

**Brunswick Hills Township
Board of Zoning Appeals
Regular Meeting Minutes
May 1, 2019**

REGULAR MEETING

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

A Roll Call of the Board was Executed

- **Board Members in Attendance:** Chris Schigel (Chair), Kimberley Hall (Vice Chair), Cliff Kersten
- **Alternate Board Members in Attendance:** Daryl Lucien, Robert Murphy
- **Board Members Not in Attendance:** Jessica Murphy (Excused Absence)
- **Others in Attendance:** Trustee John Witthuhn, Evelyn Czyz, Zoning Inspector, Mary Jean Milanko, Secretary

Alternate Daryl Lucien was seated to represent a full board in the absence of Ms. Murphy.

Mr. Schigel stated a quorum is present; this meeting has been properly advertised and is being taped for the record. The Brunswick Hills Township Board of Zoning Appeals works within the authority of Sec. 519 of the Ohio Revised Code.

Approval of Minutes: April 3, 2019 Minutes

Motion: Mr. Bitto motion to approve the April 3, 2019 minutes as submitted. Mr. Schigel seconds the motion. **Roll Call:** Mr. Kersten-yes; Mr. Bitto-yes, Mr. Lucien-yes, Ms. Hall-yes, Mr. Schigel-yes. Motion carries to approve the April 3, 2019 minutes.

Approval of the BZA Decision Letter for 4948 Chablis Circle, Brunswick, OH 44212

Motion: Ms. Hall made a motion to approve the decision letter for 4948 Chablis Circle, Home Occupation Class II Permit. Mr. Bitto seconds the motion. **Roll Call:** Mr. Bitto-yes, Mr. Lucien-yes, Mr. Kersten-yes, Ms. Hall-yes, Mr. Schigel-yes. Motion carries to approve and sign the decision letter.

New Business: Public Hearing

Swearing in of the Zoning Inspector. Mr. Schigel swore in Evelyn Czyz, Zoning Inspector.

-----Case #1-----

(1)) **Area Variance: Said & Tanya Mougrabi**, 4977 Autumnwood LN Brunswick Hills: area variance of 52.79 feet for frontage setback to build a new single family dwelling at **5236 Markwood CT**, Valley City, Ohio per Sec. 402-3, B Lot requirements, PP#001-02C-11-035; Zoning District: RR.

Said and Tanya Mougrabi, 4977 Autumnwood Lane, Brunswick, OH 44212 were sworn in and asked to present their case. Mr. Mougrabi stated we bought our property about 15 months ago in Markwood Pines subdivision through a realtor. Mr. Mougrabi stated we were told it was buildable and everything was good to go and we thought great. He said we sat on it for a couple of months and we found a builder, Diyanni Homes, and went through all of the process with the septic, etc. to make sure it would pass through Medina County. He said when Diyanni homes requested a building permit through Brunswick Hills and they came back and said Evelyn (Zoning Inspector) said we are short 52.79 feet of frontage. Mr. Mougrabi stated we were shocked because we didn't know anything about that and we thought we were good to go. He said I called the realtor and asked him about it, but he didn't say much. Mr. Mougrabi stated we were frustrated

and apparently they had it to build with someone else and we didn't know that if for two years it sits empty there is another process so we are just requesting that the zoning board could approve this process for us.

Mr. Schigel asked if the lot is already cleared. Mr. Mougrabi said yes, so in the front there is woods and right behind that it is all sloping. He said before this came through we did clear some woods on the sides to give us more room on both sides for the septic and to adjust the house within the rules for the building.

Mrs. Czyz stated to the board that is often the process, especially when you have a septic system, that the County Health Department will want to see exactly where they can put a septic system in so they will want to see that land cleared.

Ms. Hall asked if the realtor is required to make any kind of disclosure. Mrs. Czyz stated she would think so and the realtor never called me. Mr. Lucien said "caveat emptor", buyers beware. He said realtors do not have anything in their certification that requires them to know everything about a piece of property that's for sale. Mrs. Czyz stated however, I would think that when you put up a sign with false information – that is up to the realtor to make sure that information is correct and not being falsely advertised. Ms. Hall stated that was her point that it was marketed and advertised as buildable. Mrs. Czyz stated the applicants were unaware that it was an unbuildable lot because it was left vacant for two years.

Mr. Schigel stated so where the house is going to be all of the trees are down and asked if there will be any other tree cutting. Mr. Mougrabi stated it is cleared and ready to go. Mr. Bitto asked if where the house will be planted meets all of the setbacks from the side lots? Mr. Mougrabi stated he asked Diyanni about that before we came to this meeting and he said everything else is good. He said Diyanni was shocked because they matched everything to the zoning rules and this was the only thing that came up.

Mr. Bitto asked what is the square footage of the lot and asked the Zoning Inspector if she had any issues with the square footage of the lot. Mrs. Czyz stated no, I do not have any issues. Mr. Kersten asked the Zoning Inspector if there were other homes in that area built on the same size lot. Mrs. Czyz stated yes. No further questions by the board.

Public Input/Comment – Testimony & Evidence: None.

Review of the Duncan Factors

Sec. 1005-1 Area Variances

Where the appeal or application requests an area variance, that is, a variance involving provisions relating to yard dimensions, setback, height, or similar spatial or dimensional requirements, then the following standards shall be considered and weighed in determining whether the grant of a variance is warranted to afford relief of practical difficulties:

- A. Whether the property in question will yield a reasonable return and whether there can be any beneficial use of the property without the variance.** *All board members stated no.*
- B. Whether the variance is substantial.** *All board members stated yes.*
- C. Whether the essential character of the neighborhood will be substantially altered and whether 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 variance will adversely affect the delivery of governmental services. *All board members stated no.*
- E. Whether the property owner purchased the property with knowledge of the zoning restriction. *All board members stated no.*
- F. Whether the property owner's predicament can be obviated through some method other than a variance. *All board members stated no.*
- G. Whether the spirit and intent of this Zoning Resolution will be observed and substantial justice done by granting the variance. *All board members stated yes.*
- H. 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.*

Motion to Approve the Variance Request for 5236 Markwood Court, Brunswick Hills Ohio, 44212

Motion: Ms. Hall made a motion to approve the variance request for 52.79 feet at the address of 5236 Markwood Court as requested. Mr. Lucien seconds the motion. **Roll Call:** Mr. Bitto-yes, Mr. Kersten-yes, Mr. Lucien-yes, Ms. Hall-yes, Mr. Schigel-yes. Motion carries unanimously to approve the variance request.

Chair Schigel stated: *Any person adversely affected by a decision of the Board of Zoning Appeals may appeal to the Court of Common Pleas in Medina County on the grounds that such decision was unreasonable or unlawful. He said they have 30 days to appeal.* Mr. Schigel stated the decision letter will be signed on Wednesday June 5th at our next meeting.

Mr. Mougrabi approached the podium and asked if that meant they have to wait 30 days before they assign us a dig date? Mr. Schigel stated you should wait the 30 days in case someone wants to appeal with Medina County. Secretary Milanko stated a copy of the minutes and the decision letter will be sent after the June 5th meeting by certified mail.

-----Case #2-----

(2) **Variance Request: Marlene Piatak, 4970 Neura Parkway, Brunswick Hills, Ohio:** five (5) foot area variance from rear of the house to waters edge to install an in-ground swimming pool per Sec. 1005-1 and Sec. 303-6,G Swimming pools of the Brunswick Hills Zoning Resolution. PP#001-02A-23-271; Zoning District: R-1.

Chair Schigel recused himself from the next case. Alternate Bob Murphy was seated and Ms. Hall, Vice Chair facilitated the case. Ms. Hall reiterated the Board of Zoning Appeals acts within the regulations of Sec. 519 of the Ohio Revised Code and the same rules apply as for the previous case.

Marlene Piatak, 4970 Neura Parkway, Brunswick Hills was sworn in and asked to present her case.

Mrs. Piatak stated I am requesting a variance of five (5) feet from the setback of the rear of the house in order to put a pool in because we have a swale in the back of our lot for water drainage - so it wouldn't infringe on that swale at all. Mr. Lucien asked if it was her swale or a community swale. Mrs. Piatak said I guess it is a community swale. Mrs. Czyz stated there aren't any community swales and said it is a swale that is created by Medina County Storm Water Management. Mrs. Piatak said, but there is no easement on it. Mrs. Czyz said there is an easement to the east of the subject property. Mr. Bitto said so the swale that we are talking about is within their property line? Mrs. Czyz stated that is correct, however, not identified on the surveying.

Ms. Hall asked how many gallons of water does a 16 x 35 ft. pool hold? After looking up the calculation, Mrs. Czyz stated 4,704 gallons of water. Mr. Bitto asked about the depth of the pool. Mrs. Piatak said it goes from four (4) feet to six (6) feet I believe. Mrs. Piatak said our house has a bump out in the living room so about half of the house would be 14 feet back and half the house would be the 10 foot setback.

Mr. Bitto asked about the swale and asked the Zoning Inspector if it shows up anywhere. Mrs. Czyz stated she doesn't see it so it could be to the very back property line and where it connects with the 10 ft. storm sewer easement. Mr. Bitto stated swales don't always land where they are supposed to be. Mrs. Czyz stated she is not an engineer to determine that. Mr. Bitto asked the applicant which way the water goes in that swale when it collects. Mrs. Piatak said it goes from right to left so the sewer is on the left-hand side of the property; so that would be east.

Ms. Hall asked the applicant if she looked at other options for the size of the pool. Mrs. Piatak said yes and to be five (5) feet smaller would only be 11 feet wide and they don't really come in that size. She said so the only other option would be 14 feet or otherwise it would be really small.

Mr. Bitto asked about the fence that is going to have to go around the pool. Mrs. Piatak stated that all of our neighbors already have a fence so all we have to put up is the gates across the sides of our house. She said everyone else has a fence that completely blocks in our yard so we just need the gates to get into the back yard. Ms. Hall said so is the swale in the back yard inside that fence? Mrs. Piatak said yes. Mr. Bitto said what's to say that somebody wants to take down their fence. Mrs. Piatak stated the neighbors to the left of us and behind us all have pools so they wouldn't be taking down their fence so it would just be the neighbor to the right would have the possibility of that happening and in that case we would put up the rest of the fence. Ms. Hall asked her to confirm that there is fencing on both sides of the house. Mrs. Piatak said yes, around the whole and both sides. Ms. Hall asked the Zoning Inspector if they can count the neighbors fence for their enclosure. Mrs. Czyz said yes if their property is enclosed by their neighbors. She said the only thing they would have to do is put in the gates and that is indicated on the last sheet of the packet where this a line and then a diagonal line—that is where each gate would be. [See Exhibit 1 – Piatak]. Mrs. Czyz said she would highly recommend that the gates to the west be moved up halfway to the house so that it does not encompass the meters and they are not in that gated area. Mrs. Czyz said otherwise it leads to intrusion of the meter reader and what if he leaves the gate open, so you really don't want that.

Mr. Lucien asked if this is a vinyl lined pool. Mrs. Piatak stated it is a fiberglass pool. One of the board members said that changes a lot. Ms. Hall asked if that is because it's fiberglass and it won't leak. Mr. Lucien said if you get water under a fiberglass pool it will float. Mr. Kersten said when water freezes it expands and said with fiberglass that big and 7,000 gallons of water freezing is there any chance of that cracking the pool. Mrs. Piatak said that people think that can happen, but they said that people in Canada primarily put fiberglass pools in and they don't have a problem with expansion or contraction. Mr. Lucien said it would let about a foot of water out when it rises. Mrs. Piatak stated they researched what type of pool to put in and decided that fiberglass is best and it also has less maintenance required.

Mr. Bitto asked what is the footage from the end of the backside of the pool to your property line. Mrs. Piatak said with the variance it would be 15 feet. Mr. Bitto asked where does the swale end up in relationship to the pool when we are all set and done with the variance. Mr. Bitto said I don't want to see that the swale all of a sudden fills up one day and fills your back yard and the pool with it. Mrs. Piatak said we would be at the top level and won't go into the swale at all so all of the water would flow underneath that, but our builder wants us to put in a cement footer around the edge just to make sure the water doesn't push up against the pool. She said he suggested a three (3) ft. cement footer to go underground to prevent anything like that happening. Mr. Bitto asked if he said anything to you about the storm sewer or any concerns over that? Mrs. Piatak said no, he only said to put the concrete barrier in. Ms. Hall asked if they can do that. Mrs. Czyz said if the county allows it, but she is not sure if the county allows it. She said that is one of the provisions that

I put in here and that is if it is approved, one of the conditions that must be in place is that a letter to the Zoning Inspector from the office of the Medina County Storm Water Management indicating they have no issues with the pool being built that close to a swale or the easement. Ms. Hall said so they wouldn't be issued the permit until you received that letter, correct? Mrs. Czyz said correct. Because it is so close to a swale and storm water easement, will the county allow for that kind of barrier. She said if they need to get through there, they could rip everything out including the pool if they need to and they are not in any way liable for that. Mrs. Czyz said one of my bigger concerns is that should that pool spring a leak, where is that water going to go? She said it is going to head right to that swale so that is why I want verification from the County Engineer's office that they have no issues with it and this way we are protecting ourselves. Ms. Hall said realistically if 7,000 gallons gets out where is that going; it's going downhill to the swale. Mr. Bitto said along with any other water that could be coming down from the other way.

Mrs. Piatak said our neighbors to the left of us also have the sewer in the corner of their yard and they have a pool so I think they would have the same issue and I would think the swale is more of a protection because the water wouldn't be rising up to the house level as much. Mr. Bitto said the swale would only be there to move water left and right off your property. He said the storm sewer is taking it from the street to a retention pond or something downstream. Mr. Bitto said that wouldn't affect you or the pool; the swale I think would be the only issue. He said the county has on occasion gone in to re-profile a swale because 15 houses up the street are being flooded so that is always a possibility. Mr. Bitto said and then the other thing that concerns me is the 10 ft. easement for the storm sewer and that is there isn't a man-made machine that would be able to fit down there. Mrs. Piatak said we are really far away from the pool because the pool would be closer to the right side of the house so she didn't think that would be an issue. Mr. Bitto stated he just wanted to make her aware of the possibility.

Mr. Lucien stated based on what Evelyn said, wouldn't it be prudent to do a time out and let her go to the County Storm Water and get that out of the way. Mr. Bitto stated she is already into it with everything at this point. Mr. Kersten asked are you permitted to drain into swale? Mrs. Czyz stated that is a question for the County Storm Water Management. Mr. Kersten said maybe in the winter they could drain the pool down a foot or two. Mrs. Czyz stated I cannot request that. Mr. Kersten said so the only place you're going to drain that much water would be into the swale. Mr. Bitto said or through a downspout. Mrs. Piatak said their neighbor has a hose and it goes from their pool to the sewer whether that is legal or not she didn't know. Mr. Kersten said at some point you would have to drain some water especially if we keep getting these levels of rain. Mr. Bitto stated to the applicant that you will have to submit drawings to Medina County. He said Storm Water is going to go one way and plumbing is going to go the other way. Storm Water Management is going to be concerned with where the swale is and what can be done to hinder the swale, and the plumbing is going to be concerned with where they are dumping any water from the pool. Mrs. Czyz also confirmed that the applicant needs to contact Storm Water Management about storm water and the swale. Mrs. Czyz said the plumbing goes through the Building Department. Mr. Bitto stated you will also need electrical.

Mr. Lucien asked again if the applicant should obtain the letter of approval from the county first. Ms. Hall stated she would have no problem approving the request without the letter.

Public Comment/Testimony & Evidence: None

Review of the Duncan Factors

Sec. 1005-1 Area Variances

Where the appeal or application requests an area variance, that is, a variance involving provisions relating to yard dimensions, setback, height, or similar spatial or dimensional requirements, then the following standards shall be considered and weighed in determining whether the grant of a variance is warranted to afford relief of practical difficulties:

- A. **Whether the property in question will yield a reasonable return and whether there can be any beneficial use of the property without the variance.** *All board members said yes.*
- B. **Whether the variance is substantial.** *All board members stated yes.*
- C. **Whether the essential character of the neighborhood will be substantially altered and whether adjoining properties will suffer interference with their proper future development and rights as a result of the variance.** *Mr. Lucien and Mr. Bitto stated no. Mr. Murphy stated it depends if it floods or not. Ms. Hall stated she was thinking the same thing. Mr. Bitto stated she is surrounded by all of the neighbor's pools. Mr. Kersten, Ms. Hall and Mr. Murphy then stated no.*
- D. **Whether the variance will adversely affect the delivery of governmental services.** *All board members stated no.*
- E. **Whether the property owner purchased the property with knowledge of the zoning restriction.** *Mr. Kersten stated we did not ask the applicant that question. Mr. Lucien agreed. No response by board members because it is unknown.*
- F. **Whether the property owner's predicament can be obviated through some method other than a variance.** *All board members stated yes.*
- G. **Whether the spirit and intent of this Zoning Resolution will be observed and substantial justice done by granting the variance.** *All board members stated yes.*
- H. **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.*

Motion to Approve the Variance Request for 4970 Neura Parkway, Brunswick Hills, Ohio.

Motion: Mr. Murphy made a motion to approve the variance for five (5) feet from the rear of the house to the waters edge to install an in-ground swimming pool at 4970 Neura Parkway, Brunswick Hills, Ohio, subject to receipt of approval from the Medina County Storm Water Management submitted to the Zoning Inspector indicating they have no issues with the pool being built that close to a swale or the easement. At no time can water be drained onto adjoining properties or cause flooding or standing water issues.

Question by the Zoning Inspector and Discussion by the Board. Mrs. Czyz asked the applicant if this is approved, when would you plan to put in the pool? Mrs. Piatak said it would be until late August or early September. Mrs. Czyz asked if we could hold off on the decision until we get a letter from Medina County Storm Water Management one way or the other? Ms. Hall asked for what purpose. Mrs. Czyz said if they come back and say they are not going to allow this, and this board says yes we are going to allow this, she is not going to be able to do it anyway. Ms. Hall stated we are aware of that and we talked about it. Mr. Bitto said if we hold off on this it will take another 30-60 days for her approval. Mrs. Czyz stated if it is going to be August or September she didn't think it would make a difference. Mr. Bitto thought it would delay her installing the pool. Trustee Witthuhn stated it might put her down further in the process if the contractor said we can install your pool in August and if she doesn't get an answer from Storm Water Management in 30 days, then she might be pushed to September. Mr. Bitto stated it would actually be October or November because it would have to come back before us and then another 30 days until it is approved. Ms. Hall stated we are trying to avoid having her come back or lengthening the procedure. Ms. Hall stated if the board approves this tonight, then she is clean and clear from us and then all she has to get

through is Storm Water Management and if they say no then it is a no regardless of what we said anyway. Mr. Kersten agreed we would not gain anything by not making a decision tonight because she has to go through the county anyway.

Motion Restated /Vice Chair Hall asked the secretary to read back the motion:

Mr. Murphy made a motion to approve the variance for five (5) feet from the rear of the house to the waters edge to install an in-ground swimming pool at 4970 Neura Parkway, Brunswick Hills, Ohio, subject to receipt of approval from the Medina County Storm Water Management submitted to the Zoning Inspector indicating they have no issues with the pool being built that close to a swale or the easement. At no time can water be drained onto adjoining properties or cause flooding or standing water issues. Mr. Lucien seconds the motion. **Roll Call:** Mr. Bitto-yes; Mr. Kersten-yes; Mr. Lucien-yes; Mr. Murphy-yes; Ms. Hall-yes. Variance request granted unanimously by the board.

Ms. Hall stated your decision letter will be signed next month on June 5th, however, it will all come down to what Medina County Storm Water says. Mr. Lucien suggested the applicant take her builder with her to the county in case there are questions she can't answer.

Public Comment: None

Additional Business:

1. Secretary Milanko distributed the application requests for the June 5, 2019 meeting.

Announcement of Next Meeting Date: Wednesday, June 5, 2019 @ 7 p.m.

Motion to Adjourn: Mr. Murphy made a motion to adjourn the meeting. Mr. Bitto seconds the motion.

Roll Call: All in favor to adjourn. Meeting officially adjourned at 7:59 p.m.

Respectfully Submitted,
Mary Jean Milanko, Zoning Secretary


Chris Schigel, Chair


Date