

# Minutes

## Nimishillen Township Board of Zoning Appeals

4422 Maplegrove NE, Louisville, OH 44641

Wednesday, January 4, 2017 – 7:00 PM

**Board Members Present:** Pan Aslanides, Chairman  
David Foss, Secretary  
Bill Ehlers, Member  
Gary Brahler, Member  
Tom Davis, Alternate

**Board Members Absent:** Anthony ‘Tony’ Mucci, Vice Chairman

**Zoning Inspector:** Dale Riggerbach

**Township Secretary:** Shelby Dieffenbaugher

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

**APPEAL #0654** – Joseph & Sherri Davide of 7540 Bentler Ave. NE, Canton, Ohio 44721, Parcel #33-07829, is requesting variance for: (A) Existing 1,702 sq. ft. Accessory Building instead of the allowed 1,280 sq. ft. as permitted in Section 602.4 of the Nimishillen Township Zoning Resolution. (B) 2,976 sq. ft. addition to an existing 2,400 sq. ft. (1997 Variance) Accessory Building totaling 5,376 sq. ft.

### **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.

### **ORGANIZATION OF THE BOARD OF ZONING APPEALS:**

#### **Election of Officers:**

The Board held a discussion about the election of new officer for 2017. Mr. Ehlers says he would feel more comfortable to keep the existing officers until the situation is resolved. Than at the 1<sup>st</sup> meeting following the conclusion and a decision is made regarding Bentler, Mr. Ehlers will ask to remove this motion and call for a vote of officers for 2017. The Board agreed.

BILL EHLERS MOTIONED TO TABLE THE ORGANIZATIONAL MEETING FOR THE ELECTION OF OFFICERS FOR 2017 BECAUSE OF THE PENDING APPEAL ON BENTLER AVE. SECONDED BY GARY BRAHLER. **MOTION CARRIED.**

Roll call voting:	David Foss	--	In Favor
	Gary Brahler	--	In Favor
	Bill Ehlers	--	In Favor
	Pan Aslanides	--	In Favor
	Tom Davis	--	In Favor

#### **Set day and time for hearings:**

After discussion, the Board decided to keep the day and time the same, which is 1<sup>st</sup> Wednesday of each month at 7 P.M. Board members responded by saying ‘I do’. **MOTION CARRIED.**

GARY BRAHLER MOTIONED TO KEEP THE DATE AND TIME THE SAME, WHICH IS THE 1<sup>ST</sup> WEDNESDAY OF THE MONTH AT 7 P.M. SECONDED BY DAVE FOSS. **MOTION CARRIED.**

Roll call voting:	David Foss	--	Approve
	Gary Brahler	--	Approve

Bill Ehlers -- Approve  
Tony Mucci -- Approve  
Pan Aslanides -- Approve

**CALL HEARING TO ORDER:**

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 the audience the process of the hearing and the history of the case.

Chairman Aslanides informs the audience and the Board that the Conditional Use Permit has not been finalized because the Board had questions for the Prosecutor. The Board did receive the answers from the Prosecutor today (January 4), so the continuation will be the first hearing in February.

Chairman Aslanides explained to the audience that tonight’s hearing will be for the buildings only, not the business. The business will be the hearing in February. Tonight is just the buildings.

**Appeal #0654** – Joseph & Sherri Davide of 7540 Bentler Ave. NE, Canton, Ohio 44721, Parcel #33-07829, is requesting variance for: (A) Existing 1,702 sq. ft. Accessory Building instead of the allowed 1,280 sq. ft. as permitted in Section 602.4 of the Nimishillen Township Zoning Resolution. (B) 2,976 sq. ft. addition to an existing 2,400 sq. ft. (1997 Variance) Accessory Building totaling 5,376 sq. ft.

**Sherri Davide of 7540 Bentler Ave.** stepped to the podium to inform the Board that they are asking for approval of a variance for 2 accessory buildings. Mrs. Davide stated that they were required to have 5 permits, 3 were standard permits, which has been taken care of with the zoning department. The other 2 permits are pending, per the decision of the Board. Mrs. Davide stated the building that is 1,702 sq. ft. is just a standard garage, with a lean-to, which makes the building longer, on both sides for their pool and deck area. Mrs. Davide stated the existing permit for the 1st garage, building #4 in the pictures provided to the Board, was added onto the rear and north sides. Not all items stored inside are relative to the business. The north addition doesn’t house any equipment for the business. It houses a workout facility, TV & couch, and gaming area for their kids. The rear addition does house business equipment as well as personal equipment such as mowers, tractors, rollers, spreaders, and material for home use. Mrs. Davide stated that these buildings have been up for some time and at no point in the time they have been there has there ever been a complaint by any neighbors or issue until another scenario a couple years ago. When this was brought to their attention and asked to address this, the auditor came to the property, measured the garages and they have paid all of the back taxes as soon as it was addressed.

Mrs. Davide submitted to the Board with 4 “For” letters from neighbors specific to the buildings.

Mrs. Davide stated that they have 4 drivers each with their own vehicle and most of the garages house their personal vehicles.

Chairman Aslanides asked why they didn’t get permits as they added on. Mrs. Davide stated that they got the 1<sup>st</sup> permit for the 1<sup>st</sup> building but they didn’t know that permits were needed to add on. They didn’t realize they had to do that. Once they were notified by the township since the matters

were being handled separately, that is why they didn't address the permits 4 months ago. Since there was a continuance, they went ahead and paid for the permits they could.

Mr. Brahler asked roughly how many years ago were the buildings built. Mr. Davide stated the original variance in 1997 was approved; each building was built after that. The 1<sup>st</sup> was a few years after the original, pool building was in 2005, and the little building in 2005. So they have been there at least 12 years.

Mrs. Davide informed the Board that once they were notified of the error, they have taken care of the back taxes, gotten permits, gotten letters from their neighbors, done the variances. There were no issues at first; all the neighbors saw the building being built. Discussion followed.

Chairman Aslanides enters into Evidence 4 letters that are For the buildings. Evidence A:

1. Richard Kurz
2. Sandra Beichler
3. Walt Barson
4. Joe & Peg Dossi

**Joe Davide of 7540 Bentler Ave.** stepped to the podium to inform the Board that he has spoken to all of his neighbors because he is getting a bad reputation. Mr. Davide submits a letter to the Board that was given to the neighbors.

Chairman Aslanides enters into Evidence, Evidence B, a letter addressed to the Board of Zoning Appeals and to Zoning Inspector Dale Riggbach.

Mr. Davide stated that a neighbor is trying to have others sign a petition against the variance. Mr. Davide says that he built his home 23 years ago. He moved to Nimishillen Township because he wanted his kids to grow up here and that he enjoys the community. Mr. Davide wants this to stop affecting his neighbors. Discussion followed.

Chairman Aslanides 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 that he has known the Davides' for 20 years. The Davides' always kept their house nice, the garages nice, and the yard nice. The equipment, vehicles, cars, and 4-wheelers are always put away, there is no trash on the property, and Mr. Davide has his support.

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

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

**John Juergensen of 6545 Market Ave.** stepped to the podium to explain the Board about an Ohio Supreme Court Case from 1986, Duncan v. Middlefield. This case stated that in order for the Board to grant a variance, the applicant has to show practical difficulty associated to the land. Mr. Juergensen states that the applicants have not provided this to the Board and if the Board grants this variance, they are setting a dangerous precedence to others.

Chairman Aslanides states that he feels this is a special circumstance and that everything the Board does, is on a case by case basis. The Board could deny the variance and then grant it for someone else because of different circumstances. The Board does change the zoning laws on a case by case basis and that every person who comes to the Board is asking for a change in the zoning laws.

Discussion was held with Mr. Juergensen and the Board regarding the variance, practical difficulty, and the Ohio Supreme Court Case.

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

**Robert McCartney of 7707 Bentler Ave.** stepped to the podium to inform the Board that he has no animosity for anyone. The only reason he is in attendance is because he's addressing the sign that Dale had put on the property. Mr. McCartney asked the Board some questions regarding the variances.

1. Are the variances for the buildings already built?
2. Did they get a permit to build?

Chairman Aslanides informed Mr. McCartney that yes, the buildings are already built and that a permit was granted in 1997 for the original building. Mr. Riegenbach stated that the only permit in the file besides the home was one from 1997. Mr. McCartney asked since they didn't have the proper permits, the county doesn't know about the buildings so they haven't been paying taxes on them. Mrs. Davide informed Mr. McCartney that since they were informed of this, the Auditor has been out to the property and everything, the back taxes, has been paid. Mr. McCartney informed the Board that since they have paid the taxes, it's okay with him. Discussion followed.

**Bob Kraus of 7506 Bentler Ave.** stepped to the podium to inform the Board that the Davide's say that it doesn't affect their neighbors except it affects their neighbor with the biggest property line right next to theirs. Mr. Kraus is also concerned with their cement driveway that is on his property that hasn't been fixed, which it could have been. Mr. Kraus provides the Board with 13 signed letters from neighbors who are against the variance. Mr. Kraus reads aloud a copy of the letter to the Board.

Chairman Aslanides asked Mr. Kraus if he wrote the letter the neighbors each signed. Mr. Kraus stated yes, he wrote the letter then passed it out for people to sign them with their names and addresses listed. Chairman Aslanides enters into Evidence, Evidence C, 13 letters of neighbor against the variance.

Mr. Kraus informed the Board that they are all neighbors and they should try to get along as friends. Mr. Kraus has extended an olive branch with the lawyers to the Davide's but never heard nothing back. Mr. Kraus feels that if you extend an olive branch, you should get something back.

Mr. Kraus continues to read the letter to the Board. Mr. Kraus informs the Board that Mr. Davide is a cheater and that he was never invited to a hearing for the 1997 variance to voice his opinion. Mr. Kraus asked Mr. Davide to move the building over 4-6 ft. and he didn't. Mr. Kraus stated that Mr. Davide did not care about him then and doesn't care about him now. Mr. Kraus informed the Board that Mr. Davide has threatened him several times.

**Nancy Kraus of 7506Bentler Ave.** stepped to the podium to inform the Board that she is against it because every morning they hear the trucks by their bedroom window. She is concerned about the noise.

**Bob Kraus of 7506Bentler Ave.** stepped to the podium to inform the Board that he provided to them at the last hearing letters stating if he tries to sell his property he will lose money because of how close the buildings are to the property line. Mr. Kraus is concerned about part of the driveway being on the property line and he isn't sure why the 3rd building isn't included in the variance.

Mr. Riggenbach stated that he has acquired permits for the smaller building.

The Board asked Mr. Kraus if the driveway is on the property line. Mr. Kraus stated that is was on the property line. Chairman Aslanides asked for clarification, was the driveway on the property line or is the driveway on the property line. Mr. Kraus stated was and part of it still is. Mr. Kraus is not allowed on the property to go out and measure.

Mr. Foss asked Mr. Kraus why he keeps bring up Mr. Davide's character and who his associates are to the Board. Mr. Kraus asked Mr. Foss if he means the illegal stuff. Mr. Foss stated what does any of this have to do with what they are discussing tonight. Mr. Kraus stated it is related if he is cheating on his taxes and that he hasn't fixed his septic system yet. Discussion followed.

Mr. Riggenbach informed the Board that he spoke to Kathy at the Stark County Auditor's Office, the Davides' addressed all of the issues they have said and they are paying all of the back taxes. As for the driveway, they have to be 2 ft. off the property line which was imposed in 2008. Mr. Davide's driveway was done prior to that, so it is grandfathered in. Mr. Kraus stated that his real estate agent doesn't care about that and its putting a financial hardship on him, which he will not be able to get the price he wants for his home or have people come look at it. Chairman Aslanides stated that it's zoned and the driveway is zoned properly. Mr. Kraus stated that it is not zoned properly and that it may be grandfathered in but it's not proper. Mr. Kraus feels that he or his real estate agent shouldn't have to walk people out to the area and say that is proper to have someone's driveway on your property. Discussion followed.

Chairman Aslanides asked if anyone in attendance would like to speak against the variance. Someone in the audience informed Chairman Aslanides that he is impartial and would like to speak. Chairman Aslanides asked him to come to the microphone and sign in.

**Nick Babos of 7776Bentler Ave.** stepped to the podium to inform the Board that he lives just past Hahn and has owned his home for 1 year. Mr. Babos stated that he doesn't know either party; they have never met until this evening, and he doesn't know anything about the buildings. Mr. Babos stated that he met Bob on New Year's Eve, when Bob provided him the same letter as the Board. Mr. Babos explains to the Board that he doesn't appreciate a gentleman knocking, beating on his door and ringing the doorbell numerous times. Mr. Babos stated that this is about a variance. Mr. Babos stated he has an issue with 1 person coming to other people and states issue after issue about evading taxes, not paying, cheating, & lying. Mr. Babos called someone at the County he knows and found no issues. Mr. Babos stated he is not high-fiving either one and that he is here for a zoning issue and to see who he would need to contact, who he needs to talk to, get approval from or permits from if he chooses to build. Mr. Babos informed the Board that being pushed in this manner by someone was absolutely disgusting. This is about a zoning issue and it needs to be kept

to that. It's not about a septic tank, not about co-workers, not about being threatened, and it's not about a lawyer discussing Jackson Township. Mr. Babos informs the Board and Mr. Kraus that he understands about setting precedence but in a rural area having almost 6 acres of land, whatever he wants to do with it and is approved by these gentlemen then so be it. Mr. Babos expressed to the Board and Mr. Kraus how upset he was when having someone beating down his door and ringing his doorbell on New Year's Eve when all they did was belittle someone. That is not the issue; it's about a variance for the buildings.

**Sherri Davide of 7540 Bentler Ave.** stepped to the podium to inform the Board of copies of the permit for the 1<sup>st</sup> variance that was done through the township. Mrs. Davide shows the Board a copy of a letter from the Health Inspector stating that everything is fine. The Inspector walked through every building and asked the Davide's to reroute a sink, which has been done. The Inspector was out last week to check the sink. They are waiting for another letter from the Health Inspector that states the sink is okay. Mrs. Davide stated they called the county about the electric and water, and explained to them they are waiting for the variance. Once completed then they will send an inspector out. Mrs. Davide informs the Board that they did tear out and replace some cement. Dale came out to measure since it has to be 2 ft. off the property line. The cement is 2 ft. 4 inches. Discussion about the cement followed.

**Daniel Eisenbrei** stepped to the podium to inform the Board that he is an associate of Jim Mathews, the attorney for the Davides'. Mr. Eisenbrei informed the Board that this is a neighbor dispute between the Kraus' and Davides'. The buildings have been constructed for 16 years and no one has said anything up to this point. The Davides' have done everything in their power to make this right. Mr. Eisenbrei explains to the Board that this Board is limited to the zoning code and not the Constitutional issues. Mr. Eisenbrei encourages the Board to look at the factors 3, 6, & 7 of the Duncan case that Mr. Juergensen discussed. Mr. Eisenbrei states that factor 3 states that the character of the neighborhood is altered due to the use of the variance. No, because the character of the neighborhood included these buildings for 16 years. Mr. Eisenbrei states that factor 6 & 7 says a property owner's predicament could be resolved other than a variance, which couldn't at this point; the only other option would be to tear down the buildings that have existed for 16 years.

**John Juergensen of 6545 Market Ave.** stepped to the podium to explain the Board that the factors Mr. Eisenbrei stated are well and good, but those are dealing with a situation where the need for the variance wasn't created by the land owner. A variance is to help someone who is in an unjust situation because of the natural lot or tree or something of that nature. Discussion was held regarding the functions of the Duncan law case.

**Jessica Bailey of 7810Bentler Ave.** stepped to the podium to address the Board that she is concerned that they are considering having the buildings torn down. Ms. Bailey believes that the property value has increased and if the buildings are torn down that it would decrease the property value by seeing vehicles, 4-wheelers and such on the property. The point in having them is to put things away so neighbors don't have to see them and so the property isn't an eye sore, as well as for safety. Ms. Bailey stated that everyone makes a mistake and it sounds like they are trying to right their mistake. Ms. Bailey informed the Board that she has even learned from their mistake.

**Bob Kraus of 7506Bentler Ave.** stepped to the podium to and held a discussion with the Board regarding the original building from the 1997 variance.

**Joe Davide of 7540 Bentler Ave.** stepped to the podium to inform the Board that he has had his property surveyed twice in the past. 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 #0654.

***BILL EHLERS MOTIONED FOR A BALLOT VOTE FOR APPEAL #0654 SECONDED BY GARY BRAHLER. The Board responded by saying 'I'. MOTION CARRIED.***

Roll call voting:	Dave Foss	-- Approve
	Gary Brahler	-- Approve
	Bill Ehlers	-- Approve
	Pan Aslanides	-- Approve
	Tom Davis	-- Approve

Chairman Aslanides said **the request for Appeal #0654** 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:**

The Board held a discussion about possibly imposing a limit on how long people can talk.

The Board held a discussion if they have more questions for the Prosecutor regarding her opinion.

The Board asked if there will be anything new for next month. There will be 1 new case in addition to the continued variance.

**New Business:** Chairman Aslanides stated that the Board will have something in February and will continue the Davide's as more information comes.

**Approval of Minutes:**

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

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

**Adjournment:**

***GARY BRAHLER MOTIONED TO ADJOURN AT 8:48 PM SECONDED BY DAVE FOSS. The Board responded by saying 'I'. MOTION CARRIED.***

Roll call voting:	Dave Foss	-- Approve
	Gary Brahler	-- Approve

Bill Ehlers -- Approve  
Pan Aslanides -- Approve  
Tom Davis -- Approve

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Pan Aslanides, Chairman  
Nimishillen Township Board of Appeals

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David Foss, Secretary  
Nimishillen Township Board of Appeals

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*Zoning Board of Appeals Minutes: 2017 – January 4; One Case: Accessory Building & Accessory Building Additions @ 7540 Bentler Ave.*