

**Brunswick Hills Township
Board of Zoning Appeals – Public Hearing Meeting Minutes
December 5, 2018**

Call meeting to Order: Chair Bitto called the Brunswick Hills Township Board of Zoning Appeals Regular Meeting to order at 7:01 p.m.

A Roll Call of the Board was Executed

- **Board Members in Attendance:** Jessica Murphy, Kimberley Hall, Cliff Kersten, Chris Schigel (Vice Chair), John Bitto (Chair)
- **Alternate Board Members in Attendance:** Daryl Lucien , Bob Murphy
- **Others in Attendance:** Evelyn Czyz, Zoning Inspector, Trustee Michael Esber, Mary Jean Milanko, Zoning Secretary

Chair Bitto stated a quorum is present and this meeting has been properly advertised and is being taped for the record. The Brunswick Hills Township Board of Zoning Appeals acts within the regulations of Sec. 519 of the Ohio Revised Code.

Approval of Minutes: August 8, 2018 Minutes

Motion: Mr. Kersten made a motion to accept the August 8, 2018 minutes as submitted by the Secretary. Mr. Bitto seconds the motion. **Roll Call:** Ms. Murphy-yes; Mr. Kersten-yes; Mr. Schigel-yes; Ms. Hall-yes; Mr. Bitto-yes. Motion carries to approve the minutes.

New Business:

1. **USE Variance Request: Richard Turner, 51509 Brock Ridge Road, Beallsville, OH 43716,** application request for a Use Variance to construct an accessory building on a vacant lot located on parcel #001-02A-01-009, Boston Road (vacant) Lot 21 WH Boston Acres Sub.00A, per Sec. 403-2 (R-1 Residential District) Permitted Uses. *[Note: Steve Winters, 20656 Wakefield Circle, Strongsville, OH 44149, potential property buyer and authorized representative for property owner Richard Turner.]*

Chair Bitto swore in Evelyn Czyz, Zoning Inspector and Trustee Michael Esber. The applicant was asked to approach the board and present his case.

Testimony & Evidence

1. **Steve Winters,(Authorized Representative for the Turners), 20656 Wakefield Circle, Strongsville, Ohio 44149 was sworn in.** Mr. Winters stated he is here to represent the landowners, Mr. & Mrs. Turner and provided a notarized letter from the Turner's authorizing Mr. Winters to represent them at the 12/5/2018 BZA meeting. (Attachment 1). Mr. Winters stated the Turner's are trying to sell the property and I would like to buy the parcel of land. Mr. Winters stated when I buy the land I would like to build what is technically an accessory building so the Turner's had to submit for the Use Variance. Mr. Winters stated it is not an accessory building by any means, it is a very, very nice garage that will look like a residence. He said I propose to have a restroom/bathroom, a permitted septic, all utilities and heat. Mr. Winters said since it will be heated, it will conform to the residential building codes for an actual residence. Mr. Winters said right now it is a vacant lot that is 80 ft. x 273 ft. and there is already an Area Variance from the board on the lot to build a residence even though it does not have the 90-foot setback.

Chair Bitto confirmed the BZA board granted an Area Variance for that property to build a house because it's in a R-1 area so that is what it is zoned as. Chair Bitto stated the reason that variance was granted is because just about every lot on that street is the same size. Mr. Winters said so there is already that variance to build and the structure I am proposing fits easily within those requirements of a ranch type home. He said the picture I gave you (Attachment 2) shows it as a two story but it doesn't have to be that exact thing, that was just the idea of the type of building I would like to build from an aesthetic standpoint and a planning standpoint. Mr. Kersten asked what the height of the building will be because he didn't see it on the plan. Chair Bitto stated that was his next question

as well. Mr. Winters stated right now the height of that building is about 30 feet. Chair Bitto looked at the plan and asked where the 47 feet comes from. Mr. Winters said if you look at the plan, the 47 feet is the wall (Attachment 3 and 4) and pointed to the 16 x 47 garage. Chair Bitto confirmed with the Zoning Inspector that the maximum height on an accessory building is 15 feet. Mrs. Czyz confirmed the height is 15 feet in an R-1.

Mr. Winters stated his interest in purchasing this land is contingent on obtaining the Use Variance. Chair Bitto confirmed with the Zoning Inspector that when the board granted the Area Variance it was for a residence, not for an accessory building. Mrs. Czyz said you granted the Area Variance June 7, 2017 because you need 60 feet at the front however, the width has to be 90 feet so you granted the variance for the width so that the house could fit there. Chair Bitto said we granted it for a house and now we have an accessory building. Mrs. Czyz stated an accessory building without a home so it is a Use Variance as opposed to an Area Variance. Ms. Hall said so what happens if 10 years from now somebody comes along and wants to tear down the accessory building and put a house there. Mrs. Czyz stated if the property remains vacant for more than two years, they would still have to come in, but the variance goes with the property.

Mr. Kersten said so if we grant a variance on this tonight, we would also be granting the variance on the height? Mr. Winters stated no; the way we wrote this is just for the right to build the building. He said I know there are different requirements so we can come back. He said a residence is 35 feet and I understand that this isn't a residence. Chair Bitto stated he was not comfortable in using the Area Variance for a house as a Use Variance for an accessory building. Mrs. Czyz stated these are two totally different variances. Chair Bitto agreed with that but in an R-1 an accessory building of any kind is not allowed without a house. Mr. Winters stated and that is the variance we are asking for to change what the "use" is. He said there are vegetable stands, roadside stands and other "structures" besides residences that are approved in an R-1. Chair Bitto stated correct. Mr. Winters said so the variance we are asking for is purely the right to build the accessory building contingent upon all of the approvals from height restrictions of 15 feet, etc. Ms. Hall confirmed that 15 feet is the maximum height on an accessory building. Mr. Winters said without another variance, yes.

Vice Chair Schigel asked if he was clear that we are only voting on one type of variance tonight? Mrs. Czyz stated yes, a Use Variance. Mr. Schigel said so you would still have to come back. Mr. Winters said yes with the final plans of what I would like to build. Mr. Schigel said your plans show two garage doors. Have you looked at possibly putting any garage doors on the side to make it more aesthetic to the other properties? Mr. Winters said yes I entertained that but the concerns are with the width there to actually get into it. Mr. Kersten said do I understand that you are not going to put a home on this lot at any time? Mr. Winters said not right now, no. Mr. Kersten said what about the near future? Mr. Winters said no. Ms. Hall stated a house is irrelevant. Mr. Winters said the second floor loft is 1400 square feet so technically you could put an apartment in there. He said it will be built to code so technically it could be turned into a residence, but right now my intent is to use it for a few cars. Chair Bitto said and going forward, you are not going to be here forever and your neighbors aren't going to be there forever so what will that building become in the future? Mr. Bitto said it is built as a garage but that doesn't mean someone else isn't going to come in there and use it as a true garage; maybe a repair facility or something that would leave our Zoning Inspector with a nightmare because zoning does not permit that there. Mr. Bitto stated you cannot have a commercial business of any shape, size or form there. Mr. Winters said this is not a commercial business. Mr. Bitto said today it wouldn't be but in 30 years it could be if you're not here. Mr. Bitto said that variance stays with the property even if you are no longer here or someone buys it. He said there are neighbors on each side that may or may not be there forever, or may decide to sell their home, that this may impact the sale of their home. Ms. Hall shared the concern. Mr. Winters stated that is true if I build a residence too. Mr. Bitto said but a residence is zoned for that area.

Mr. Kersten said he has a loft so he could make an apartment in the loft. Mr. Bitto said he could turn the whole thing into a house with a garage under it. Mr. Winters said he could but he doesn't need another house. Mrs. Czyz said he already has a variance to meet the setback for a house. Trustee Esber asked what if he built this structure with an upstairs rental unit. Chair Bitto stated it cannot be rentable; it has to be a residence. Mrs. Czyz said you can rent a residence. Mr. Bitto said you can rent it but you can't build it as an apartment to rent; you can build it as a residence and then rent it as a house. Mr. Winters said he understood he would have to rent out the whole house and can't rent out just part of the structure. Mrs. Czyz and Trustee Esber were not sure they agreed with that. Mrs.

Czyz said I can rent out part of my basement or I can rent out rooms in my home. Mrs. Czyz stated she has an accessory building with a loft and it has hot and cold water, a drain and heat in it. Mr. Bitto said I would still feel better about the structure being built as a true residence. Mr. Winters asked what defines a true residence. Mr. Bitto said bedrooms, bathroom, kitchen – not much more than what you have on the plan today. Mr. Winters said so is it just a matter of finishing the second floor on this plan? Mr. Bitto said but then because it is a residence, it changes the height limitations. Mrs. Czyz stated that is why he is here because he wants to build an accessory building as opposed to a residence. Mrs. Czyz said that parcel can already have a residence on it but the question is that he does not want to build a home he would just like to build an accessory building to store stuff in it.

Testimony & Evidence / Public Input

1. Walter Kobak, 5290 Boston Road, Brunswick OH was sworn in. Mr. Kobak stated he's been a resident since 1991 and said the Turner's have owned this side-by-side property for a number of years. Mr. Kobak said he called his neighbor Dan to see if he would be at the meeting tonight, but he did not receive a letter from the Township. He said Dan had concerns of purchasing this second lot next to him. Secretary Milanko asked if that was Dan Le or Dan Kargle? Mr. Kobak said Dan Le is the one who purchased the Turner home and Dan Kargle is on the other side. Secretary Milanko stated Dan Kargle's letter was returned as non-deliverable by the Post Office. Mr. Kobak stated the neighbor sometimes has trouble with his mail. Secretary Milanko stated the letters were mailed through the US Postal Service per the tax map addresses that are listed on the Auditor's website and she wanted to verify that an attempt was made to notify him and you notified him as well. Mr. Kobak said yes, I told him I would keep him informed.

Mr. Kobak stated I hope the zoning board will follow proper procedures of any structure being built on this property. He said there is a basketball court/slab poured on that property. When I had my building built behind my house I had to have permits and so on and a proper slab poured so I could build my building on the back lot. He said on residential lots, there is a pole every five feet unless you put in laminated joists. He said he invested in that rather than a pole every five feet. Mr. Kobak said there are no culverts in and there is no access driveway to this property yet. He said there is a building on the property in the back corner that I feel Mr. Turner should have had taken down or it should have been deemed structurally unsafe. The building is sinking into the ground and as far as I know there is not a foundation under it. My neighbor Dan has had problems with tick infestations because the property has not been properly maintained so the neighbors have cut the grass several times. He expressed his concern about the building being unsafe for children or anyone to go in it. He would like something to be done about the building previous to going forward and having another structure built on this property. As far as what the building will look like or what its use is up to the board to determine through the laws on how it is made. He said he is not here to be a hindrance and he had hoped other neighbors could be here tonight for additional input.

Ms. Hall asked Mr. Kobak if it was his understanding that there needs to be a driveway there for an accessory building. Mr. Kobak said if you are going to have garages there how are you going to access the building without a culvert or a driveway being put in? He said there is a tree there now that has fallen which is laying in Dan's property and I've been looking at it for years. Mr. Kobak expressed his concern about the massive fallen pine tree and property value if he wants to sell. He said there is friction over who's tree it is and it's not been taken care of.

Chair Bitto asked the Zoning Inspector to explain the regulations on driveways and culverts. Mrs. Czyz stated if he is going to put in a driveway, he needs to get a permit from the Medina County Highway Engineer's office. Mrs. Czyz regarding a culvert, that is through Medina County Storm Water Management. Mrs. Czyz said the structure in the back corner that you said is sinking into the ground would be through the Medina County Building Department because the Township has no authority to condemn a building; and with the ticks, you need to contact the Medina County Health Department. Mrs. Czyz said there are different agencies that would take care of the problems on that property but it is not the Township's responsibility to get involved because it is a civil issue. Mrs. Czyz reiterated that whoever purchases that property cannot put in a driveway without the Medina County Highway Engineer issuing a permit and that permit will have to be brought to me before any accessory building is allowed on that property. Chair Bitto stated that is the same for the culvert that goes in as well. Mrs. Czyz stated yes and that is through Medina Storm Water Management. Chair Bitto reconfirmed that nothing happens until everything is approved by the County. Mrs. Czyz stated and if it were to be residential, there still would be the process of permits that need to come to me such as a driveway permit, a health permit, a storm water permit and for any kind

of septic system, they have to have a sewer permit. Mrs. Czyz stated I would need architectural drawings as well and said she will mail Mr. Kobak the process that needs to be followed for a residential dwelling.

Chair Bitto asked what the height maximum is for residential in R-1. Mrs. Czyz stated 35 feet. Chair Bitto stated an accessory building in R-1 is 15 feet and what is the height the applicant is proposing for this accessory building? Mr. Winters stated those plans are approximately 30 feet, but I don't have the architectural drawings Ms. Hall asked if he would still build the building if he couldn't put the second story on it. Mr. Winters said yes. Mr. Bitto said I don't know if you could get the look that going for. Mr. Winters said I don't know if I could get the look but it is really more about the space. He said it is a six-car garage with the height of a 14-foot ceiling on the first floor so you could put an R-V or a boat inside. Mr. Bitto said or a small little lift. Mr. Winters said he would be more than happy to work on alternate plans but it is really about trying to get that sixth car in. Mr. Bitto said a 14-foot sidewall is going to get you a 21 to 22 foot peak no matter how you do it. Mr. Bitto said so no matter what you have, you are over the maximum height, so your dream of having that garage does not work. Mr. Bitto said whereas if it were a home with a garage it changes everything. Mr. Winters asked if there is a size limitation to the size of the home. Mrs. Czyz stated 35 feet. Mr. Bitto said he is asking about square footage. Mrs. Czyz stated it would be 1,250 square feet. Mr. Winters said the second floor of his drawing is 1,400 square feet with nine-foot ceilings. Mrs. Czyz stated you could build a 1,250 square foot ranch and then build your two-story garage that could be up to the height of 35 feet. Mr. Schigel asked if he would even need to be here if he just put a kitchen in that second floor. Mrs. Czyz said yes because it is not a house so those would be a totally different set of plans for the Building Department. She said he would still have to get a permit from the Medina County Building Department because it exceeds 200 square feet, but that was not his intent. Mr. Bitto stated if I'm not mistaken the Medina County Building Department's concern would be is this a residence. Mrs. Czyz stated it would have to be built to code. Mr. Bitto stated then you would lose the pole barn. Mr. Winters said I don't want a pole barn and that is why I picked that particular design. He said I understand as soon as I put heat, HAVC, septic and sewer in there the codes all go to house/residential codes. End of testimony and questions.

Review of the Duncan Factors for a Use Variance Request

BHT Zoning Resolution (pg. 115/119) Sec. 1005-2 Use Variances

Where the appeal or application requests a use variance, that is, a variance for the approval of a use which is not permitted in the district, then the following standards shall be considered and weighed in determining whether the grant of a variance is warranted to afford relief of an unnecessary hardship:

- A. Whether uses permitted in the district may be reasonably established on the property and whether they are economically viable on the property in question without the variance.** *Ms. Hall said there can be a beneficial use of the property without the variance and it would yield a reasonable return. All board members agreed.*
- B. Whether the variance is the minimum variance which will afford relief to the property owner.** *Mr. Bitto stated no and stated the reason is that there are hundreds of lots like that in the Township and everyone is caught in the same spot when trying to sell it and a garage or an out building on most of those lots would be the optimal thing. Mr. Schigel no; Ms. Murphy no. No additional responses.*
- C. Whether the essential character of the neighborhood will be substantially altered or adjoining properties will suffer interference with their proper future development and rights as a result of the variance.** *All board members stated no.*
- D. Whether the property in question has unique or exceptional circumstances or conditions that do not generally apply to other properties in the vicinity and within the same district.** *All board members stated no.*
- E. Whether the hardship condition was created by actions of the applicant.** *All board members stated no.*

- F. **Whether the spirit and intent of this Zoning Resolution will be observed and substantial justice done by granting the variance.** *All board members stated no.*
- G. **Whether the use requested is similar in character to the permitted uses in the subject district.** *All board members stated no.*
- H. **Whether the subject property is adequate to meet the needs and requirements of the proposed use.** *All board members said yes except Mr. Kersten who said no.*

Before the vote, Mr. Bitto stated “Any person who is adversely affected by the decision of the Board of Zoning Appeals may appeal to the Court of Common Pleas Court of Medina County on grounds that such decision was unreasonable or unlawful. They have 30 days from the date the decision letter is signed to appeal.” Mr. Bitto said the decision letter will be signed at the January 2019 meeting.

Motion to Grant the Use Variance for Richard Turner property PP#001-02A-01-009 Boston Road

Mr. Bitto made a motion to grant the Use Variance request as submitted for PP#001-02A-01-009, Boston Road. Mr. Kersten seconds the motion. **Roll Call:** Mr. Schigel-no; Ms. Hall-no; Mr. Kersten-no; Ms. Murphy-no; Mr. Bitto-no based on the fact there is a very viable solution without the variance. Use Variance request unanimously denied by board.

Additional Business:

1. Reminder of BHT holiday party on Friday, December 7, 2018 @ 3 p.m.
2. Duncan Factors. Ms. Hall noted for the record that all board members should be referring to the same information in the zoning book on page 115-116 when reviewing the Duncan Factors for an Area and Use Variance. Ms. Hall expressed her concern that Duncan Factors submitted with the application were not correct, but what the Secretary read from the book was correct. Mr. Bitto stated if you read the application carefully, he has a combination of both Duncan Factors for Area and Use Variances in there. Mrs. Czyz stated there may be problems when individuals download information from the website. Ms. Hall stated all forms online should be in PDF format and asked that the Zoning Inspector and Trustee Esber verify that.

Public Comment: None

Announcement of Next Meeting Date: Wednesday, January 9, 2019 Organizational Meeting

Motion: Mr. Kersten made a motion to hold the Organizational Meeting on Wednesday, January 9, 2019 @ 7 p.m. Ms. Hall seconds the motion. **Roll Call:** All in favor.

Adjourn Meeting

Motion: Vice Chair Schigel made a motion to adjourn. Ms. Hall seconds the motion. **Roll Call:** All in favor to adjourn. Meeting officially adjourned at 7:55 p.m.

Respectfully Submitted,

Mary Jean Milanko, Zoning Secretary

BZA Chair

Date