

**LIBERTY TOWNSHIP BOARD OF ZONING APPEALS**

**May 8, 2018**

**6:00 PM**

**MEETING MINUTES**

---

The Board of Zoning Appeals was called to order at 6400 Princeton Road, at approximately 6:00 P.M. by Mr. Andrew Schweier, Chairman. The Pledge of Allegiance was recited.

Upon call of the roll, members in attendance were: Mr. Patrick Merten, Mr. Richard McKinney, Mr. Andrew Schweier, Mrs. Brienne Fey and Mr. Robert Rogers. Also in attendance was Bryan Behrmann, Director of Planning and Zoning.

Mr. Schweier reviewed the hearing procedures and performed a group swearing in.

---

Mr. Schweier called for the first case.

Mr. Behrmann presented the staff report and PowerPoint Presentation for case **BZA#18-006**, TIE Investments LLC, 5331 Hamilton-Middletown Road, which is a request for two Variances under Sections 7.6.3(4) and 7.6.3(5) of the Liberty Township Zoning Resolution for the installation of a gravel driveway and no continuous curbing for the rear parking lot and access area. The proposed variances are in conjunction with the development of a garden center/landscape supply store. The site is split by the Lemon Township and Liberty Township boundary line, and Mr. Behrmann explained that anything in Lemon Township is not subject to approval by this board.

Mr. Schweier asked if there were any questions for staff. There were none.

Mr. Schweier asked to hear from the applicant.

Jerry Major (5525 Princeton Road, Liberty Township, OH) who explained that he is the owner of Green Acres Landscaping, which was located on Kyles Station Road for 23 years until this past January. Mr. Major explained that they will be using millings, which is grinded up asphalt that would be dust free once it is put down. Mr. Major explained that the rear portion is their contract division, so the general public will very rarely be in that area. Mr. Major explained that their heavy trucks would tear up the asphalt quickly and they would rather not have to put asphalt in the rear when Lemon Township allows gravel drives in the non-public areas.

Mr. Schweier asked if anyone would like to speak in favor of the variance.

Bob Hutsenpiller (7404 Liberty One Drive, Liberty Township, OH) who identified himself as a member of the steering committee for the township back in the 90's when the zoning resolution was developed and they certainly didn't have agricultural uses in mind when the asphalt drive requirement was put in.

Mr. Schweier asked if anyone would like to speak in opposition of the variance. There were none.

Mr. Schweier **CLOSED THE PUBLIC HEARING** for BZA#18-006 and the Board began their deliberations.

Mr. Schweier stated that this was pretty straight forward since the area in question is in the back portion of the site and the nature of the business with the heavy equipment would constantly tear up the asphalt if installed.

Mr. McKinney noted that the front portion, which is in Lemon Township will be paved.

Mr. Merten stated that because the property is split between two townships, which has two separate set of development standards, it makes sense to make the site consistent and he is prepared to vote in favor of the variance.

Mr. McKinney made a motion for BZA#18-006 to **APPROVE** the variance requests as requested with staff's recommended conditions. Mr. Merten seconded the motion. Upon call of roll: Mr. McKinney – yes; Mr. Merten – yes; Mr. Rogers – yes; Mrs. Fey – yes; Mr. Schweier – yes. The motion passed and the requests were approved.

---

Mr. Schweier called for the next case.

Mr. Behrmann presented the staff report and PowerPoint Presentation for case **BZA#18-007**, J. Lyn Property who is requesting a Conditional Use for an “Educational Facility” for a Montessori School in an existing building and a Variance under Section 4.9.10 for the existing building that is less than 200 feet from residential property lines. The property is located at 7537 Burton Drive. Mr. Behrmann reviewed the zoning of the property and in the area, the parking requirements and the pick-up/drop-off circulation pattern.

Mr. Schweier asked to hear from the applicant.

Todd and Jamie Minniear (6703 Liberty Park Drive, Liberty Township, OH) who explained that they are the applicants. Mrs. Minniear provided a background regarding their Montessori School and the philosophy of such a school. Mr. Minniear that they envisioned a close connection to the Cederbrook Subdivision and serve as a community space for the neighborhood. Mr. Minniear explained that a church use is allowed, but due the size of the existing building it is too large for just a church to make the financial aspects work.

Mr. Schweier asked the applicant if they were committed to working with staff and the neighborhood to ensure traffic on Burton Drive does not become an issue and what they would do if it did become an issue. Mr. Minniear confirmed that they are committed to working with the families to make sure the pick-up/drop-off works smoothly and does not impact Burton Drive.

Mrs. Fey asked if there would be any busses traveling to or from the facility. Mr. Minniear stated that they do not have any relationships that require bussing.

Mr. Schweier asked if anyone would like to speak in favor of the variance.

Linda DeFazio (5090 Long Meadow Dr, Franklin, OH) who was the Director of Embrace Preschool that operated in the subject building, which was the original purpose of the building. The church later used portions of the building until they grew large enough to build a standalone building on the front of the property, but that never happened. She believes the proposed Montessori School would be a welcomed addition to the area.

Peter Kos (7397 Burton Dr, Liberty Township, OH) who has been a resident of the Cedarbrook Subdivision for the last 12 years and he fully supports the proposed quality school in the neighborhood. Mr. Kos noted an alternative of the property developing with more residential lots, which he doesn't believe would be a good thing.

Erin Kokenge (6379 Stonehenge Blvd, Liberty Township, OH) stated that her family has gone to Community Montessori School for the last seven years and it has made a tremendous impact of their family.

Ian Rife (7544 Burton Dr, Liberty Township, OH) who is the property owner on the opposite side of the road from the subject site. He welcomes the proposed school and believes it to be the best use for the property.

Mr. Schweier asked if anyone would like to speak in opposition of the variance.

Mike Robinette (5576 Pine Cone Ct, Liberty Township, OH) identified himself as a member of the Cedarbrook HOA and noted that they recently found out about the proposed request. Mr. Robinette explained that they have several potential issues that they would like the opportunity to work out with the applicant. Mr. Schweier asked what issues that they have. Mr. Robinette referenced buffers, traffic, drainage, future potential impacts. Mr. Robinette asked that the request be tabled to give them time to work out any potential issues with the applicant.

Mr. Rogers asked if there was any existing agreement between the current owners of the church property and the HOA to agree on preferences. Mr. Robinette confirmed that he was not aware of any.

Mr. Minniear confirmed that timing is an issue for them since a lot of work still needs to be done before a projected July closing, including an appraisal and getting information to the bank. Therefore, while he is willing to work with the neighborhood, he is not supportive of tabling the request.

Richard Smith (7398 Airy View Dr, Liberty Township, OH) is a resident of the neighborhood and suggests that the proposed requests be approved with the condition that if there was any expansion it would require another review by the board and the neighbors. Mr. Behrmann confirmed that any significant expansion of a Conditional Use would require BZA approval. Mr. Smith confirmed that his concerns have been addressed.

Tom Gieske (5694 Summerfield Ct, Liberty Township, OH) is an adjoining resident to the south and his concern is if the property is sold in the future and if the future owners want to build onto

it he was concerned about a reduced setback. Mr. Schweier confirmed that any future expansions for the use would require BZA approval. Mr. Gieske confirmed another concern of traffic.

Mike Robinette (5576 Pine Cone Ct, Liberty Township, OH) stated that since the applicant was not willing to table the request, he wanted to enter their concerns into the record. He believes that the primary use of the property was a church and the preschool was a minor component. He suggested that the Conditional Use only apply to the building area and not the remainder of the property. Mr. Robinette also noted an erosion issue just west of the parking lot. He does not believe the proposed use is consistent with the township Land Use Plan. He believes the proposed use would be a detriment to the neighborhood and would generate additional traffic in the area and will create safety concerns.

Jason Harmon (5578 Conifer Dr, Liberty Township, OH) is a resident of the neighborhood, who is a former member of the church and also used the preschool. He noted that a lot of the opposition is conjecture with no evidence.

Mr. Schweier **CLOSED THE PUBLIC HEARING** for BZA#18-007 and the Board began their deliberations.

Mr. Schweier stated that he believes the request is reasonable, the building has been there for many years and the preschool use has operated there without issue. He noted that because any significant expansion would require board approval, this would allow future evaluation if there a desire to expand.

Mr. Merten agrees with Mr. Schweier about the proposed use being ok for the property and thinks the applicant has done a good job of addressing any concerns and has a willingness to work with the neighborhood.

Mr. Merten made a motion for BZA#18-007 to **APPROVE** the variance request to approval a Conditional Use for an “Educational Facility” as a Montessori school and the proposed setback variance, subject to the recommended conditions by staff. Mrs. Fey seconded the motion. Upon call of roll: Mr. Merten – yes; Mrs. Fey – yes; Mr. McKinney – yes; Mr. Rogers – yes; and, Mr. Schweier – yes. The motion passed and the request was approved.

---

Mr. Schweier called for the next case.

Mr. Behrmann presented the staff report and PowerPoint Presentation for case **BZA#18-008**, Marc & Keri Lohse, 6100 Blackberry Ct, which is a request to keep an existing 855 Sq.Ft. above-ground swimming pool and a 192 Sq.Ft. detached deck, which exceeds the maximum 576 Sq.Ft. on a lot less than one acre by 471 Sq.Ft. Mr. Behrmann explained that the applicant obtained a permit for the two structures prior to installation and the permits were issued in error by township staff. The township inspector noticed the issue upon final inspection, but it was constructed as approved on the two permits.

Mr. Schweier asked if there were any questions for staff. There were none.

Mr. Schweier asked to hear from the applicant.

Marc and Keri Lohse (6100 Blackberry Ct, Liberty Township, OH) have resided in the house for six years. He believes that since they followed the correct process, if they knew they couldn't construct a pool of the desired size they never would have installed the pool and deck. Mr. Lohse submitted a letter in support from an adjacent neighbor.

Mr. Schweier asked if anyone would like to speak in favor of the variance.

Donna Drake (6096 Blueberry Dr, Liberty Township, OH) is the applicant's realtor and is concerned that a decision be made ASAP so they can move on and sell the house.

Mr. Schweier asked if anyone would like to speak in opposition of the variance.

Tina Backstrom (6097 Blackberry Ct, Liberty Township, OH) is concerned about the size of the variance that is being requested and how that might impact property values. While there is no active HOA, there are restrictions for the subdivision that prohibit aboveground pools.

Anne Gabbard (6090 Blackberry Ct, Liberty Township, OH) is an adjacent property owner asked about the one year time limit. Mr. Behrmann explained that since the permits were already obtained and the improvements made, so the time limit would not apply in this situation.

Mr. Schweier **CLOSED THE PUBLIC HEARING** for BZA#18-008 and the Board began their deliberations.

Mr. Schweier stated that this case is straightforward due to errors made by staff, but a condition could be included that if the pool and deck are ever removed that they couldn't be replaced unless they are in compliance.

Mr. Schweier made a motion for BZA#18-008 to **APPROVE** the variances as requested with staff's recommended conditions. Mr. McKinney seconded the motion. Upon call of roll: Mr. Schweier – yes; Mr. McKinney – yes; Mr. Rogers – yes; Mr. Merten – yes; Mrs. Fey – yes. The motion passed and the requests were approved.

---

Mr. Schweier called for the next case.

Mr. Behrmann presented the staff report and PowerPoint Presentation for case **BZA#18-009**, Sue Amend, 7365 Millikin Road, which was a request for a Variance under Section 4.12.4 and Table 4.12-A of the Liberty Township Zoning Resolution to locate a 696 Sq.Ft. pool pavilion in the side yard. Mr. Behrmann reviewed the property, the surrounding properties, the proposed pavilion location and details.

Mr. Schweier asked if there were any questions for staff.

Mrs. Fey asked if an adjacent property ever developed, how close to the property lines could something be built. Mr. Behrmann confirmed that accessory structures could be built within 10' to a side property line and a house could be built within 15' from the property line.

Mr. Schweier asked to hear from the applicant.

Mark Koeninger (4535 Port Union Road, Fairfield, OH) who is the architect for the proposed pool pavilion. He explained that the proposed site is the only location it could be located septic system and existing pool pumps.

Greg Amend (7365 Millikin Road, Liberty Township, OH) explained that if he developed the adjacent property, the adjacent lot would have a required setback that would be in addition to the proposed 22' setback to the pavilion. He noted that he has no intentions of developing his property.

Mr. Schweier asked if anyone would like to speak in favor of the variance. There were none.

Mr. Schweier asked if anyone would like to speak in opposition of the variance. There were none.

Mr. Schweier **CLOSED THE PUBLIC HEARING** for BZA#18-009 and the Board began their deliberations.

Mr. McKinney explained that the proposed location would not have an impact on any adjoining properties.

Mr. Schweier stated that the only place that the pavilion could be located in compliance is where the existing leach field is currently located, which presents a hardship for the applicant.

Mr. Merten made a motion for BZA#18-009 to **APPROVE** the variance as requested with staff's recommended conditions. Mr. Schweier seconded the motion. Upon call of roll: Mr. Merten – yes; Mr. Schweier – yes; Mr. McKinney – yes; Mrs. Fey – yes; Mr. Rogers – yes. The motion passed and the request was approved.

---

Mr. Schweier called for the final case.

Mr. Behrmann presented the staff report and PowerPoint Presentation for case **BZA#18-010**, Lilia Toledo Padilla, 5720 Horseshoe Bend Rd, which was a request for a Variance under Section 4.12.4(2) of the Liberty Township Zoning Resolution to reduce the minimum required distance of an accessory structure from a side lot line from 10' to 8.5'. Mr. Behrmann reviewed the property, the surrounding properties and the details of the existing gazebo that was constructed without a permit, and several other outstanding zoning issues for improvements being constructed incorrectly or without a permit.

Mr. Schweier asked if there were any questions for staff.

The board wanted clarification on the other outstanding zoning issues that were referenced by Staff. Mr. Behrmann stated that the applicant is working toward resolving the other outstanding zoning issues and the only item for review by the board is the setback for the existing gazebo.

Mr. Schweier asked to hear from the applicant.

Lilia Padilla (5720 Horseshoe Bend Rd, Liberty Township, OH) is the daughter of the property owner, whose name is also Lilia Padilla, and she will be speaking on her behalf. Ms. Padilla explained that the fence issue is being resolved now and that they would contact the township when all the other outstanding zoning items are resolved.

Mr. Schweier asked the applicant why they would install the gazebo when they knew that they needed a permit for such an improvements. Ms. Padilla noted her hardheaded parents and a language barrier.

Mr. Schweier asked if there was a problem with moving the gazebo to where it belongs at a 10' setback. Ms. Padilla noted a concrete footer that was already in place for the supports and there would be a cost to move it.

Mr. Merten asked if the residences on both sides are occupied. Ms. Padilla confirmed that both houses were occupied.

Mr. Schweier noted that there was nobody else in attendance at the meeting, and therefore is nobody to speak in support of opposition of the proposed request.

Mr. Schweier **CLOSED THE PUBLIC HEARING** for BZA#18-010 and the Board began their deliberations.

Mr. McKinney asked if the applicant already came in to obtain or revise all of their permits. Mr. Behrmann explained that the other issues have been resolved, or are in the process of being resolved.

Mr. Schweier noted that the variances that were approved in 2016 have expired and if they wanted to move forward with those improvements, they would have to reapply for the variances.

Mr. McKinney made a motion for BZA#18-010 to **APPROVE** the variance as requested with staff's recommended conditions. Mr. Merten seconded the motion. Upon call of roll: Mr. McKinney – yes; Mr. Merten – yes; Mrs. Fey – yes; Mr. Rogers – yes; Mr. Schweier – no. The motion passed and the request was approved.

---

Mr. Behrmann explained that the minutes from the April 10, 2018 meeting are not complete at this time due to the length of the meeting; however, the Notice of Decision for BZA Case #18-003 is complete and has been distributed for the board's consideration.

Mr. Schweier made a motion to **APPROVE** the Notice of Decision for BZA Case #18-003 as presented. Mr. McKinney seconded the motion. Upon call of roll: Mr. Schweier – yes; Mr. McKinney – yes; Mr. Merten – abstain; Mr. Rogers – abstain; Mrs. Fey – yes. The motion passed and the Notice of Decision was approved.

Mr. Schweier explained that when Mike McDonald, who was the Vice Chairman of the Board of Zoning Appeals, resigned from the board, the Vice Chairman seat became vacant. Therefore, he solicited a motion to appoint a new Vice Chairman.

Mr. Schweier made a motion to nominate Mr. McKinney as Vice Chairman of the Board of Zoning Appeals. Mr. Merten seconded the motion. Upon call of roll: Mr. Schweier – yes; Mr. Merten – yes; Mrs. Fey – yes; Mr. Rogers – yes; Mr. McKinney – yes. The motion passed and Mr. McKinney is appointed a Vice Chairman of the board.

Mr. Schweier commended Mike McDonald's years of service on the Board of Zoning Appeals and wanted to publicly thank him. The board agreed.

Mr. Schweier made a motion to adjourn. Mr. McKinney seconded. Upon call of the roll, the motion passed unanimously and the **BOARD OF ZONING APPEALS MEETING ADJOURNED.**

Respectfully submitted,

---

Andrew Schweier, Chairman

---

Bryan Behrmann, Secretary