

# Minutes

## Nimishillen Township Board of Zoning Appeals

4422 Maplegrove NE, Louisville, OH 44641

Wednesday, November 2, 2016 – 7:00 PM

**Board Members Present:** Pan Aslanides, Chairman  
Anthony ‘Tony’ Mucci, Vice Chairman  
Bill Ehlers, Member  
Gary Brahler, Member  
Tom Davis, Alternate

**Board Members Absent:** David Foss, Secretary

**Zoning Inspector:** Dale Riggerbach

**Township Secretary:** Shelby Dieffenbauger

### **Purpose: (One Case)**

**Appeal #627** – Joseph & Sherri Davide of 7540 Bentler Ave. NE, Canton, Ohio 44721, Parcel #33-07829, is requesting a Conditional Zoning Certificate #754, a home occupation for Cement Contractor, regarding billing, storing equipment in an accessory building. Zoned RR-Rural Residential, subject to Section 702.2 (B) (3), Conditional Uses Subsections 115, A through G of the Nimishillen Township Zoning Resolution.

### **CALL HEARING TO ORDER:**

Chairman Aslanides opened tonight’s hearing at 7:00 PM introduced all board members in attendance, the zoning inspector, and the township secretary. Chairman Aslanides 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”.

**Appeal #627** – Joseph & Sherri Davide of 7540 Bentler Ave. NE, Canton, Ohio 44721, Parcel #33-07829, is requesting a Conditional Zoning Certificate #754, a home occupation for Cement Contractor, regarding billing, storing equipment in an accessory building. Zoned RR-Rural Residential, subject to Section 702.2 (B) (3), Conditional Uses Subsections 115, A through G of the Nimishillen Township Zoning Resolution.

**Jim Mathews of 400 S. Main St.** stepped to the podium to inform the Board that he is the attorney for the Davides’. Mr. Mathews stated the Davides’ will be using the out building for storing commercial equipment for Mr. Davide’s cement business. Mr. Mathews provided the Board with a legal brief regarding past case law. Mr. Mathews stated that this is not a business use of property. There will be no customers, no vendors or material on the property, and all of the work is done offsite. The income producing vehicles are parked inside at the property and not outside, with occasional maintenance on the trucks. In the home, there will be some bookkeeping done.

Mr. Mathews held a discussion with the Board on the legal brief he provided. (Copy attached)

Mr. Mathews informed the Board that some employees come to the property to drive the vehicles off the property. Mr. Mathews provided the Board an aerial view of the property. (Copy attached)

Zoning Inspector Dale Riggerbach asked Chairman Aslanides to enter the picture as Exhibit A for the record.

**Sherri Davide of 7540 Bentler Ave.** stepped to the podium to inform the Board they are requesting the storage of vehicles on the property for her husband’s cement business, which he started about

10-12 years ago. All of the neighbors but 2 have lived there before them and they have seen their business grow. Mrs. Davide's husband keeps the area clean and all vehicles in the garages. The buildings are approximately 700 ft. off the roadway and trees line the property line, so the building can't be seen. He also is respectful and doesn't start the vehicles early in the morning or late into the evening. Typically the trucks go up and down the driveway once in the morning and once in the evening. Mrs. Davide's husband is a cement contractor and all of the work is done offsite. There are no customers, suppliers, or vendors at the home. No materials on site, only the storage of the vehicles along with their personal vehicles, 4-wheelers, motorcycles, and golf carts. Mrs. Davide stated that she and her husband have been very compliant and have completed everything that was asked by Mr. Riegenbach for zoning, the Health Dept., and the Auditor's office.

Mrs. Davide informed the Board she asked her neighbors for letters, which she provided to the Board. Chairman Aslanides introduced Exhibit B, 7 signed and notarized letters. (Copy attached)

Due to some audience members entering in late, Chairman Aslanides and the Board decided to do another mass swearing in.

Mr. Mucci asked Mr. & Mrs. Davide why they are just now coming to the Board and have they been violating codes all this time? Mrs. Davide explained to the Board of an incident with a neighbor. The Sheriff's were involved and a no contact order was in place for 2 years, which expired in mid-September, then all of the complaints started.

**Joe Davide of 7540 Bentler Ave.** stepped to the podium & held a discussion with the Board regarding his first variance from 1997 for the 40 by 60 building. Mr. Mucci asked if he received approval for the additions to the building. Mr. Davide stated no and he will cooperate with Dale. Mr. Riegenbach informed the Board the building will be addressed next.

Discussion was held regarding the locations of their neighbors' properties.

Mr. Riegenbach informed the Board of the history of the neighbor disputes.

Mr. Riegenbach informed the Board that Mr. Davide will need to apply for another variance for the building additions. Discussion followed.

Discussion was held regarding the first variance from 1997 and the terms of a Condition Use Permit.

The Board asked if anyone in attendance would like to speak for the variance.

**Walt Barson of 5090 Hahn St.** stepped to the podium to inform the Board the Davides' are good neighbors, they keep everything in nice shape, and they help each other out. Mr. Barson is for the variance.

**Joe Dossi of 7586 Bentler Ave.** stepped to the podium to inform the Board the Davides' are great neighbors, he has no issues with the variance. The Davides' keep their property well maintained, the trucks are never outside, and the business is not disruptive.

Mr. Davis asked Mr. Dossi if the trucks coming and going are bothersome. Mr. Dossi said no, the trucks leave and return in an orderly fashion.

Chairman Aslanides asked Mr. Dossi what time the trucks leave. Mr. Dossi said he couldn't tell the Board because he doesn't hear them leave. Discussion followed.

**Richard Kurz of 7535 Bentler Ave.** stepped to the podium to inform the Board that he lives across the street, their driveway lines up with his property. Mr. Kurz has no issues. The trucks go up and down the driveway once, maybe twice a day and there is no significant noise.

**Harry Bauman of 7482 Bentler Ave.** stepped to the podium to inform the Board that he backs up the Davides'.

Chairman Aslanides asked if anyone in attendance would like to speak against the variance.

Chairman Aslanides informed those in attendance that Bob and Nancy Kraus called the Board personally and sent letters stating that they are against this variance. Their concerns are the noise & safety; the trucks are driving fast down the driveway, and they are concerned that the vehicles could come into the yard. Discussion followed.

Chairman Aslanides asked Mr. Riggenbach if there were any other calls. Mr. Riggenbach said there were 2 calls to the office, one from Gabriel and the other from Pat Riegler. Both callers did not oppose the variance.

Chairman Aslanides asked Mr. Riggenbach if there were others who opposed the variance besides the Kraus'. Mr. Riggenbach stated no.

Chairman Aslanides informed the Board and those in attendance that the Kraus' are not present at the hearing; they are on vacation, although a representative would be attending for them.

Chairman Aslanides asked if the representative was in attendance.

**Pat Bucher** stepped to the podium to inform the Board that he is representing Bob and Nancy Kraus, who are against the variance.

Mr. Riggenbach informed the Board he has spoken to both Bob and Nancy. Both are against this variance. Mr. Riggenbach informed the Board that Mr. Kraus could have a representative attend the hearing since he is on vacation and couldn't attend.

Chairman Aslanides stated the Kraus' provided a letter to the Board stating they are against the variance, which was discussed earlier in the hearing.

Discussion was held regarding the terms of a Condition Use Permit.

Mr. Riggenbach informed the Board that Bob and Nancy Kraus attended the last Trustees Meeting on October 27 to inform the Trustees that they are against this variance.

**Jim Mathews of 400 S. Main St.** stepped to the podium to discuss the terms of the Conditional Use Permit with the Board. Discussion followed.

**Motion for a Ballot Vote:** With no other questions and/or discussion, Chairman Aslanides asked for a motion for a ballot vote to approve or disapprove Appeal #627/Conditional Zoning Certificate #754.

*GARY BRAHLER MOTIONED FOR A BALLOT VOTE FOR APPEAL #627/CONDITIONAL ZONING CERTIFICATE #754 SECONDED BY TONY MUCCI. The Board responded by saying 'I'. MOTION CARRIED.*

Roll call voting:	Tom Davis	--	Approve
	Gary Brahler	--	Approve
	Bill Ehlers	--	Approve
	Tony Mucci	--	Approve
	Pan Aslanides	--	Approve

Chairman Aslanides said **the request for Appeal #627** was **APPROVED** and advised Mr. Davide 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.

**Old Business:** There was no old business to discuss.

**New Business:** Chairman Aslanides asked if anything would be coming up. Mr. Riggenschach stated he has had some inquiries but they may not be for next month.

Discussion was held about Conditional Use Permits.

**Approval of Minutes:**

*BILL EHLERS MOTIONED TO APPROVE THE MINUTES FOR SEPTEMBER 7, 2016 AS WRITTEN SECONDED BY GARY BRAHLER The Board responded by saying 'I'. MOTION CARRIED.*

Roll call voting:	Tom Davis	--	No Vote
	Gary Brahler	--	Approve
	Bill Ehlers	--	Approve
	Tony Mucci	--	Approve
	Pan Aslanides	--	Approve

**Adjournment:**

*TONY MUCCI MOTIONED TO ADJOURN AT 7:55 PM SECONDED BY GARY BRAHLER. The Board responded by saying 'I'. MOTION CARRIED.*

Roll call voting:	Tom Davis	--	Approve
	Gray Brahler	--	Approve
	Bill Ehlers	--	Approve
	Pan Aslanides	--	Approve
	Tony Mucci	--	Approve

Pan Aslanides, Chairman  
Nimishillen Township Board of Appeals

Tony Mucci, Vice Chairman  
Nimishillen Township Board of Appeals

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*Zoning Board of Appeals Minutes: 2016–November 2: One Case: Conditional Zoning Permit Home Business @ 7540 Bentler Ave.*