

North Middleton Township Zoning Hearing Board

Township Building
2051 Spring Road
Carlisle, PA 17013

Minutes of the Zoning Hearing Board Tuesday, January 13, 2009

The meeting was held at the North Middleton Township Building on Spring Road, in Carlisle, PA.

Attendance

Board Members-**James Hare** (Chairman), **Henry Weeks** (Vice-Chairman) and **Mark Carpenter** (Secretary)

Solicitor-**Michael Rundle**

Zoning Enforcement Officer-**Ruben Lao**

The scheduled stenographer did not appear this evening. The statements documented on the following pages were taken from one of two audio recordings made during the hearing.

Visitors

Daniel R. Miller-1051 McClures Gap Road, Carlisle, PA

Yvette M. Miller-1051 McClures Gap Road, Carlisle, PA

Call to Order

Chairman Weeks (for 2008) called the meeting to order at 7:00 p.m. He asked Mr. Lao to lead the Pledge of Allegiance.

Reorganization of the Zoning Hearing Board for 2009

Henry Weeks asked for a nomination for Chairman.

Mark Carpenter moved to nominate James Hare for Chairman of the Zoning Hearing Board. Henry Weeks seconded the motion. There was no opposition to the nomination, and the motion carried. Mr. Hare accepted the position of Chairman.

Chairman Hare asked for a nomination for Vice-Chairman.

James Hare moved to nominate Henry Weeks for Vice-Chairman of the Zoning Hearing Board. Mark Carpenter seconded the motion. There was no opposition to the nomination, and the motion carried. Mr. Weeks accepted the position of Vice-Chairman.

Mr. Hare asked for a nomination for Secretary.

Henry Weeks moved to nominate Mark Carpenter for Secretary of the Zoning Hearing Board. James Hare seconded. There was no opposition to the nomination, and the motion carried. Mr. Carpenter accepted the position of Secretary.

The Zoning Hearing Board lineup for 2009 will be:

- Chairman-**James Hare**
- Vice-Chairman-**Henry Weeks**
- Secretary-**Mark Carpenter**

Minutes from Tuesday, October 14, 2008

Chairman Hare asked for any changes, additions, or corrections to the minutes from the Tuesday, October 14, 2008 Zoning Hearing Board meeting. None were requested.

Henry Weeks moved to approve the October 14, 2008 minutes as presented. Mark Carpenter seconded. All votes were in favor and the minutes were approved as written.

Daniel R. Miller, #08-08, Variance Request

Mr. Hare introduced the Application as follows:

This is the time set aside by the North Middleton Township Zoning Hearing Board to hear the Application #08-08; Mr. Daniel R. Miller of 1051 McClures Gap Road who is applying for a Variance to allow the installation of a storage shed pole bar per North Middleton Ordinance 204-14, Table 2.

Mr. and Mrs. Miller came forward. Mr. Hare asked who would be testifying. Mr. Miller indicated that he would be. At this time Mr. Miller was sworn in by Mr. Hare. Mr. Hare turned the proceedings over to Solicitor Rundle who conducted the questioning.

At the request of Mr. Rundle, Mr. Miller identified himself as Daniel R. Miller of 1051 McClures Gap Road, Carlisle. Mr. Rundle asked who the owner of the property is. Mr. Miller testified that he is the owner. Mr. Rundle asked Mr. Miller if he owns the property together with his wife or alone. Mr. Miller stated that he owns the property alone and that the other name on the property would be his mother, who is deceased. He testified that at present, he is the sole owner of the property.

Mr. Rundle asked Mr. Miller if it was correct that he has requested a Variance on the property to construct a shed. Mr. Miller replied, "Yes, that's correct." Mr. Rundle then referred to what he had labeled as Applicant's Exhibit #1; a sketch that Mr. Miller had labeled as Plot Plan "A." Mr. Rundle asked Mr. Miller to identify which direction was north. Mr. Miller looked at A-1 and stated that north would kind of be directly out over the part that was marked "Slate Hill." Mr. Rundle then asked to call the top of the page the north, the bottom of the page the south, the right-hand side of the page the east, and the left-hand side of the page the west. Mr. Miller agreed. Mr. Rundle asked Mr. Miller if this drawing accurately depicts what is currently on the property. Mr. Miller responded, "Yes it does."

Mr. Rundle said he wished to talk about the structures that are on the property right now. Mr. Rundle referred to the southwest corner where he said there appears to be a garage. He asked if this was correct. Mr. Miller responded:

Yeah, that would be the...actually the start of the whole property back in the 1950's. They built a little garage down at the foot of the hill. My property is really hilly. It's hard to depict in a picture, in a drawing like this, but the garage itself sits right kind of like into the bank. There's like probably at least a 40-foot bank right behind the garage itself.

Mr. Rundle pointed out that Mr. Miller had the word "hill" written immediately to the north of the garage. He asked if this was correct. Mr. Miller acknowledged that that was correct. Mr. Rundle again referred to A-1 and asked if this depicts the garage as being 38 feet by 35 feet. Again, Mr. Miller indicated that this was correct. Mr. Rundle noted that there was something immediately to the south of the garage, closer to McClures Gap Road labeled a "rubber room." Mr. Miller testified that this is what he calls his rubber room.

Mr. Rundle asked Mr. Miller to explain what that is. Mr. Miller testified that it is basically a storage room which has a wooden framework to it. Mr. Rundle asked if it has a roof on it. Mr. Miller replied, "It has a wooden roof on it, but the roof and the side walls are rubber." Mr. Rundle asked if the structure is totally enclosed. Mr. Miller answered, "Yes." Mr. Rundle asked if it is attached to the garage. Mr. Miller responded, "It is attached to the garage with a little walk-through door from the garage to the rubber room." Mr. Rundle asked if it is, in effect, one large structure as opposed to two smaller ones. Mr. Miller replied, "Yes, I would say." He added that the rubber room has a wooden floor and the garage has a concrete floor so that it is not possible to store anything heavy in the rubber room area. Mr. Rundle asked what the garage is utilized for. Mr. Miller replied, "Right now I actually have a race car, so we use it mainly for recreational use." Mr. Rundle asked what the rubber room is utilized for. Mr. Miller answered, "Storage."

Mr. Rundle then asked to go farther back on the lot, where there appeared to be the main structure. He asked if that was the main structure in the center of the lot. Mr. Miller answered, "Yes." Mr. Rundle asked if that is the home itself. Mr. Miller replied, "Yes." Mr. Rundle noted that the home has a deck on the southern portion. Mr. Miller indicated that this was correct. Mr. Rundle asked if this is an elevated deck. Mr. Miller replied, "Yes." He stated, "When you're standing on that deck you're probably looking down to the driveway maybe four stories."

Mr. Rundle referred to the area immediately to the east. He noted that a porch is depicted there. He asked Mr. Miller to describe that. Mr. Miller testified that this is enclosed and is basically used to keep plants in during the winter time. He also stated that this is used as a smoking area, since smoking is not allowed in the house and that there are a couple of small chairs out there.

Mr. Rundle referred to the house itself and asked if it was correct that the house is 35 feet by 38 feet. Mr. Miller answered, "Yes." He testified that the house is one story.

Mr. Rundle then mentioned the area further to the north where a car port is indicated. He asked if this is enclosed. Mr. Miller responded, "No, just a roof." Mr. Rundle noted that there appears to be a pool immediately to the west of the house. He asked if this is an aboveground pool. Mr. Miller answered, "Yes." Mr. Rundle then referred to the area to the northeast of the house where there appears to be what is called an "existing shed." Mr. Miller stated that this is just a small storage shed. Mr. Rundle asked if that shed is 12 feet by 12 feet. Mr. Miller acknowledged that this was correct. Mr. Rundle asked if that shed is on a foundation. Mr. Miller responded, "No." Mr. Rundle asked if it is a portable shed. Mr. Miller stated, "It is a portable shed." Mr. Rundle asked, "So it is possible to move that shed?" Mr. Miller replied, "It could be moved, yes."

Mr. Rundle then referred to an arc of hashed lines in the northwest corner of the lot with the words "Slate Hill" written inside the arc. He asked Mr. Miller to describe what he means by that. Mr. Miller responded to Mr. Rundle:

That's basically why I'm here. Directly behind my house, which they would consider my back yard is that massive slate hill that I really can't do anything with without major bulldozer work. The Variance I'm asking for is because I live on a corner property and the side there, which would be the east side, actually has about a 30 or 40-foot embankment that goes down to the road.

At this point Mr. Rundle indicated to Mr. Miller that, "We're going to get there." Mr. Rundle noted that the house has an address of McClures Gap Road. He asked if the house fronts on McClures Gap Road. Mr. Miller replied, "Yes." Mr. Rundle referred to the eastern boundary of the property and noted the words "Union Hall Road." Mr. Miller stated, "Correct." Mr. Rundle again referred to the eastern boundary, or the Union Hall Road side of the property and noted the words "embankment." Again, Mr. Miller stated, "Correct." Mr. Rundle then referred to two sheets with some photographs that had been attached to the Application. Mr. Rundle labeled as Applicant's Exhibit A-2 a sheet with three photographs numbered 1, 2, and 3. Mr. Miller indicated that he understood.

Mr. Rundle referred to photograph #1 on A-2. He asked Mr. Miller where he was standing when that picture was taken. Mr. Miller replied, "I would be standing on Union Hall Road taking a picture up over the bank towards where I want to put the building." Mr. Rundle asked Mr. Miller if it was correct that he was facing west, taking a picture of his eastern boundary. Mr. Miller answered, "Yes." Mr. Rundle asked if it was correct that the road seen on A-2, photograph #1 is Union Hall Road. Mr. Miller responded, "Correct."

Mr. Rundle then referred to photograph #2 in the upper left-hand corner of A-2. He asked Mr. Miller where he was standing and what he had taken a picture of there. Mr. Miller replied, "That would be a similar picture standing on Union Hall Road, again taking a picture of the bank and the existing shed that's up there." Mr. Rundle asked if it was correct that the shed that's up there is the 12-foot by 12-foot shed. Mr. Miller responded, "Correct."

Mr. Rundle referred to photograph #3 on A-2. He asked Mr. Miller where he was standing and what he was taking a picture of. Mr. Miller stated, "I would be standing again on Union Hall Road and this time the picture would be south, down towards the corner of McClures Gap and Union Hall Road." Mr. Rundle asked Mr. Miller if the right-hand side of photograph #3 shows the embankment leading up to his property. Mr. Miller replied, "Correct, that's showing the embankment." Mr. Weeks pointed out the mailbox seen in photograph #3. He asked Mr. Miller if this was his mailbox. Mr. Miller responded, "That would be my neighbor's mailbox." Mr. Weeks then noted the drive immediately to the right of the mailbox. Mr. Miller testified that this is his neighbor's driveway. Mr. Weeks asked, "Not yours for access to the hill?" Mr. Miller stated, "Correct."

Mr. Rundle asked to look at some more pictures. He labeled as Applicant's Exhibit A-3, a sheet with three photographs labeled 4, 5, and 6. Mr. Rundle referred to photograph #4. He asked Mr. Miller where he was standing there and what he was taking a picture of. Mr. Miller stated, "I would be standing approximately at the top of my driveway taking a picture north." Mr. Rundle asked Mr. Miller if he was facing towards the rear of the property. Mr. Miller replied, "Towards the rear of the property, correct." Mr. Rundle then noted the structure in this photograph. He asked if this was the 12-foot by 12-foot shed. Mr. Miller replied, "That is the 12-foot by 12-foot shed, yes."

Mr. Rundle then referred to photograph #5. He asked Mr. Miller if it was correct that he was standing at the intersection of Union Hall and McClures Gap Roads, and facing northwest toward his property. Mr. Miller stated, "Yes." Mr. Rundle asked if this photo shows the house. Mr. Miller answered, "The house and the embankment."

Mr. Rundle referred to photograph #6 on A-3. He again asked Mr. Miller where he was standing and what he was taking a picture of. Mr. Miller stated, "I would be standing right by my carport taking a picture kind of northeast in the area of where I want to put the shed, again showing the steep embankment behind the house." Mr. Rundle asked Mr. Miller if this is the embankment that he has labeled "Slate Hill." Mr. Miller replied, "That's the embankment I have labeled Slate Hill, correct."

Mr. Rundle then marked as A-4, what Mr. Miller had labeled as Plot Plan "B." Mr. Rundle noted that this has all of the same structures that had just been talked about. He asked Mr. Miller what it was that was being indicated in the northeast corner of his property. Mr. Miller stated, "A new shed." Mr. Rundle asked Mr. Miller if this is what he wants to put up. Mr. Miller replied, "Correct." Mr. Rundle asked what the dimensions of the new shed will be. Mr. Miller responded, "They would be 28 by 34." Mr. Rundle asked if this is 28 feet wide by 34 feet deep. Mr. Miller stated, "Correct."

Mr. Rundle asked what the purpose of the shed will be. Mr. Miller testified:

The purpose of this shed will be to store my vehicles in to help bring my property within code and also help protect my vehicles. I have a couple of '65 Mustangs, so it's probably not a bad idea to get them out of the weather.

Mr. Rundle indicated that he wished to talk about the '65 Mustangs. He asked Mr. Miller if his involvement with the '65 Mustangs is a hobby or a business. Mr. Miller stated, "Oh, it's strictly a hobby." Mr. Rundle

asked Mr. Miller if he has personal vehicles as well that he personally operates on a day-to-day basis. Mr. Miller replied, "Yes." Mr. Rundle asked, "How many?" Mr. Miller responded, "Myself, I have two trucks that I drive and my wife has a vehicle that she drives; a car." Mr. Rundle asked Mr. Miller where those vehicles are typically stored when they are not being operated. Mr. Miller stated, "Under the carport." Mr. Rundle asked if this is all three vehicles. Mr. Miller replied, "No, the one would sit there to the side in, I think you labeled it maybe Exhibit #3, picture #6, the one vehicle kind of sits there to the side." Mr. Rundle asked Mr. Miller if it was correct that the new shed would not be used to store his daily-use vehicles, but would be for the storage of his "hobby vehicles." Mr. Miller answered, "Correct." Mr. Rundle asked where the door access to the shed would be. Mr. Miller stated, "That would be one big door right in the front which would be on the south side." Mr. Rundle asked, "Access to that shed would be how?" Mr. Miller responded, "You would drive right alongside the existing 12-foot shed." Mr. Rundle asked which side. Mr. Miller testified that this would be the east side. Mr. Rundle asked if this would be between the shed and the embankment. Mr. Miller stated, "Between the shed and the embankment, yes."

Mr. Rundle noted that on the exhibit there is a driveway bounded by hashed lines. Mr. Miller acknowledged that this was correct. Mr. Rundle asked what the surface of the driveway is. Mr. Miller testified that it is stone. Mr. Rundle asked Mr. Miller if he has another driveway or if he anticipates placing another driveway going back to the new shed. Mr. Miller answered, "No, just because it's for storage vehicles."

Mr. Rundle referred to A-3, photograph #4. He asked Mr. Miller if this shows what he proposes as the access to the shed. Mr. Miller responded, "Yes." Mr. Rundle asked, "Basically you would be driving right up there along where it looks to be a white Mustang in the rear?" Mr. Miller responded to Mr. Rundle:

Yes, where the white Mustang and the little red corner of the truck there you see, that's where the shed would be. Actually I have to remove a little bit of the slate bank in order to get it over far enough because I wanted to keep it plenty far enough back from the edge of the bank...kind of erosion or anything like that I don't want the bank to start to give way. I want to keep the building back far enough.

At this point Mr. Hare indicated that he had a question. He asked Mr. Miller what the distance is going to be between the existing shed and the new shed. Mr. Hare referred to A-4 and said he was assuming that after approaching the new shed from the east side of the existing shed it will be necessary to make a left turn and then a right turn to get into the new shed. Mr. Miller responded to Mr. Hare:

All I can say is there is enough room to do it. I thought I had that measurement from the back of the property line to the front of the existing shed, but I'm not seeing that on my drawing. I may have missed putting that on there.

Mr. Hare asked if there is enough room to manipulate into the new shed, going in back of the existing shed. Mr. Miller answered, "Yes." Mr. Hare had nothing else at this point.

Mr. Rundle referred to his earlier question about the existing shed being portable. Mr. Rundle asked Mr. Miller, "If necessary, would you move the existing shed to the west, closer to Slate Hill to gain access to the new shed?" Mr. Miller responded, "That is possible, although, it's not shown very well in the picture...picture #4 shows it a little bit better. There's not a whole lot of room to move it over." Mr. Weeks said he wished to clarify Mr. Miller's testimony. Mr. Weeks asked Mr. Miller, "It is possible if necessary?" Mr. Miller stated, "I would have to get a bulldozer and move some of the hill, yes."

Mr. Rundle noted that Mr. Miller had attached to his application an advertisement from a company called Fetterville Sales. Mr. Miller acknowledged that this was correct. Mr. Rundle asked Mr. Miller if this is where he proposes to buy the shed. Mr. Miller stated, "That is where I propose to buy the shed, yes." Mr. Rundle marked the advertisement as A-5. Mr. Rundle asked Mr. Miller if this is the advertisement showing the various sheds offered by Fetterville Sales. Mr. Miller answered, "Yes." Mr. Rundle asked Mr. Miller which of the designs he is choosing for his shed. Mr. Miller replied, "To be honest, none of them." Mr. Miller stated, "Inside their advertisement they have a bazillion different configurations. It would basically be the type of shed that they are showing there for agricultural use, except the shed would only have one

overhead door." Mr. Rundle asked Mr. Miller if he would have one overhead door facing McClures Gap Road. Mr. Miller answered, "Yes." Mr. Rundle again referred to A-5 and asked which of the three examples shown there the structure of the building will be similar to. He further asked if it will be the commercial or the residential. Mr. Miller replied, "Well, I would have to go more with the residential, definitely not the commercial, because we did go with the overhang to get the water away from the footer of the building and, you know, the enclosed garage door without the windows and that kind of..." Mr. Rundle asked, "So if you took one quarter of that building for example, that would be similar to what your shed will look like?" Mr. Miller responded, "Yes." Mr. Rundle asked, "With one door facing McClures Gap?" Again, Mr. Miller stated, "Yes."

Mr. Rundle asked Mr. Miller who owns the property immediately to the north of him which has the mailbox. Mr. Miller testified that he doesn't know who they are or what the address of the property is. He clarified this:

You're going to laugh but that's what Ruben asked me way back in the beginning. He said is your neighbors going to have any problems. I said Ruben, I have the best neighbors there is. We don't bother them. They don't bother us.

Mr. Weeks asked Mr. Miller if this would be Sam and Beth Meno of 641 Union Hall Road. Mr. Miller stated, "Yes, his name is Sam." Mr. Rundle asked what is located on that property. Mr. Miller testified that it is a double-wide or modular home.

Mr. Rundle asked who owns the property immediately to the west on McClures Gap Road. Mr. Miller stated that that would be Melvin Kelley. Mr. Rundle asked what is on that property. Mr. Miller said that this would be the original Kelley farm. He stated that the barn has been torn down but the house is still there. Mr. Miller added that Mr. Kelley has a couple of sheds and some other things on the property.

Mr. Rundle then asked what is on the corner directly across Union Hall Road. Mr. Miller testified that this is the conference center that used to be Camp Shand and the Penn-Del Conference Center. Mr. Rundle asked if it was correct that this is not a residential property. Mr. Miller testified that this was correct.

Mr. Rundle asked Mr. Miller, "Why do you need the shed?" Mr. Miller stated, "For storage of my collector vehicles." Mr. Rundle asked Mr. Miller, "As far as location on your property is concerned, why do you feel it has to go in the location where you are proposing?" Mr. Miller responded, "Without major bulldozer excavation, that's about the only place to put it." Mr. Rundle asked Mr. Miller if he would have to do considerable earthmoving to put it in immediately to the rear of his home. Mr. Miller answered, "Correct." Mr. Rundle asked, "Because of the location of Slate Hill?" Again, Mr. Miller stated, "Correct."

Mr. Rundle asked Mr. Miller how long he has owned the property. Mr. Miller testified that he has owned the property for about 15 years and that he has lived there his whole life. Mr. Rundle asked Mr. Miller if his mother owned it before that. Mr. Miller indicated that this was correct.

Mr. Rundle asked for any questions from the Board. Mr. Weeks had no questions. Mr. Hare had no questions. Mr. Carpenter referred to the indication on the east side of the property that the shed would sit 31 feet from a line along Union Hall Road. He asked what this line represents. He asked if the line represents the macadam or the right-of-way of Union Hall Road. Mr. Miller stated, "That would be the edge of my property to the right-of-way to Union Hall Road, yes." Mr. Carpenter had nothing else at this point.

Mr. Rundle asked Mr. Miller if there is any room to move the new proposed shed closer to Slate Hill. Mr. Miller responded to the question:

The way things stand now, I have to do some excavating in that slate hill. The slate hill is blue slate. It is very tough. It would take a big bulldozer to move it much further over than where we have it laid out. Like I said, when I measured it out I tried to take into consideration as far over that way as I could keep it without an extreme amount of work.

Mr. Rundle referred to the hashed line depicting Slate Hill. He asked Mr. Miller if this depicts the base of the hill. Mr. Miller replied, "Pretty much." Mr. Rundle asked how much room there is now between the base of the hill and the proposed western wall of the new shed. Mr. Miller responded, "None. I would have to remove a little bit of the existing bank in order to get that west wall over as far as where we have it now." Mr. Weeks followed up by talking about moving the new shed 8 feet to the west which would put the new shed in line with the existing shed. He asked if this would be impossible without the big bulldozer. Mr. Miller indicated that this was correct.

Mr. Hare asked what would happen if the two sheds changed places so that the existing shed was placed further to the rear and the new shed further forward and closer to the house. Mr. Miller responded to Mr. Hare:

The existing shed is...we use it more often. It's for things like the riding lawn mower and all that kind of stuff, and if I had that at the back of the property, constantly running over everything with the lawn mower, getting it in and out, and the kids' bikes and everything in the shed, I'm just thinking the design would be better if the storage shed was behind the stuff that was in the shed that we use more frequently.

Mr. Rundle asked Mr. Miller, "Is that purely for your convenience?" Mr. Miller responded to Mr. Rundle:

That and trying to keep it from getting muddy. The property has very little topsoil on it and we actually have hauled topsoil in there along the front corner and around that shed that's sitting there, and if you had to start driving things back through there on any type of regular basis it would get muddy quick.

Mr. Carpenter indicated that he had another question. He referred to Exhibits A-1 and A-4 that Mr. Miller had provided to show the property layout. Mr. Carpenter asked if these were based on a survey plan or if they were based on a deed. Mr. Miller responded:

They are based on...we walked around and measured everything. We had the basic property layout, deed layout, and then we just kind of measured in from the sides and measured the sides of the buildings and laid everything out on the property the way it was to the best of our ability.

Mr. Carpenter asked Mr. Miller if there were any survey markers at the corners of the property to identify where the corners of the property are. Mr. Miller replied, "There are some metal stakes, yes." Mr. Carpenter asked if these are at each of the four corners. Mr. Miller stated:

Not at all four corners. The north corner...let's say the northwest corner, the southwest corner both have property markers. The other two corners are kind of to the right-of-way of Union Hall Road.

Mr. Carpenter asked Mr. Miller how he determined the width of the right-of-way of Union Hall Road. Mr. Miller responded to the question:

I tried to measure from the center of the road over as far as I could and basically determined that I started at the bottom of the bank. The bank is about 25 feet from the center of the road over to the bottom of the bank, so I started my measurements at that point.

Mr. Carpenter asked Mr. Miller if he had assumed a 50-foot right-of-way on Union Hall Road. Mr. Miller answered, "Yes." Mr. Carpenter asked Mr. Miller if he was aware of what the front yard setback is that is allowed in the Agricultural Zoning District that he lives in. Mr. Carpenter referred to Section 204-14, Table 2. Mr. Miller replied:

Not exactly, I...to be honest, until this all came up I never even realized by any means that that was my front yard. Because, really it's kind of a grown up slate area of the property that I just...this is all new to me with even imagining that that's my front yard, yeah.

Mr. Carpenter referred to the buildings on the property. He listed the garage along McClures Gap Road, the rubber room, and the existing 12 by 12 shed. He asked long these have existed there. Mr. Miller responded:

Forever. Well, I can't say forever. The garage, I would say approximately 12 to 15 years ago I added a bit onto the garage. It used to be about half the size of what it is now. But the garage itself was the first thing built on the property back in the early 50's.

Mr. Carpenter referred to the rubber room and asked approximately what year this was built. Mr. Miller testified that this has been there ever since he was a kid. Mr. Carpenter asked Mr. Miller how old he is. Mr. Miller testified that he is 44. He added, "So it's probably been there for 40 years anyhow." Mr. Carpenter asked how long the 12 by 12 shed has been there. Mr. Miller guessed that it would be probably 20 years.

Mr. Hare referred to the proposed storage of the Mustangs in an enclosed area. He asked Mr. Miller if there was any reason to keep them in there other than the fact that he wants to keep the weather off of them. Mr. Miller responded, "I want to keep the weather off of them and it helps me get my property into the Zoning Ordinance." Mr. Hare asked, "So what you're saying is, with them outside now and being unlicensed, it's not in accordance with the Ordinance?" Mr. Miller answered, "Correct, the new Ordinance says that they have to be in an enclosed building." Mr. Hare indicated that he had no other questions.

At this point Mr. Rundle asked Mr. Hare to swear in Mr. Lao. Mr. Lao was sworn in by Mr. Hare. The witness identified himself as Ruben Lao. He testified that he is the Zoning Enforcement Officer for North Middleton Township. Mr. Rundle asked Mr. Lao if this hearing had been properly advertised. Mr. Lao replied, "Yes it has." Mr. Rundle asked if the property had been properly posted. Again, Mr. Lao stated, "Yes it has."

Mr. Rundle asked Mr. Lao to explain the necessity for the Variance for this new shed in light of the recent ordinance change. Mr. Lao replied to Mr. Rundle's question:

The recent ordinance change has made it a criminal violation to have any vehicles that are not currently registered and/or inspected on your property other than in an completely enclosed building and he has some antique vehicles, classic vehicles, old Mustangs and trucks that are currently in violation of that and he wants to put a storage shed and the only place that can be put in a building, a storage building, that's about the only flat area...and according to the Agricultural Zone, Table 2, you cannot have an accessory structure in the front yard.

Mr. Rundle noted that this property is located at the intersection of McClures Gap Road and Union Hall Road, fronting on both roads. He asked Mr. Lao if it has two front yards. Mr. Lao replied, "It does have two front yards." Mr. Rundle referred to the current existing 12-foot by 12-foot shed. He asked Mr. Lao if it is a nonconforming structure in its present location. Mr. Lao stated, "It's grandfathered in." Mr. Rundle again asked if it is a nonconforming structure. Mr. Lao indicated that this was correct. Mr. Rundle then referred to the garage with the attached rubber room and asked if this is also a nonconforming structure in its present location, being in the front yard of McClures Gap Road. Mr. Lao stated, "Correct, grandfathered in of course." Mr. Rundle asked Mr. Lao if Mr. Miller needs the Variance to build the new shed in its present location because it is in fact being located in the front yard of Union Hall Road. Mr. Lao replied, "Based on our new Ordinance, yes." Mr. Rundle referred to the front yard on the Union Hall Road side. He asked what depth this would be under the new Ordinance. Mr. Lao stated that it would be anything from his house out to the street. Mr. Rundle noted Exhibit A-4. He asked if this would now be 70 feet on the Union Hall Road side. Mr. Lao responded, "That is correct. Under the old Ordinance it would have been 35 feet." Mr. Rundle asked Mr. Lao if it is possible to locate the new shed anywhere on the property and be in compliance with the Ordinance, other than by doing significant earthmoving to Slate Hill. Mr. Lao stated, "No it's not."

Mr. Rundle asked for any questions from the Board. Mr. Weeks thanked Mr. Lao for the letter of December 22, 2008 which he had authored and entered into testimony. Mr. Hare had no questions. Mr.

Carpenter asked Mr. Lao if he knew what the right-of-way width of Union Hall Road is. Mr. Lao indicated that he didn't know it off the top of his head. He said he thought it was 50 feet and offered to look it up. Mr. Lao stated:

The bottom line is, from the right-of-way is where he needs to have that so...his setback starts in the right-of-way whether it's 30 feet or 50 feet, it's starts in the right-of-way back...so...but no, I don't know it to be honest with you.

Mr. Carpenter asked if the setback would be 35 feet if you were to build a house on this road, fronting on Union Hall Road. Mr. Lao indicated that this was correct. Mr. Carpenter asked if it was correct that an accessory use is not permitted in the front yard. Again, Mr. Lao stated that this was correct. Mr. Carpenter asked Mr. Lao if he would interpret that to mean that an accessory use could not be permitted within 35 feet of the right-of-way of Union Hall. Mr. Lao responded, "It says accessory use is not permitted at all, according to this. That's why he's asking for the Variance." Mr. Carpenter stated, "Not permitted in the front yard." Mr. Lao responded, "Correct." Mr. Carpenter then asked, "And then the front yard setback for a principal structure that's allowed in this district; a single-family detached house is 35 feet?" Mr. Lao replied, "That's correct." Mr. Carpenter asked, "Is my logic correct that an accessory structure could not be permitted within 35 feet, or is it the front yard as where the existing house sits; the 70 feet?" Mr. Lao indicated that he was "a little baffled." He asked for some clarification. Mr. Rundle spoke at this point:

I think what he's asking Mr. Lao is if you were building a house fronting on Union Hall Road, complying with the Ordinance, you could not put that any closer than 35 feet, so if you were building an accompanying accessory structure together with the house, would you agree that the structure could be no nearer than 35 feet to the road?

Mr. Lao stated that this was correct. Mr. Carpenter noted that a lot of the older roads had a right-of-way width of 33½ feet. Again, Mr. Lao indicated that this was correct. Mr. Carpenter stated, "If we knew that right-of-way width it might make a difference between not needing a Variance for this structure." The other Board members and Mr. Rundle pointed out that the Variance would still be needed because it is in the front yard. Mr. Carpenter acknowledged this but stated, "I as a member I would feel better if it could meet the 35-foot setback from the right-of-way." Mr. Hare asked Mr. Lao if he could find out what the right-of-way is.

At 7:38 p.m. Mr. Lao left to look up the requested information. A brief break was taken at this time. The hearing went back on the record at 7:40 p.m.

Mr. Lao stated that the right-of-way of Union Hall Road is 33 feet. Mr. Hare pointed out that a Variance is not needed for setback but that a Variance is needed to put the shed in the front yard. Mr. Rundle indicated that this would be correct. Mr. Carpenter stated, "Well, you need a Variance for setback." Mr. Weeks added, "For 2 feet." Mr. Carpenter then said, "But I feel more comfortable with it if it meets the 35-foot that's required for a principal use." Mr. Carpenter addressed Mr. Lao:

Ruben, if the...without doing a lot of math, if he assumed it to be a 50-foot right of way on Union Hall and he measured 31 feet off the new shed to the right-of-way and now we have a 33-foot right-of-way, 16½ feet from center, I've calculated that would be 8½ feet more than 31 feet, or 39½ feet to the new shed from the right-of-way. Does that logic follow?

Mr. Lao answered, "Yes." Mr. Rundle stated, "So in fact it would be 39½ feet." Mr. Hare pointed out that this is beyond the 35 feet that is required of a new structure. Mr. Hare said to Mr. Lao, "Now with your assumption that they both would require the same thing, we're okay." Mr. Lao replied, "Yes, correct." Mr. Hare pointed out that the only thing the Board was faced with at this point was the request to put the shed in the front yard. Again, Mr. Lao stated, "Correct." Mr. Rundle pointed out that this is a Variance to Section 204-14, Table 2.

Mr. Hare asked for any more questions of the Applicant. None were offered. Mr. Hare asked for any more questions of Mr. Lao. None were offered.

No members of the public were present to offer testimony. Mr. Rundle suggested that the record be closed. At 7:42 p.m., Mr. Hare asked that the record be closed.

Decision #08-08: Daniel R. Miller, Variance Request

Henry Weeks moved to grant the Petitioner's request for a Variance to Section 204-14, Table 2 to locate an accessory structure in the front yard, with the requirement that the Petitioner comply with all other applicable federal, state, and local laws, rules and regulations. Mark Carpenter seconded the motion.

There was a brief discussion on the motion.

Chairman Hare called for a vote. The vote was unanimous in favor of the motion, and it carried.

Mr. Rundle explained to Mr. Miller that a written decision would be mailed out within the next several days. He further explained that there is a 30-day period in which a neighbor may file an appeal of this decision. He suggested that Mr. Miller not invest any money on this building until the end of the 30-day period. Mr. Miller thanked the Board.

Adjournment

Chairman Hare asked for anything else for the good of the order. Nothing was offered. With no further business before the Zoning Hearing Board at this time, the meeting adjourned at 7:44 p.m.

Respectfully Submitted,

Mark Carpenter
Secretary
North Middleton Township
Zoning Hearing Board

Michael S. Medvid
Recording Secretary