



Berkshire Township Board of Zoning Appeals Meeting December 21, 2022

Call to Order: Bruce Denton called the meeting to order at 7:00 p.m.

Determination of a Quorum/Roll Call: Members Dorothy Kerr, Kim Zianno Hartman, Bruce Denton, James Spurrier and Ellen Ebe were present. Also present were David Weade, Zoning Inspector; Chris Betts and Michael Cavanaugh from the Delaware County Prosecutor's Office; Sara Clark, Court Reporter; and Chris Sharlike, Meeting Secretary.

Motion to approve the minutes: A motion to approve the meeting minutes from October 19, 2022, was made by Ellen Ebe and seconded by Dorothy Kerr. The motion carried 5-0. The May 18, 2022, minutes that were previously approved were signed.

New Business:

Chairman Bruce Denton explained the procedure for the meeting, and court reporter Sara Clark swore in those who wished to speak at the meeting as well as Zoning Inspector Weade. Chris Betts and Mike Cavanaugh from the Delaware County Prosecutor's Office were introduced.

- **Application #22-214, Applicants Property Worx LLC/Property owners Marguerite and Todd Piche are requesting a rear yard property variance**

Kevin Iannetta of Property Worx, LLC, representing applicants Marguerite and Todd Piche, reviewed the application for variance. The rear yard depth is 34.5 feet, and with a setback of 20 feet, it only leaves 14.5 feet for an outdoor living space. Applicants do not feel this is an adequate area to create an outdoor space that is equitable to the house. Zoning Inspector Weade referenced 2 letters from neighbors included in the application that were in support of granting the variance, and a third letter in support of the applications was read to the Board by Inspector Weade.

Mr. Iannetta was asked by the Board if they were aware of the Township requirements at the time of permitting. He responded that they were made aware of the requirements when the permit was denied. No construction has taken place. It was confirmed that the encroachment would be between 8.5 and 11.5 feet. Mr. Iannetta was asked the distance from the back of the property to the walking path, and the applicants stated that it was at least 50 feet.

The plot plan was marked Exhibit 1.

Public Participation: Tim Richey, neighbor of the applicants, was sworn in. Mr. Richey stated that the walkway is 12 feet wide and is at least 60 feet from the property line.

James Spurrier moved to approve application #22-214 and Ellen Ebe seconded. Vote: Dorothy Kerr-yes, Kim Zianno Hartman-no, Bruce Denton-yes, James Spurrier-yes, Ellen Ebe- yes. Motion carried 4-1.

- **Application #22-213, Applicant Brent Fenstermaker is requesting a conditional use**

Attorney Thomas Hart, 5029 Cemetery Road Hilliard and representing applicant Brent Fenstermaker, presented the request. Applicant is requesting conditional use of his residence at 3397 Rome Corners Road for his business. A commercial site on Domigan Road has been purchased and is being prepared but applicant is requesting an 18-month conditional use of his residence so he can continue to operate his business until it can be moved to the commercial location. Mr. Hart explained that the applicant had done a lot in the last couple of months to follow suggestions of the Township to improve the site and install screening so that it is difficult to see any evidence of the business from the road.

The applicant and Mr. Hart responded to questions from the Board

- The business has been operating at that location since 2018, and became a larger operation during Covid.
- The possibility of construction delays was discussed, given the current demand for construction workers and materials. Applicant was asked if 18 months would be long enough. Applicant stated they were comfortable with the 18-month timeline. If the 18 months is not long enough, applicant would file for an additional conditional use, but does not anticipate that it would be necessary. Applicant expects to begin construction as soon as possible after zoning for commercial site is approved. The zoning application is on the agenda for February.
- The Board had many questions about pallet removal and deliveries. Applicant stated that deliveries would be similar to that for residential homes and that the goal would be to limit those to between 8 a.m. and 5 p.m. Applicant said deliveries would be less than they had been over the last 2 years because they now have inventory in stock. Deliveries will be taken inside and outside materials are tarped. Board members expressed concern over the noise and commotion.
- In addition to using the barn for management and planning, equipment similar to that used for landscaping is stored in the barn. Overstock such as heaters, pumps and plumbing materials are also stored in the barn.
- Concrete storage is no longer there.
- The application was submitted as Exhibit A, and current photos of the site as Exhibits 1-5.

- There are six employee parking spaces. Employees do not work at this site but come to the site to pick up materials and receive instruction before going to job sites.
- Materials used are stone and landscaping materials. There is a plan to enclose the dumpster and pallets will be stored inside that enclosure.
- Applicant stated there were more employee vehicles at the property lately due to employees being on site for clean-up.
- In addition to storage, the barn has a home office and is used for meeting with the head of construction and the head of service. There is another office off-site.

Public Participation: Chairman Denton reviewed the rules for public participation

Summer Fenton, 7525 Plumb Road, is a neighbor of the property. Due to the position of her property, she can see everything inside the fence. Ms. Fenton stated that the applicant's property is zoned agricultural, but that he is not using the property for that purpose and does not have a permit for a change of use. She believes the applicant has an unpermitted building. Ms. Fenton is also concerned about the vehicle traffic. Ms. Fenton gave the Board some photos, which were marked Exhibit B.

Ashley Fenton, 7525 Plumb Road, spoke about the noise coming from the property that interferes with her home business. She stated that heavy machinery is being operated. Ms. Fenton also said there is more than one non-resident employee working there and that the employees have harassed her mother. Ms. Fenton played a video that she stated was the noise of the commercial dumpster being emptied. Attorney Betts explained that in order for the Board to consider the video as evidence, the video would need to be on some type of hard media such as a flash drive. Ms. Fenton asked if a link to a Google Drive document could be downloaded, but Attorney Betts said that a link would not be proper in a public setting.

Attorney Hart stated that the video is not evidence. There is no calibration of the sound, no indication of when it happened, and it doesn't meet the rules of evidence according to Ohio Law.

Board members were asked by the Chair if there were additional information that would be helpful. It was decided to hear from other members of the public, then decide if they would ask for additional information from previous speakers.

Attorney Betts asked the Board to keep in mind that the request before them is a conditional use application. The property is currently zoned A-1. Under A-1, expanded home occupation conditional uses section 21.12 of the zoning resolution contains particular criteria for granting a conditional use. The Board needs to be confined to that list in terms of making their decision. In addition, there are 6 general criteria in section 28.07. These should be considered as well. Questions should be geared towards and focused on those particular items since these are the criteria the Board needs to consider when approving or denying the application and any decision made should reference those criteria.

Chairman Denton asked about deliberations in private for the Board. Attorney Betts suggested completing the public participation portion of the meeting, then moving to a private deliberation session if needed.

Chairman Denton invited others from the public to speak.

Jerry Fenton, 7525 Plumb Road, said that employees coming and going, dump trucks, semis, flat bed and delivery trucks, and equipment all create a nuisance of sound, and they cannot enjoy their yard. Mr. Fenton believes the applicant's business has affected his property value. The applicant's commercial dumpster is emptied twice a week, which Mr. Fenton stated is an indication of the amount of waste. In addition, Mr. Fenton contends that the applicant is parking in the front yard and has widened the parking and storage.

Todd Mitchell, 3419 Rome Corners Road was sworn in. Mr. Mitchell is a neighbor of the applicant and stated that he works from home three days a week and is has never heard loud noises coming from the property and does not believe it is a nuisance.

Bruce Kinsel, Rome Corners Road, wanted to confirm that the Board had received the letter that was signed by all the neighbors that touch the applicant's property, which was in support of the conditional use application. A member of the public stated that the application was incomplete due to a resident who lives within 200 feet of the property was not being notified. It was noted that Robert John Geiger, Trustee, 3450 Rome Corners Road, was the resident who was not notified.

Attorney Hart stated that the applicant had submitted and addressed each of the criteria in the zoning code, and that the dumpster meets code and had been approved by the health department.

Kim Zianno Hartman moved for the Board to go to private deliberations. Ellen Ebe seconded, and the motion was approved 5-0.

James Spurrier made a motion to reconvene the meeting, which was seconded by Kim Zianno Hartman and was approved 5-0.

The Board asked Ashley Fenton what time of day and what days she notices the noise. She replied that there is noise from Monday through Saturday as early as 4:30 a.m. until around 5 p.m. Her home is south of the applicant and the noise vibrates through the house. Attorney Hart responded that the time of 4:30 a.m. is not accurate, and that if it would help the Board in their deliberations, the applicant would remove the dumpster.

Todd Mitchell was asked where his residence is located in relation to the applicant. It is west of the applicant.


Bruce Kinsel said his property is northeast of the applicant. While he admitted his property is somewhat further away, he reminded the Board that of the letter signed by all the individuals whose properties touch the applicant's property.

For clarification, Chairman Denton advised those present that during private deliberations by the Board, no vote was taken, and no decisions were made.

Kim Zianno Hartman made a motion to deny application number 22-213, filed November 1, 2022, based on section 21.12, section 2, and the nuisance criteria in section 28.07 of the zoning code. Ellen Ebe seconded. Vote: Dorothy Kerr- yes, Kim Zianno Hartman- yes, Bruce Denton- yes, James Spurrier- no, Ellen Ebe- yes. The motion carried and application #22-213 was denied.

Other Business: Zoning Inspector Weade said there is currently one application for the January 18, 2023, meeting, and that at that meeting the Board will need to elect a Chair and Vice-Chair for the 2023 year.

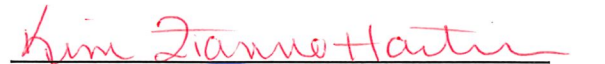
Adjournment: As there was no further business, Chairman Denton adjourned the meeting.




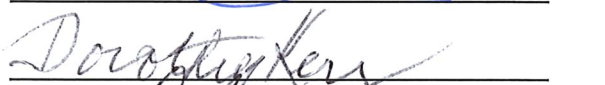
Zoning Inspector

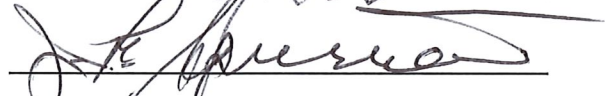


Meeting Secretary









Ellen Ebe
Ellen Ebe

Board Members

Date 1/18/2023