

**LIVONIA JOINT ZONING BOARD OF APPEALS**  
**Meeting Minutes - November 19, 2012**

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**PRESENT:** Chair. P. Nilsson, J. Case, C. Rider, M. Sharman, R. Ehmann, J. Campbell - Town Attorney, K. Masterson - Code Enforcement Officer, Tammie Schwerzler - Acting Recording Secretary

**EXCUSED:** B. Weber

**AGENDA:** - Joanne Buchanan  
- 3851 Kathryn's Way  
- Area Variance  
- 12' x 12' Storage Shed

Chair. P. Nilsson opened the meeting at 7:03 p.m.

Chair. P. Nilsson asked the board to review the November 5, 2012 meeting minutes. M/2/C (M. Sharman/C. Rider) to adopt the November 5, 2012 Livonia Joint Zoning Board of Appeals meeting minutes as presented.  
Motion carried 5-0.

Recording Secretary read aloud the first Legal Notice:

RE: Application of **Joanne Buchanan** for a public hearing requesting an Area Variance to place a 12' x 12' storage shed which violates the setback requirement according to Section 150-31 G and Section 150-42 A according to the Town of Livonia Zoning Codes. The property in question is located at 3851 Kathryn's Way Livonia, New York and is zoned Neighborhood Residential (NR) Zoning District.

Chair P. Nilsson polled the board members for site visit:

Chair. P. Nilsson	-	yes
C. Rider	-	yes
J. Case	-	no
R. Ehmann	-	yes
M. Sharman	-	yes

Chair. P. Nilsson informed Joanne that each of the board members have visited her property prior to tonight's meeting. He asked her to explain her request.

Joanne approached the board and explained that she and her ex-fiancé purchased the property in 2002 and started building the house. When Joanne was ready to put a shed on the property, she had seen that there was a pile of stone in which she figured her ex-fiancé placed there for the shed to be placed upon.

Prior to putting the shed there, Mr. Gilbert informed her that the proposed location would place the shed over their shared property line. Ms. Buchanan asked Mr. Gilbert where he thought the best location might be. He gave her an indication of where to place the shed, and she did so. She felt this was the ideal location because it is the flattest part of her yard. It is next to a paved driveway entrance off Rte. 20A, as well as a tree, in which she couldn't place the shed any closer to.

She admitted that she knew nothing about zoning codes or setback requirements from property lines. She only did what she thought was the right thing at the time.

She maintains her property and takes great joy in its appearance. She often receives compliments about how nice it looks by neighbors, friends, people from St. Matthew's Church and from Mr. Gilbert in the past. He told her once that Mr. Schuster who lives across the street often told Mr. Gilbert that she has made great improvement in the property.

Joanne further explained that because it was very important to her that her property is appealing, and because the siding and roofing materials she used on the residence was no longer available in this area, she ordered matching siding from a company in Nebraska and drove to Syracuse to pick up the delivery.

M. Sharman asked Joanne when she moved the shed. Her answer was, "withing a few days after Jerry told her it was over the property line, which was seven years ago."

C. Rider wanted verification. "So you moved it seven years ago when you were first advised where you should place the shed?" Joanne replied yes.

Chair. P. Nilsson opened up the public hearing portion of the meeting. He explained that if someone wished to speak, they needed to state their name, address for the record, and their reason for being here.

Jerry Gilbert, 5928 Big Tree Road, is the owner of the subdivision where Joanne's house is located. He stated that a portion of what Joanne said is accurate and part is not. When Joanne first put the shed on her property, he saw a crew delivering the shed and knew immediately it was off her property. He showed her where the pins were. He said he never advised her as to where the shed should be placed, he only showed her the pins. He is not a Zoning Officer so he didn't feel it was his job to tell her where to place the shed. He thought she would abide by the zoning setbacks.

M. Sharman asked Jerry if he owns the property to the South and East of Joanne. Answer was yes.

Jerry stated that there is no tree near the shed, it's by the road. And the driveway she's talking about is an existing curb cut to the Schuster property that was paved by the person who built the house.

Jerry stated that it is his understanding that one must prove a hardship or lack of space. He said she owns the biggest lot on the street and that there are five other lots in the subdivision and these people were able to abide by the setback requirements. When he built the houses, he applied for variances to allow the houses to be constructed closer to the road to allow for larger back yards so there's plenty of room for accessory buildings to be placed within the proper setbacks. He feels it's not fair to everyone else. His main concern is that he doesn't want this to set a precedence for others to place things ahead of time and then ask for a variance after the fact. He's hoping that the housing market, gas prices, etc improve soon because he has a theory to build patio-homes to the east of Joanne's property, with smaller yards and smaller houses. The shed will be too close to those structures. The shed is 3' off the property line, not 14 or 15 feet. She was asked once to move it and she didn't.

Erin Bills of 3854 Kathryn's Way asked to speak. She explained that she had spoken to all neighbors within the subdivision except for Jerry Gilbert. All neighbors said they did not have a problem with the shed being in it's location on Joanne's property. Each of these people signed a petition stating that fact. She said she didn't go to the Gilbert's home for obvious reasons.

Joanne stated that some of the neighbors have told her in the past that their sheds are closer to their property lines than what Livonia Town Code allows.

Chair. P. Nilsson closed the public hearing portion of the meeting at this time.

M. Sharman wanted clarification of which property Jerry owned.

Jerry replied, "The property to the east as well as the property to the south of Joanne's.

M. Sharman asked Jerry if the sheds on the Kidder and Prato properties were within the required setbacks. Jerry said that the Kidder shed was, but he was uncertain of the Prato shed.

Jerry explained that he has placed posted signs along Joanne's eastern & southern property lines he shares with Ms. Buchanan. He knows that according to Livonia Town Code, if a shed is 120 sq. ft. or smaller, one can place the shed as close as four feet to a side and rear property lines. This shed is 144 sq. ft. and should be further from the property lines, fifteen feet from the side property line and thirty feet from the rear property line.

Joanne asked to address the board again. Before she went any further, she wanted to apologize to the board. She has not been completely forthcoming with some things. She further explained that in July Jerry's four dogs came into her yard and began fighting with her two dogs. Jerry's son began whipping and beating her dogs with a leather leash and raised his arm to do what she thought was the same to her. She felt physically threatened by him. He verbally attacked her as well, screaming and yelling at her. Joanne called the sheriff's office and asked to press charges against his son Tim and to have a protection of order put in place.

Neighbor, Erin Bills, was a witness to this.

Within days of this incident and since then, she has been blackmailed and harassed by Mr. Gilbert. He has placed posted signs about every twenty feet along her east and south property lines. He painted the sticks bright orange and all signs are facing her property. She feels it distracts from her property that she tries to keep very nice. Joanne's neighbors are upset about seeing the posted signs in the neighborhood. In addition, Mr. Gilbert has told her that if she pays the \$1,500 in court fees that his son was charged then this will all go away. He says this to her in a sing-songy voice. "Fifteen hundred dollars, and this will all go away."

Joanne stated that there is a utility pole at the property line and she has always mowed around the pole. Mr. Gilbert had her arrested for trespassing onto his property when she mowed in October.

In addition, Jerry told her that he was coming to the ZBA to make a complaint about her shed so she will have to move it.

Again, Joanne apologized to the board, but she felt it was important to be up front at this point. She is embarrassed that she had to reveal all this. She did say that she has copies of police reports if they'd like to see them.

M. Sharman asked Town Attorney, Jim Campbell if there is any way we can be privy to the reports, if so, could he get copies for this board?

Jim said they may or may not be available to us, but the victim can get copies and bring them into the Building & Zoning Department.

Jim stated that it is obvious to him that this has become an instrument for revenge. He then asked when the shed was placed in this location.

Joanne replied, "In 2005." She stated that the dog incident happened on July 14, 2012.

Joanne explained that Mr. Gilbert had told her in the past that Mr. George Schuster who lives across the street has said numerous times how nicely she has improved the property and that he enjoys looking at it.

C. Rider asked Joanne how the dogs got onto her property. Joanne said they just came over when they saw my dogs in my yard.

Chair. P. Nilsson then asked the Board to review the **Area Variance** legal criteria:

- (1) Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by granting the variance?  
- no
- (2) Can the benefit sought by the applicant be achieved by some feasible method other than a variance?  
- feasible, but being it was placed there in 2005, 2012 is late!
- (3) Is the request substantial?  
- yes
- (4) Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood district?  
- no
- (5) Is the alleged difficulty self created?  
- yes

Chair. Nilsson asked for any questions or comments from the board.

M. Sharman stated that he'd like to see copies of the police reports. All board members agreed.

Chair. P. Nilsson tabled a decision from this board until such time they have the opportunity to review the Sheriff reports. Joanne will get copies to Kevin or Tammie. Tammie will send them to the members prior to the next meeting. That meeting will be held Dec. 3, 2012

Joanne explained that she has never been involved in anything like this in the past and must apologize for not being up-front from the beginning, but she didn't think they would have wanted to hear all this.

M/2/C (M.Sharman/J. Case) to adjourn the meeting at 7:45 p.m. until December 3, 2012.

Respectfully submitted,

Tammie Schwerzler  
Recording Secretary

/ts