Exactly right.

Mr. James: It is always what the primary structure is, so that is just what we were going by.

Mr. Daniel: Right.

Ms. Duffer: So then my understanding is then Mel that there is nothing to vote on because our ordinance and the PUD says that there is no setbacks so we can't grant something if there is no outbuildings allowed.

Mr. Daniel: It is a technical legal question and the answer is, now we have another question, which your comment raises. This doesn't give a notice to allow them to violate the commitments. Because we are away from the 2', 6', 8' issue that is resolved. The notice does not indicate that this is going to be a public hearing that would allow them to violate the commitments of this PUD, which is what the board would have to do if it voted in favor of this.

Mr. James: Well like I said earlier you can't do it on a condition that the PUD gets amended.

Mr. Daniel: No. What this board cannot do is bind anybody, I mean what you are saying is they could approve this on the condition that the PUD get amended so they can have an accessory building, is that what you are saying?

Mr. James: Yes they remove the restriction.

Mr. Daniel: Right, but in the meantime he is in violation, I mean because if and when that ever occurred if it does or it did up until then he is still in violation.

Mr. Cavanaugh: I am prepared to make a motion, but because I think we have a larger issue to deal with that is not these folks problem. If we continue to address their issue that has been presented this evening it may not resolve in the same answer if a larger problem is fixed. From my perspective I would hate to run over somebody's work that they have done on one instance when it is prevalent in the area. I am not sure what the other process is to get the larger question resolved, but I don't think that I am prepared to move forward with an answer to their request this evening. I think we should continue it and I think that would be up to this board to develop to develop a course of action to get the larger problem addressed and then we can more properly deal with this particular issue and perhaps others. I hate to infect perhaps punish the petitioner when it is not necessarily a problem they have created.

Mr. Daniel: And I am not trying to persuade the board one way or another but I think that is a good idea, I would encourage you to treat this as, as long as this is continued that that accessory building should be left where it is and then to the extent the greater problem is resolved and then that will resolve everybody's but there will be no enforcement action taken so as long as the building stays where it is.

Mr. Cavanaugh: I may offer a little explanation, I think we need to have the change made to the zoning commitment. That is not something that the public is prepared for this evening and that is not something this board is prepared for this evening, it is not something that you necessarily can bring forward I don't think. So if we are proceeding your request this evening it is probably not going to come out well for you. I am going to move that, in a minute I will make my official motion that we continue this so that hopefully we can work with the home owners association and get the overall issue whether a storage buildings or out buildings are allowed or not, get that corrected and then your issue is still there and becomes a different and more easily dealt with condition. Right now we are trying to fix something that the only way to fix it is to make every storage building disappear from that subdivision and that is not likely to happen. So that is unfairness to people who did things with what they thought were in accordance with the subdivision, covenants, and restrictions. I think that you have been given

the information that you believe to be true and we need to try to figure out something to do to fix that because it is different from the Town rule is right now. None of your doing. With -that I move that the Board of Zoning Appeals continue BZA-17- 004 as filed by Michele E. Mikesell, requesting approval of a variance to allow a shed to encroach into the side yard setback from the south property line subject to the following conditions;

1. That the shed remains where it is and not be moved until further determination is made and no enforcement action will be taken as long as the shed remains where it is right now.

Mr. Klinger: Point of order it is BZA-17-003, is that correct?

Ms. Duffer: I will second the motion.

Mr. Monnett: I have a motion by Mr. Cavanaugh and a second by Ms. Duffer for a continuance. Mr. Klinger would you please poll the board?

Mr. Klinger: Ms. Duffer- yes
 Mr. Monnett- yes
 Mr. Cavanaugh- yes
 Mr. Philip- yes
 Mr. Slavens- yes

BZA-17-003 is continued by a vote 5-0.

OLD BUSINESS/NEW BUSINESS

Mr. Monnett: Mr. James any old business and or new business?

Mr. James: No that is all that we have for tonight.

ADJOURNMENT

Mr. Monnett: Motion for adjournment?

Mr. Cavanaugh: So moved.

Mr. Monnett: Thank you.