

Minutes
Nimishillen Township Board of Zoning Appeals
4422 Maplegrove NE, Louisville, OH 44641
Wednesday, November 5, 2014 – 7:00 PM

Board Members Present: Bill Ehlers, Chairman
Pan Aslanides, Vice Chairman
Anthony ‘Tony’ Mucci, Secretary
Gary Brahler, Member
David Foss, Member

Zoning Inspector: Dale Riggerbach

Township Secretary: Shelby Dieffenbaugher

Purpose: (Two Cases)

Appeal #610 – Jeffery J. McKelvey of 2759 Maplegrove Ave. NE, Louisville, Ohio is requesting a variance for an accessory building at his place of business, Opening Day Lawn and Landscaping located at 5610 Louisville St. NE, Louisville, Ohio, zoned I-1 Light Industrial, Parcel #33-01659, to be 23 feet high instead of the allowed 17 feet, 3,000 sq. ft. instead of the allowed 1,200 sq. ft. and an 8 foot setback on the east side instead of the required 25 foot setback as permitted in Section 721.4 of the Nimishillen Township Zoning Resolution.

Appeal #611 - Philip Folk and daughter Shari Folk of 3500 Beck Ave. NE, Louisville, Ohio, Parcel #33-09450, zoned R-1 Single Family Residential, are requesting a Conditional Zoning Certificate #753 for a home occupation for a Type ‘A’ Day Care Center subject to Sections 702.2(B)(14) Article XI Conditional Zoning Certificates Section 1102 Subsections 102, 103, 104,109, 114, 122, 125, 126, 133 and 134 of the Nimishillen Township Zoning Resolution.

Call Hearing to Order:

Chairman Ehlers opened tonight’s hearing at 7:00 PM and introduced all board members, zoning inspector and township secretary. Ehlers swore in everyone in attendance by asking them to swear that the information they are about to present, either in oral or written form, is true and accurate to the best of their knowledge. The people responded by saying, “I do”. Chairman Ehlers decided to begin with Appeal #611.

1st CASE – APPEAL #611:

Shari Folk of 3500 Beck Ave NE stepped to the podium and is requesting a Conditional Zoning Certificate for a Type A Day Care License. The first step to receive a license from the State of Ohio is to attend a Board of Zoning Appeals hearing and to be approved by the Board of Zoning Appeals.

Bill Ehlers asked how many children and the age of the children Ms. Folk will be watching. Dale Riggerbach explained the difference between Type A and Type B license. Type B allows only 6 children in the home. Type A allows 8 children in the home. Ms. Folk had 8 children in her home. In order to comply with the State, Ms. Folk had to attend this hearing to apply for a Conditional Zoning Certificate for a Type A license.

Bill Ehlers asked if Ms. Folk has 8 children in her home. Ms. Folk currently has a Type B license; she had to comply with the Type B license of a limit of 6 children in the home. Two children are being watched by a family friend until Ms. Folk is approved for a Type A license.

Pan Aslanides asked if Ms. Folk plans to increase the number of children to 12. Ms. Folk is not certain what will happen in the future. Ms. Folk would like to apply for Type A and see where it leads.

Pan Aslanides asked if the strand fence qualified as the 6 foot fence around the play area that is required by zoning. Ms. Folk stated the strand fence is for the horses on the property and not for the play area. The fence has been purchased but has not been installed.

Anthony Mucci asked if Ms. Folk had proof of purchase for the 6 foot fence. Ms. Folk did not have a receipt for proof of purchase. The fence will not be installed until spring.

When asked how long Ms. Folk has had the Type B license, she said she has had the Type B license for 4 years.

Bill Ehlers asked if anyone would like to speak for or against Ms. Folk. Frank Meeker of 3394 Beck Ave., located east of the property in question, stepped to the podium. Mr. Meeker stated that Ms. Folk and her father are good neighbors and he did not mind helping them out.

Bill Ehlers asked Mr. Meeker if he was in favor or against this variance. Mr. Meeker stated he was in favor.

BZA Minutes (Cont.) – Two Cases: Accessory Bldg @ 5610 Louisville St. & Type A Day Care @ 3500 Beck Ave

Bill Ehlers said Dale Riggenschach received a phone call from Matt McElroy of 3386 Beck Ave. regarding the variance at 3500 Beck Ave. Mr. McElroy stated he has no problem with the proposed variance.

Bill Ehlers asked Dale Riggenschach about an email to Sharon Crawford. Dale said Ms. Crawford is from Chesapeake Energy on Energy Drive. Ms. Crawford was concerned with the fence and where the property line is located. Ms. Crawford had issues with children possibly coming onto the property since Chesapeake does have large delivery trucks come through. Dale sent Ms. Crawford a letter with satellite pictures of the home and property lines. Dale has not heard back from Ms. Crawford.

Anthony Mucci asked if the area around the property floods and if there is access to the property in case of an emergency. Philip Folk of 3500 Beck Ave stepped to the podium. When Nimishillen Creek floods; the flood water does not prevent them from getting into their driveway. There is an access road, with a barricade that can be moved, which Energy Drive can be accessed in case of an emergency. The City of Louisville had concerns about the owners using the access road to Energy Drive. Mr. Folk went to Chesapeake in regards to making this access an alley way for vehicles. Mr. Folk said according to Chesapeake, this access road is on City of Louisville property. Mr. Folk went to the City of Louisville and the City stated that this access is on Chesapeake's property. Eventually, the case was dropped. Mr. Folk said the children will not have access to this area.

Anthony Mucci said he is more concerned about getting emergency vehicles into the area for assistance if there is a flood. Mr. Folk said that the barricade on the access road from Energy Drive can be moved or emergency vehicle(s) can go around the barricade in case of an emergency. Mr. Folk said the vehicle goes over a bank of land and then it comes to their lane.

When asked if the access road is constructed of gravel, Mr. Folk stated that Mr. Meeker and himself put down gravel on the access road located on Nimishillen Township property. Then the City of Louisville put down top soil and planted grass seed over the gravel and put up a wood barricade. Mr. Folk asked the City of Louisville if this access could be turned into an alley. The City said no.

Bill Ehlers suggested that Mr. Folk send a Certified Letter to the Nimishillen Township Fire Chief regarding which access road to use in case of an emergency. Mr. Folk agreed.

Discussion was held as to whether or not an emergency vehicle would sink into the grass and top soil if a flood occurred. Mr. Folk stated there is a good foundation on the access road from Energy Drive because he put down a few layers of gravel before the City of Louisville planted the grass.

Dale Riggerbach talked about the location of the access road on the map. Dale talked to Matt McElroy of 3386 Beck Ave. about putting in an access road to Energy Drive on his property. Chesapeake agreed with this decision.

The Board Members discussed concerns about flooding in the area and emergency vehicles being able to access the property. Mr. Folk stated if the area is too flooded, the day care will close for the day.

Discussion was held concerning the 6 foot fence required by zoning before this variance is approved. Mr. Folk stated the fence will be installed around the play area.

Pan Aslanides asked if the State would come in once the variance is approved before Ms. Folk becomes licensed. Mr. Folk said the State will come to the property for fire and other inspections. Anthony Mucci is concerned that the fence, which is part of Article XI Conditional Zoning Certificates Section 1102 Subsections 133, 134, will not be installed and it is not the State's requirement to make sure the fence is installed because the Zoning Board approved the variance. Mr. Folk said this was the first time he and Shari heard that zoning requires a 6 foot fence around the play area. Mr. Folk then stated the fence was purchased and will be installed.

David Foss asked if the City of Louisville would consider putting gravel down and put up a gate on the access road giving emergency vehicles a key to the gate so they have the ability to get through if there is an emergency. Mr. Folk agreed and if Matt McElroy has applied for this, then he must cut out a 10 foot bank on his property to allow access to Energy Drive.

The Board Members discussed the access road to Energy Drive between the City of Louisville and Chesapeake.

Pan Aslanides asked about the parking situation on the property and is concerned with a mad rush of people on the street. Mr. Folk said there is a 4 car garage on the property and there is room for 4 cars on the driveway or some can park on the grass. Most of the mothers are in the health care occupation. Drop off would be at 6 a.m. and pick up would be at 3 p.m. Mr. Folk also said that sometimes the mother drops off the child and the father picks them up, so the time of pickups may alternate. If the parent is parked and someone pulls in behind them, they must wait.

Anthony Mucci asked if the parents would have to use the same access road that the emergency vehicles would use if an emergency did occur. Mr. Folk if the day care was open during a flood, the parents would use the same access as emergency vehicles or they would take the child by car to the parent on Energy Drive.

Prior to voting, Pan Aslanides asked Dale Rigganbach about the variance request being approved as is. Dale responded that it is approved as is, but conditions can be added for the applicant to meet.

Motion for a Ballot Vote: With no other questions and/or discussion, Chairman Ehlers asked for a motion for a ballot vote to approve or disapprove Appeal #611.

GARY BRAHLER MOTIONED FOR A BALLOT VOTE FOR APPEAL #611 SECONDED BY PAN ASLANIDES. The Board responded by saying ‘I’. **MOTION CARRIED.**

Roll call voting:	Pan Aslanides	-- Approve; as long as all conditions are met
	Anthony Mucci	-- Denied; does not comply with Section 1102, Subsection 133
	Gary Brahler	-- Approve
	David Foss	-- Approve
	Bill Ehlers	-- Approve

Chairman Ehlers said **the request for Appeal #611** was **APPROVED** and advised Ms. Folk to contact Dale during regular office hours (11:30 a.m. to 3:30 p.m. Monday thru Friday) to make arrangements to get whatever paperwork/permits are needed.

2nd CASE – APPEAL #610:

Jeffery McKelvey of 2759 Maplegrove Ave. NE stepped to the podium and is requesting a variance to build a 50’ x 60’ accessory building for his business, Opening Day Lawn and Landscaping located at 5610 Louisville St., instead of the allotted size by zoning. Mr. McKelvey also stated that he would like the building to be 8 feet from the property line instead of 25 feet.

Pan Aslanides asked which property is going to be located behind this building. Mr. McKelvey stated that directly behind the building is an empty field that meets the Railroad tracks. To the left (or east) of the property is Jerry’s.

Gary Brahler asked who is located on the other side of the property. Mr. McKelvey stated that Richard “Dick” Perry is at that location.

Bill Ehlers asked what this building will be used for. Mr. McKelvey said the accessory building will be used for storage of equipment and as a workshop.

Dale Riggenschach said he discussed the history of the building and property with attorney Mike Bickis of the Stark County Prosecutor's office. In 1984 & 1990, this property was considered a part of district I-1, which is a Light Industrial District. Light Industrial Districts allows a B-1, B-2, & B-3 to have a landscaping business at this location. The zoning was changed in 1990 to allow a previous greenhouse business to be at this location. Dale said that Mr. McKelvey's business can be grandfathered in the way it is now. Since there was a prior greenhouse business at this location, this allows Mr. McKelvey's business to remain there since there was no 2 year absence from business to business. Dale said that Mr. McKelvey's property can stay at I-1. Dale also mentioned that the 602.4 Accessory Building code at the time was 1,200 square feet and 17 feet high. Since the area is still zoned I-1, the building can only be 25 feet from the property line, which is still in effect today.

Pan Aslanides asked how long the business was at this location and if he bought this building for his business. Mr. McKelvey stated his business has been there since 2008. Mr. McKelvey bought this property as a foreclosure for his landscaping business. He previously ran the business out of his parents' home, which is against code.

Gary Braehler asked who owned the property located behind the building. Mr. McKelvey stated Herb Crum owns the property and that Mr. Crum does not object to this variance.

Pan Aslanides asked Dale Riggenschach if he received any letters or phone calls regarding this variance request. Dale said no.

Bill Ehlers discussed about the condition of the building and property prior to Mr. McKelvey owning it. Dale stated there were issues with the building being clean.

Bill Ehlers asked if anyone in the audience had anything to say about this variance. Norman Saeger of 4956 Eshelman, the architect for the accessory building, stated that the building will be in regulation with the building codes and will not have fertilizer or other items stated on the drawing stored in the building. Mr. Saeger asked the Board if they had any questions for him. The board had no questions.

Dale Riggenschach proposed if this variance is approved, Mr. McKelvey should landscape around the new accessory building. Dale will also make sure the new accessory building is 8 feet from the property line.

Pan Aslanides asked Dale Riggenschach if the variance is granted, could it be granted with the conditions stated above. Dale said yes.

Motion for a Ballot Vote: With no further questions and/or discussion, Chairman Ehlers asked the Board for a ballot vote to approve or disapprove Appeal #610

*GARY BRAHLER MOTIONED FOR A BALLOT VOTE FOR APPEAL #610 SECONDED BY DAVID FOSS. The Board responded by saying 'I'. **MOTION CARRIED.***

Roll call voting:	Pan Aslanides	--	Approve with amendments
	Anthony Mucci	--	Approve with amendments
	Gary Brahler	--	Approve
	David Foss	--	Approve
	Bill Ehlers	--	Approve

Chairman Ehlers said **the request for Appeal #610** was **APPROVED** and advised Mr. McKelvey to contact Dale during regular office hours (11:30 a.m. to 3:30 p.m. Monday thru Friday) to make arrangements to get whatever paperwork/permits are needed.

Board had a further discussion on both cases.

Old Business/New Business:

Pan Aslanides asked if the Trustees have determined an alternate for the Board of Appeals. Dale stated the Trustees have had interviews but have not appointed an alternate.

There was no new business to discuss.

Approval of Minutes:

*PAN ASLANIDES MOTIONED TO APPROVE THE MINUTES FOR OCTOBER 1, 2014 AS WRITTEN SECONDED BY ANTHONY MUCCI. The Board responded by saying 'I'. **MOTION CARRIED.***

Roll call voting:	Pan Aslanides	--	Approve
	Anthony Mucci	--	Approve
	Gary Brahler	--	Absent from Oct. 1 meeting, did not vote
	David Foss	--	Approve
	Bill Ehlers	--	Approve

Adjournment:

*GARY BRAHLER MOTIONED TO ADJOURN AT 8 PM SECONDED BY PAN ASLANIDES.
The Board responded by saying 'I'. **MOTION CARRIED.***

Roll call voting:	Bill Ehlers	--	Approve
	Pan Aslanides	--	Approve
	Anthony Mucci	--	Approve
	Gary Brahler	--	Approve
	David Foss	--	Approve

Bill Ehlers, Chairman
Nimishillen Township Board of Appeals

Pan Aslanides, Vice Chairman
Nimishillen Township Board of Appeals

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