

Minutes

Nimishillen Township Board of Zoning Appeals
4422 Maplegrove NE, Louisville, OH 44641
Wednesday, March 6, 2013 – 7:00 PM

Board Members Present: Bill Ehlers, Vice Chairman
Pan Aslanides, Secretary
Anthony 'Tony' Mucci, Member
Arthur 'Art' Smith, Alternate

Board Members Absent: Gary Brahler, Chairman
David Foss, Member

Trustees Present: Lou J. Johnson, Vice President

Zoning Inspector: Dale Riggerbach

Township Secretary: Sharon Shaub

Note: For detailed information, a copy of the CD from tonight's hearing can be purchased at the township office located at 4915 N. Nickelplate at a cost of \$1.00 per CD.

Purpose:

- **Organizational Meeting**
- **Appeal #597** – Patrick and Gina Nuske of 5933 Meese Road NE, Louisville, OH 44641, parcel no. 33-09853, zoned R-1 Single Family Residential, are requesting a variance for their outdoor wood-burning furnace per Sec. 603.8 Wood-Burning Furnaces as stated in the Nimishillen Township Zoning Resolution. The outdoor furnace is used to heat their home.

ORGANIZATIONAL MEETING:

Election of officers:

In Chairman Brahler's absence, Vice Chairman Ehlers asked for a nomination for chairman for 2013. PAN ASLANIDES MOTIONED TO NOMINATE BILL EHLERS AS CHAIRMAN FOR 2013 SECONDED BY ART SMITH. With no further discussion, nominations were closed. Board members responded by saying 'I do'. **MOTION CARRIED**

Newly appointed Chairman, Bill Ehlers, asked for a nomination for vice chairman for 2013. TONY MUCCI MOTIONED TO NOMINATE PAN ASLANIDES AS VICE CHAIRMAN FOR 2013 SECONDED BY ART SMITH. With no further discussion, nominations were closed. Board members responded by saying 'I do'. **MOTION CARRIED.**

2013, March 6 BZA Hearing (cont.)

Mr. Ehlers asked for a nomination for secretary for 2013. PAN ASLANIDES MOTIONED TO NOMINATE TONY MUCCI AS SECRETARY FOR 2013 SECONDED BY ART SMITH. With no further discussion, nominations were closed. Board members responded by saying 'I do'. **MOTION CARRIED.**

Set day and time for hearings:

After discussion, BILL EHLERS MOTIONED TO KEEP THE DAY AND TIME THE SAME, WHICH IS THE 1ST WEDNESDAY OF EACH MONTH AT 7:00 PM SECONDED BY PAN ASLANIDES. Board members responded by saying 'I do'. **MOTION CARRIED.**

CALL HEARING TO ORDER:

Chairman Ehlers opened tonight's hearing at 7:01 PM and introduced all board members, zoning inspector, township secretary and Vice President Trustee Lou J. Johnson. Ehlers swore in everyone in attendance by asking them to swear that the information they were about to present, either in oral or written form, is true and accurate to the best of their knowledge. The people responded by stating, "I do".

Patrick & Gina Nuske, 5933 Meese Rd. NE, Louisville, OH 44641, stepped to the podium. Mrs. Nuske said they are requesting a variance for their outdoor wood-burning furnace and stated they use the burner to heat their home. She said the contractor who installed the wood-burner misled them about the need for a permit.

Tony Mucci asked Mrs. Nuske in what way did the contractor mislead them. Mrs. Nuske said the contractor told them he checked and was told no permit was needed because they are zoned R-R Rural Residential. However, the Nuske's found out at a later date that are not zoned R-R but are zoned R-1 Single Family Residential. Mrs. Nuske said she learned they should not have taken the contractor's word and they should have checked themselves.

Letters / phone calls regarding the variance request:

The township office received no phone calls regarding this variance request; however, Mr. Ehlers said the zoning office received two letters. Both letters were read aloud as testimony in this case. Copies are available at the township office located at 1495 N. Nickelplate NE.

FIRST LETTER FROM: Arthur Sacco, 5959 Meese Rd is in favor of the variance request. Chairman Bill Ehlers read the letter aloud as testimony:

✓ COPIES TO BZA
Members

2-21-2013

FILE COPY

To The Kimickillen Township
Board of Zoning Appeals:

We are for this Outdoor
Wood Burning Furnace at
5933 Meese Rd. NE, Louisville,
Ohio 44641.

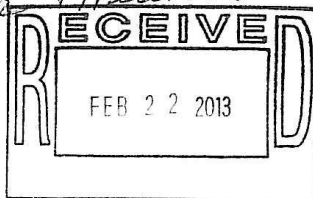
We are very lucky to have
Patrick + Gina Nuske as our
good neighbors. They take
good care of their house, yard
etc. They are an asset to our
community.

We wish them happiness.

Sincerely,

Arthur + Helen Sacco

Arthur Sacco
5959 Meese Rd
Louisville, OH 44641-9505



SECOND LETTER FROM: Joanne Clark, 5921 Meese Rd. is opposed to the variance request.
Chairman Bill Ehlers read the letter aloud as testimony:

Joanne Clark
5921 Meese Rd
Louisville, OH 44641

3-5-13
SLS

October 27, 2011

Dale Riggerbach
Zoning Inspector – Nimishillen Township
4915 North Nickelplate
Louisville, OH 44641

FILE COPY

Dear Mr. Riggerbach,

Over the past several weeks I have noticed large amounts of smoke coming from behind the shed on the property behind me. At first I did not pay much attention to the smoke thinking perhaps my neighbors were just having a small fire outside, but as time has gone by it has become a regular event lasting sometimes all day and night. It is now my believe that whatever this structure is generating the smoke is going to be the intended heat source for the home, and it's continued operation poses concerns for me about the implications for air quality and the safety of my young child with allergies. I am also of the belief that such external heat sources are not permitted within the area in which we live. I thank you for your assistance in the resolution of this matter.

Kind Regards,

Joanne Clark

- Not in FAVOR / OF Wood Burning Furnance / PER OUR CONVERSATION
11/22/11 CALLED JOANNE IN REGARDS TO WOOD BURNING FURNANCE

RESIDENTS IN ATTENDANCE ‘OPPOSED’ TO THE VARIANCE REQUEST:

Brent Hunter, 5893 Meese Rd. stepped to the podium. He said he lives SW to the front of the Nuske’s property and wanted to ask a couple questions.

- What purpose does the Zoning Resolution serve? Mr. Ehlers said it’s the guideline to regulate township zoning.
- What’s the purpose of obtaining a zoning permit? Mr. Mucci said the Zoning Resolution is a guide and not set in stone. He said that’s why people come before the Board of Appeals.
- Brent said the Nuske’s have known for over 1-1/2 years they needed a permit and they still did not get a permit.

Mr. Hunter said his only concern is the smoke the outdoor wood burner generates. Several things contribute to the density of smoke such as a foggy morning or moisture in the air – smoke rises then falls and lies in low-lying areas. You can burn pine or anything in these outdoor burners and it causes thick, dense smoke.

Mr. Hunter presented pictures to the Board that showed how much smoke the outdoor wood burner generates. He said the smoke affects their home. When it’s nice out they can’t open their windows and there’s too much smoke for his kids to play outside.

Mr. Hunter then presented a copy of a fire report. He said the outdoor wood burner generates enough smoke that a passer-by thought there was a structural fire and called the fire department. If the Nuske’s decided to use the outdoor burner to heat their water, it could burn all summer long and create smoke all year around. He said Mr. & Mrs. Nuske chose to fight the township about getting a permit instead of taking care of the issue and said the zoning inspector and board of trustees felt it was bad enough to be turned over to Stark County Prosecutor Mike Bickis. Mr. Hunter said he and his wife feel the request for this variance should not be granted due to the time frame involved and lack of cooperation with the township on the part of the Nuske’s. Mr. Hunter feels this could have been taken care of back in 2011 when this all came about.

Mr. Hunter said the Nuske’s have enough property for an outdoor wood burner (15.68 acres) and it’s placed in a great spot – no one can see it until the smoke starts. Mr. Hunter said wind direction has little regard for smoke and who knows what the Nuske’s are burning. Again, it affects his kids when they want to play outside and they can’t open their windows.

Gina Nuske stepped to the podium again and said Dale arrived after the contractor left. He told her he would check into the situation and get back to her; however, he never got back to her and was never given a citation or a violation notice. A year later, she saw their situation mentioned in the Board of Trustees meeting minutes (on-line) and that the case was being turned over to Stark County Prosecutor, Mike Bickis. At this point, they hired (by Sept. 2011) their own attorney not

knowing what was going on. She said their lawyer has a lot of issues with the language in the Zoning Resolution.

Tony Mucci asked Mrs. Nuske why their lawyer wasn't here tonight. Mrs. Nuske said they didn't ask him to come.

When asked if they burn coal, Mr. Nuske said no and said they don't burn trash either. Mr. Mucci said if the property was sold, the new owner could burn coal, trash, garbage ~ whatever they wanted.

RESIDENTS IN ATTENDANCE 'IN FAVOR' OF THE VARIANCE REQUEST:

Mr. Francis Vacco, 5945 Meese Rd. stepped to the podium and said he is Mr. Nuske's neighbor and finds nothing wrong with what they have. He said there is some smoke but not as stated in one of the letters presented at tonight's hearing as testimony that said there's smoke all day and all night. Mr. Vacco said that's a big lie and exaggerated. It's not true.

Regarding the fire report that was presented to the Board by Mr. Hunter - Mr. Vacco said the fire report is a complete farce. Five to eight fire trucks came out. Said the fire department should have called first to see if there was a problem. Board member Tony Mucci asked Mr. Vacco if his house was on fire, would he want the fire department to call him to see if there was a problem before they responded? Mr. Vacco wonders about the person who reported the fire stating at that time of night, no one would have been able to see any smoke.

Mr. Vacco said the Nuske's have a very neat wood pile, nice property and it's well kept. The only problem he sees is if Mr. & Mrs. Nuske ever sell, the new owner could burn whatever they wanted. He said he thinks there should be a restriction on what's being burned and not about the outdoor wood burner itself. The Board of Appeals said that was a good point and they would look into it.

Mr. Ehlers said the Nuske's are not the only residents in the township using an outdoor wood burner to heat their home. Mr. Mucci said there are a couple of outdoor wood burners in his neighborhood. He said the indoor burners smoke just as much as the outdoor burners and the chimneys are taller with indoor burners.

Mr. Ehlers asked Mr. Nuske how often he lights it. Mr. Nuske said every 12 hours – he loads it ½ & ½ and never lets it burn totally down. Mr. Ehlers said they all produce smoke. Mr. Mucci said yes, that's why they are allowed in R-R (Rural Residential) and not R-1 (Single Family Residential).

Mr. Mucci said they make catalytic converters for wood burners. Said they are very expensive but they work.

2013, March 6 BZA Hearing (cont.)

Mr. Mucci asked Mr. Nuske when he realized there were issues with the township about their outdoor wood burner. Mr. Nuske said they didn't realize there was a problem until they saw it on line in the trustees meeting minutes and that's when they hired an attorney. Mr. Nuske said when the lawyers got involved, no one from the township got back to them. Dale then spoke and said Mr. Bickis told him not to contact Mr. & Mrs. Nuske – all future communication would be between the attorneys.

Mr. Nuske said they received a summons the first time they fired it up this year. When asked why they didn't contact their contractor, the Nuske's said because they found out they can't depend on the contractor to give correct information and it was up to them (the Nuske's) to take care of everything.

Mr. Mucci asked if the lawyers are now handling the issue. Mr. & Mrs. Nuske said their new attorney, Bob Preston, who is local, talked to Attorney Mike Bickis, and they were advised the best course of action would be to go before the BZA so that's what they did.

The subject of smoke from outdoor wood burners was discussed again. Mr. Nuske said they shut the wood burner off April through November and fire it up again during the winter months. Mr. Ehlers said green/wet firewood smokes. Dry firewood does not smoke. When asked what kind of wood they burn, Mr. Nuske said they only burn dry firewood.

Board member Mucci said it comes down to can or can't they have the outdoor wood burner in an R-1 Single Family Residential area. Mr. Mucci said there's no way the township can regulate what they burn in it. **Dale said if there were any concerns about what's being burned; make it public record now that they can only burn dry firewood.**

An unknown person in the audience spoke out and asked the Board if smoke is the main concern. Mr. Mucci said there are two concerns. One is the smoke and the other is that the outdoor burner was put in against zoning. That's why it was placed in the Township Zoning Resolution to allow outdoor wood burners in R-R and not in R-1. Since it was not put in according to zoning regulations and there are several neighbors complaining, that's the reason for the issue at hand.

Pan Aslanides wanted to know how the township can police what is being burned. Dale said if, for example, they would be burning tires, he would get the EPA involved and if burning garbage, the Health Department would get involved. Mr. Mucci said it's tough to police what is being burned.

Tony Mucci said he won't argue they don't have nice property – they do. What it comes down to is the rules & regulates stated in the Nimishillen Township Zoning Resolution, letters from residents and complaints from neighbors.

Dennis Biery, 6582 Paris stepped to the podium and asked if there were other wood burners in the area and if the outdoor wood burners were put in before zoning regulations went into effect or did the Board of Appeals give them permission. Mr. Mucci said that was a very good point. Mr. Mucci said one of the reasons he's on the Board of Zoning Appeals is to protect the township, the value of homes and township residents. Will residents go ahead and install outdoor burners without going to zoning first and then wait until someone complains? Possibly.

Mr. Biery wondered if the board turned down Mr. Nuske's request for an outdoor wood burner in an R-1 District, how many other ones will zoning have to go after in the township and now there are lawyers involved. Mr. Biery recommended the Board take more time to think about tonight's issue because it's a bigger issue than he thought it was.

Discussion was held again regarding the smoke and the different reasons for the smoke. Mr. Nuske explained there's a water jacket around the burner itself and there's a gage on it. As soon as the water drops to a certain temperature, it kicks the blower on which feeds the fire. It has nothing to do with what's in the house – it's what's in the burner. Once the water reaches a certain temperature, it snuffs it out – in other words – shuts the burner down.

Mr. Nuske said the outdoor burner doesn't smoke for long periods of time and said he would be willing to add to the height of the stack. Dale said he's been there several times and the smoke was not bad. Obviously, he said he can't be there all the time but the times he was there, smoke was not a problem. Mr. Mucci said that's just the way they work.

Mr. Ehlers said even though Mr. Nuske is agreeable to add extra stacks but he isn't sure that would fix the smoke problem. Another route to take would be to get a catalytic converter but others in the township do not have a converter and they are very expensive.

An unknown person in the audience spoke out and said who's outside a lot during the winter months anyway. Windows aren't open and kids do not play outside that much during the winter months.

Discussion came up about possibly being a tie at tonight's hearing since there are only four board members present. At this point, Dale read an email from Attorney Sharon Miller:

- If there's a tie, the zoning inspector **cannot** be the tie breaker. If there's a tie, the case becomes 'nothing' (null and void as if it did not pass) and the applicant would have to re-apply, pay the \$200 fee again and start over **OR** the BZA can choose to '**continue**' the case. It would not have to be advertised again and a new date **must be set** that night.

After a brief discussion, CHAIRMAN EHLERS MOTIONED TO ENTER INTO EXECUTIVE SESSION AT 8:02 P.M. SECONDED BY PAN ASLANIDES. The Board responded by saying 'I'. **MOTION CARRIED.**

PAN ASLANIDES MOTIONED TO RETURN FROM EXECUTIVE SESSION AT 8:30 P.M. AND RESUME THE HEARING SECONDED BY ART SMITH. The Board responded by saying 'I'. **MOTION CARRIED.**

Mr. Aslanides asked Mr. Nuske if he would be willing to add another section to the existing stack for a minimum total height of 16'. Mr. Nuske said he would.

Chairman Ehlers asked the Board for a motion for a ballot vote.

PAN ASLANIDES MOTIONED FOR A BALLOT VOTE TO APPROVE APPEAL #597 WITH THE CONDITION THAT MR. NUSKE ADD FOUR (4) SECTIONS TO THE EXISTING STACK FOR A MINIMUM TOTAL HEIGHT TO BE 16' TO BE COMPLETED WITHIN SIXTY (60) DAYS FROM TODAY'S DATE, MARCH 6, 2013, COMPLETION DATE ON OR BEFORE JUNE 6, 2013 SECONDED BY ART SMITH. **MOTION CARRIED.**

Ballot vote as follows:	Pan Aslanides	APPROVE
	Bill Ehlers	APPROVE
	Art Smith	APPROVE
	Tony Mucci	DENY

If a motion is denied, reasons must be given for denial. Mr. Mucci denied the variance request because:

- o Mr. & Mrs. Nuske knew they had to apply for a variance and had ample time to do so;
- o Mr. & Mrs. Nuske are in violation of Section 603.8 of the Zoning Resolution.

Chairman Ehlers said the request for **Appeal #597 for an outdoor wood burning furnace** is **APPROVED with the condition** the Nuske's **add a total minimum 16' to the stack within 60 days from today, March 6, 2013.** He advised Mr. Nuske to contact Dale during regular office hours to make arrangements to pick up the proper permit for the furnace.

OLD BUSINESS / NEW BUSINESS: There was no old or new business to discuss; however, Mr. Ehlers reminded the board member about the annual dinner put on by Regional Planning on March 20th at 6 PM at Skyland Pines.

APPROVAL OF MINUTES: Chairman Ehlers asked the Board for a motion to approve the December 12, 2012 minutes as written.

PAN ASLANIDES MOTIONED TO APPROVE THE DECEMBER 12, 2012 MINUTES AS WRITTEN SECONDED BY ART SMITH. **ALL VOTED YES. MOTION CARRIED.**

Before the hearing was adjourned, Brent Hunter was concerned about the following:

- What happens if the property is sold in the future and the stack isn't kept at 16' - The BZA explained the Conditional Zoning Certificate for the outdoor wood burner stays with the property and new owners would have to abide by the permit;
- Mr. Hunter said the Nuske's have a court date on the 25th. What happens now? The BZA said the Nuske's have now been approved for the outdoor wood burner with the added height to the stack; therefore, they will not have to go to court.

Mr. Mucci said hopefully raising the height of the stack will alleviate some of the problems; however, in certain weather conditions, adding to the height won't alleviate all of the smoke but it should help. Mr. Hunter agreed and said hopefully it will.

ADJOURNMENT: Chairman Ehlers asked the Board for a motion to adjourn.

TONY MUCCI MOTIONED TO ADJOURN AT 8:40 PM SECONDED BY PAN ASLANIDES. **ALL VOTED YES. MOTION CARRIED.**

Bill Ehlers, Chairman

Anthony Mucci, Secretary