

# Minutes

## Nimishillen Township Board of Zoning Appeals

### Special Hearing

4422 Maplegrove NE, Louisville, OH 44641

Wednesday, November 23, 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 Dieffenbaugher

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

**Appeal #627/0653** – This special hearing is to reconsider action regarding Joseph & Sherri Davide of 7540 Bentler Ave. NE, Canton, Ohio 44721, Parcel #33-07829, 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.

**Appeal #627/0653** – This special hearing is to reconsider action regarding Joseph & Sherri Davide of 7540 Bentler Ave. NE, Canton, Ohio 44721, Parcel #33-07829, 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.

Chairman Aslanides states that only 8 days notice was inadvertently given instead of 10 days for the hearing held on November 2, 2016. For this Special Hearing on November 23, 2016, notice was given on November 10, 2016 to all parties, adjoining properties. To those in attendance, we will take testimony. You can re-testify if you have anything to add, something new, or if you were unable to testify at the previous hearing on November 2, 2016.

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”.

Chairman Aslanides explains to those in attendance how this hearing will go. Those who would like to speak for will go first and then those who would like to speak against will go second.

**Jim Mathews of 400 S. Main St.** stepped to the podium to inform the Board that he is the attorney for the Davide’s. Mr. Mathews held a discussion with the Board in regards to why there had to be another hearing for this Conditional Use Permit, why the Board’s first ruling is legally valid, and the difference between a public hearing and a regular hearing. Much discussion followed.

During the discussion, Mr. Ehlers asked Zoning Inspector Dale Riggerbach who gave the 10 day guideline for notifying the appropriate persons of this hearing. Mr. Riggerbach stated that a pamphlet from the Stark County Regional Planning explains the process of these hearings and in

regards to 10 days notice. Mr. Riggenbach informed the Board that he sought legal counsel and they said to have a reconsider action hearing. Chairman Aslanides explains to those in attendance that the Board is following what legal counsel is telling them to do, which is why they are here tonight. Mr. Riggenbach informed the Board that if the 10 days or more had been met, they wouldn't be here tonight. Discussion followed.

Mr. Mathews informed the Board he just had a conversation with the opponent's lawyer. He proposes to the Board a stipulation that the Board can consider the November 2, 2016 record. That way the Board does not have to hear a repeat of information and have things augmented for tonight's hearing.

**John Juergensen of 6545 Market Ave.** stepped to the podium to inform the Board that he is the attorney for the Kraus'. Mr. Juergensen stated that in interest of time, he asked the Board to consider what was said at the November 2, 2016 hearing. Mr. Juergensen stated that he has listen to the recording and has no objections. The Board could make a motion to incorporate the November 2, 2016 information into this record.

Chairman Aslanides asked Mr. Juergensen that all he is asking is that the information from November 2, 2016 be included, tonight the Board will hear new information, not go through all of the old information, and if the Board has questions to ask then move forward from there. Mr. Juergensen stated yes.

Mr. Riggenbach informed the Board that both attorneys suggest that the Board make a motion to accept the prior meeting minutes.

**Motion:** Chairman Aslanides asked for a motion to accept the prior meeting/hearing minutes.

***TOM DAVIS MOTIONED TO ACEEPT THE PRIOR MEETING/HEARING MINUTES (NOVEMBER 2, 2016) SECONDED BY GARY BRAHLER. The Board responded by saying 'I'. MOTION CARRIED.***

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

Chairman Aslanides informed those in attendance, everything everyone said at the last meeting is accepted, moving forward the Board will hear anything new or if anyone new would like to speak.

**Jim Mathews of 400 S. Main St.** stepped to the podium to inform the Board that they are here tonight in regards to a Conditional Use Permit for the Davides' to allow them to operate out of their home, which is recognized as a home business. Mr. Davide runs a concrete business, with no business conducted on the property, it is handled offsite. It is for the storage of commercial vehicles on the property and some billing activity conducted in the home by Mrs. Davide. Discussion followed.

Chairman Aslanides asked if anyone who hasn't given their view for the Conditional Use Permit.

Mr. Riggenbach provided the Board 2 pictures that were given by Mr. Kraus to the Board of Trustees at the last Trustees Meeting. Mr. Riggenbach would like Chairman Aslanides to add these pictures into evidence. Chairman Aslanides added the 2 pictures into evidence. Much discussion followed regarding the pictures.

Chairman Aslanides asked if anyone is for the Conditional Use Permit.

**Richard Kurz of 7535 Bentler Ave.** stepped to the podium stating he is for the Davide's. Mr. Kurz asked after the "against" speak, can they come back up to answer questions or to refute their statements. Chairman Aslanides stated that the Board will not make a decision until everyone has said their peace.

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

**John Juergensen of 6545 Market Ave.** stepped to the podium to inform the Board he is the attorney for the Kraus'. Mr. Juergensen held a discussion with the Board in regards as to why this Conditional Use Permit should be denied. Mr. Juergensen explained that this Conditional Use Permit is in violation of different sections of the Zoning Resolution. Much discussion followed.

**Bob Kraus of 7506Bentler Ave.** stepped to the podium to provided pictures from the Stark County Auditors website for the Board from 2013-2015. Mr. Kraus informed the Board that in the pictures you can see piles of aggregate.

Mr. Brahler asked how many acres Mr. Kraus owns. Mr. Kraus stated 3.75 acres.

Mr. Kraus provides the Board 12 letters from neighbors around him and his Real Estate agent. Mr. Kraus read aloud the letter from his Real Estate agent to the Board.

Mr. Kraus informs the Board that Mr. Davide has more than just accounting and the storage of trucks on the property. There is aggregate, limestone, gravel, and trailers. The trailers are almost always outside and they site by the property line. The trailers are in the way of Mr. Kraus mowing his grass. The workers also unload and load up gravel and limestone. Discussion followed regarding the buildings on the property.

Mr. Brahler asked Mr. Kraus how long he has lived at the property and how long has Mr. Davide had his business there. Mr. Kraus stated he has lived at his property for 24 years. Mr. Kraus stated that it depends on who you talk to regarding the business.

Mr. Brahler asked Mr. Kraus how long he has been upset with Mr. Davide. Mr. Kraus stated that he has never liked having the buildings that close to the property line. Discussion followed.

Mr. Ehlers asked Mr. Kraus if he had Mr. Davide pour concrete on his property, if he paid him for it, and how many years ago it was. Mr. Kraus stated yes and the work was done probably in 1998. Mr. Ehlers asked if this was before or after the building was up. Mr. Kraus stated it was 1 year after the building was up. Discussion followed.

**Nancy Kraus of 7506Bentler Ave.** stepped to the podium to inform the Board, since her and Bob retired, they have heard the noise from the trucks coming down the driveway, which is close to their bedroom, everyday from 6:30 a.m. – 7 a.m. If she had known 24 years ago that there was a

business next door, they wouldn't have built there. She is very upset, this should have never started, and they shouldn't have to be spending all this money if it was done right. Much discussion followed.

Mrs. Kraus informed the Board that this didn't just start in September; it has been going on for quite some time

Chairman Aslanides asked Mrs. Kraus if she has just moved into her home today and the trucks were not there, would you know there was a business at the property. Mrs. Kraus stated to be honest probably not, but would be upset after the fact.

Chairman Aslanides asked Mrs. Kraus if the only reason they know a business is there is the trucks go up and down the driveway, which wakes her up. Mrs. Kraus stated yes.

Chairman Aslanides asked Mrs. Kraus other than that, the business is not an issue. Mrs. Kraus stated it's an issue because he built the building too close to the property line. Chairman Aslanides stated that was not what he was asking. Chairman Aslanides asked if the trucks were not there, would you ever know there was a business there. Mrs. Kraus stated probably if they walked the property first then yes.

Chairman Aslanides asked Mrs. Kraus what else would have bothered you about the business besides the trucks. Mrs. Kraus stated the piles of limestone and gravel would bother her.

Mr. Davis asked since the property is zoned RR – Rural Residential, can they have a pile of aggregate or limestone on the property. Much discussion followed regarding the aggregate, limestone, the trucks, and the Board granting variances. Mr. Riggerbach stated there is something listed in Resolution #06-101 regarding aggregate and limestone. Discussion followed.

**Patrick Bucher of 8328 Welty Rd SW, Navarre** stepped to the podium to inform the Board that he is Bob Kraus' cousin. Mr. Bucher has spent several nights at his home and he can hear the trucks going up and down the road. They say the trucks leave around 7:30-8 a.m., but it's more like 6:00-6:30 a.m. Mr. Bucher stated that he has the truck because of the business.

**Joe Davide of 7540 Bentler Ave.** stepped to the podium with his attorney Jim Mathews to answer questions. Mr. Mathews asked Mr. Davide about the trucks leaving the property in the morning down the driveway to the road. Does he have a driveway that extends from the garages to the public road? Mr. Davide stated yes.

Mr. Mathews asked Mr. Davide the trucks leave at approximately what time in the morning? Mr. Davide stated between 7:30 – 8 a.m.

Mr. Mathews asked Mr. Davide how long does it take for the vehicles to leave down the driveway to go off to a job site. Mr. Davide stated a few minutes, about 5 minutes. Mr. Davide told his employees to shut lights off until they are on the road. And as his neighbor Dick stated, the lights don't affect him and it's directly in front of his home.

Mr. Davide informed the Board the aggregate behind garage he does use for his property. Some neighbors come over to ask for some gravel as well. Mr. Davide has even taken numerous times,

limestone behind Mr. Kraus' barn. Mr. Davide stated he doesn't sell it, he gives some to the neighbors if they ask, if he has some left from a job he puts it behind the garage, & if he needs it he will use it around his property.

Mr. Mucci asked Mr. Davide that he purchases it in the morning, than whatever's leftover he sets it there & never picks it up again or takes it. Mr. Davide states that if he needs 1 or 2 tons for another job he will use it. Mr. Davide informs the Board that it's easier for him to stop and get load gravel so he has a written statement to show the builders how much gravel there is than state it on the invoice.

Mr. Mucci asked Mr. Davide what size truck he has. Mr. Davide stated 2 single axel dump trucks and a 1 ton.

Mr. Brahler asked Mr. Davide how many trucks leave in the morning on an average day. Mr. Davide stated on average 3 trucks. There's 1 tool truck, 2 dump trucks, and 1 ton dump truck. The 1 ton dump truck is for little jobs and for Mr. Davide to haul grass out of his yard. Mr. Davide stated he has 2 trucks in case 1 breaks down. Discussion followed regarding the trucks and his employees.

Mr. Brahler asked Mr. Davide if there are mufflers on the trucks. Mr. Davide stated yes and that's why they aren't as loud. Discussion followed.

Mr. Mathews asked Mr. Davide to explain whether the trailers that are visible in a picture that was discussed earlier are for personal or business. Mr. Davide explains that 1 trailer is his father-in-law's, the little trailer is used to haul mowers and stuff around because he mows his mom's property, and the other trailer sits in the garage 90% of the time because it's with the bobcat. It's sitting out now so he could clean the garage. All equipment is in the garage.

**Robert Kraus of 7506Bentler Ave.** stepped to the podium to inform the Board that Mr. Davide's sons' work from him in the summertime, so he really has 6 employees.

Mr. Kraus provided the Board a picture of the pine trees on his property. After discussion, the Board informed Mr. Kraus the trees are not an issue.

Mr. Kraus informs the Board that he is concerned if the trucks are fully loaded coming down the driveway and something breaks and the driver has no control, the pine trees are not going to stop a fully loaded truck from coming into their bedroom where they sleep. Chairman Aslanides asked Mr. Kraus if he has ever felt unsafe and has something like that actually happened. Mr. Kraus stated that trucks have broken down before. Discussion followed.

**Jim Mathews of 400 S. Main St.** stepped to the podium to inform the Board as to why the Davides' reasonably satisfy the terms of a Conditional Use Permit. Mr. Mathews stated that Mr. Davide will not store aggregate at the property and there is adequate parking on the property. Mr. Mathews stated that a property own may suffer a few minutes of inconvenience or annoyance; this doesn't arise to a level of a nuisance. A nuisance is a repetitive thing that a normal person can't possibly live with. The Davides' property is clean and doesn't change the look of the neighborhood. The Davides' understand this is property specific, it doesn't transfer with them and

is limited to them and it doesn't change the zoning of the property. Mr. Mathews asked the Board to allow the Davides' to continue to operate in a reasonable fashion.

**John Juergensen of 6545 Market Ave.** stepped to the podium to inform the Board that they are bonded by a standard of beyond a reasonable doubt. The Zoning Resolutions Section 115 item A and C says using an accessory building to store vehicles for a home business disqualifies the Davides' from a Condition Use Permit and using the aggregate on the property for business use is a violation of items A & C. Mr. Juergensen asked the Board to deny this Conditional Use Permit because of the violations of Section 115 items A & C, although if the Board does grant the permit, he asks them to add a stipulation that no aggregate or material is stored on the property.

The Board held a discussion regarding letters from neighbors that are for and against the Conditional Use Permit.

Chairman Aslanides read aloud letters received that are for the Conditional Use Permit.

- Walt Barson of 5090 Hahn
- Taso Kalantzis of Hahn
- Shawn Pace of 7571 Bentler
- Sandra Beichler of 7666 Bentler
- Richard Kurz of 7535 Bentler
- Michael Hann of 5130 Hahn
- Peg Dossi of 7586 Bentler

The Board asks if any of the letters against are adjoining properties. Mr. Kraus stated they are in the neighborhood on Hahn and Bentler.

Zoning Inspector Dale Riggenbach informs the Board of a phone call from Pat Riegler. Ms. Riegler is for the Conditional Use Permit.

Chairman Aslanides explains to those in attendance that all but 1 of the adjoining properties is for it. Against are Mr. & Mrs. Kraus. Mr. Kraus submitted to the Board names that are against but are not adjoining properties.

Chairman Aslanides read aloud letters provided by Robert & Nancy Kraus that are against the Conditional Use Permit.

- Mary Lou George of Cutler Reality
- Robert Kraus of 7506 Bentler
- Robert McCartney of 7707 Bentler
- Beth Hodges of 7735 Bentler
- Shelia Stanish of 7855 Bentler
- Eric G. Cronberg of 7455 Bentler
- Audrey Kress of 7681 Bentler
- David Snyder of 8021 Wisner St.
- Ruth Ann Hubert of 5037 Hahn
- Beverly S. Nagy of 5251 Hahn
- William G. Willingham of 8036 Blendwood
- Carolyn Carroll of 5294 Hahn

Mr. Mucci wanted to inform the Board that the letter from the Real Estate agent is not included with the against letters.

Chairman Aslanides asks the Board if anyone has anything else to add. Since no one had anything to add, Chairman Aslanides asked the Board to enter into a Quasi Judicial Deliberation for a discussion. The Board agrees.

**Motion for a Quasi Judicial Deliberation:**

*TOM DAVIS MOTIONED TO ENTER INTO A QUASI JUDICIAL DELIBERATION TO DISCUSS APPEAL #627/0653/CONDITIONAL ZONING CERTIFICATE #754 AT 8:45 P.M. SECONDED BY GARY BRAHLER. The Board responded by saying ‘I’. MOTION CARRIED.*

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

Chairman Aslanides and the Board returned from the Quasi Judicial Deliberation at 9:07 p.m. Chairman Aslanides explained to those in attendance that the meeting has run long, so a new recording has started for the rest of the hearing.

Chairman Aslanides informs those in attendance that the Board has some questions they legally do not know. There are some issues in the zoning that the Board is not sure about. So the Board would like to seek legal counsel regarding several items they would like clarified before making a ruling. The Board would like to be fair to both the Davides’ and the Kraus’. Chairman Aslanides stated the Board is granting a continuance for this hearing at the next hearing on December 7, 2016 at 7 p.m. Chairman Aslanides asked if anyone had any questions for the Board.

**Motion for a Continuance:** With no other questions and/or discussion, Chairman Aslanides asked for a motion for a continuance for Appeal #627/0653/Conditional Zoning Certificate #754.

*GARY BRAHLER MOTIONED FOR A CONTINUANCE FOR APPEAL #627/0653/CONDITIONAL ZONING CERTIFICATE #754 SECONDED TOM DAVIS. The Board responded by saying ‘I’. MOTION CARRIED.*

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

The Board held a discussion regarding their questions for legal counsel and regarding the current zoning issues at the property, the size of the trucks, and the aggregate on the property.

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

**New Business:** Chairman Aslanides asked if there’s any new business. Mr. Riggenbach stated there will be 2 coming up in December, plus this continuance in December.

**Adjournment:**

*BILL EHLERS MOTIONED TO ADJOURN AT 9:35 PM SECONDED BY TONY MUCCI. 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 |

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Pan Aslanides, Chairman  
Nimishillen Township Board of Appeals

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Tony Mucci, Vice Chairman  
Nimishillen Township Board of Appeals

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*Zoning Board of Appeals Special Hearing Minutes: 2016 –Nov. 23; One Case: Conditional Zoning Permit Home Business @ 7540 Bentler Ave.*