

**Brunswick Hills Township Board of Zoning Appeals
Public Hearing Meeting Minutes
Township Hall
March 2, 2022**

Call Meeting to Order

Chairman, Cliff Kersten called the Brunswick Hills Township Board of Zoning Appeals public hearing meeting for March 2, 2022 to order at 7:00 p.m. A roll call of the board was executed. A quorum was present.

- **Board Members in Attendance:** Cliff Kersten; Chris Schigel; Ron Wetterman; Ann Barron; Linda Kuenzer
- **Alternate Board Members in Attendance:** Gregg Timura
- **Others in Attendance:** Evelyn Czyz, Zoning Inspector, Trustee Trica Murphy, Zoning Liaison, Fire Prevention Officer Matt Payne; Mary Jean Milanko, Secretary.

Chair Kersten turned the meeting over to Secretary Milanko to continue unfinished business from the January 5, 2022 Organizational Meeting.

CONTINUED BUSINESS – Organizational Meeting

1. Swearing in of Board Member. Trustee Murphy swore in Chris Schigel as a full board member for 2022.

2. Election of BZA Vice Chair for 2022

Secretary Milanko called for nominations for the position of BZA Vice Chair for 2022. Mr. Kersten nominated Ron Wetterman. Mr. Wetterman accepts the nomination. Mr. Schigel seconds the motion. Upon no other nominations a roll call was executed. **Roll Call:** Ms. Barron-yes; Mr. Schigel-yes; Ms. Kuenzer-yes; Mr. Kersten-yes. Ron Wetterman elected Vice Chair for 2022.

3. BZA ByLaws/Amendments

Chair Kersten asked to open the BZA ByLaws to submit two motions. Upon no objection by the board, discussion of the ByLaws was opened.

Motion #1 by Mr. Kersten: Non-board members will not be permitted to interject in any board business unless recognized by the Chair or a board member asking the non-member a question. Failure to comply will result in (1) out of order (2) has to leave or (3) will be removed from the meeting.

Mr. Wetterman seconds the motion. No discussion on the motion. **Roll Call:** Ms. Kuenzer-yes; Ms. Barron-yes; Mr. Wetterman-yes; Mr. Schigel-yes; Mr. Kersten-yes.

Motion #2 by Mr. Kersten: All documents and correspondence for the board must be submitted to the Secretary so she can log them in and pass them out at the appropriate time to board members.

Mr. Schigel seconds the motion. No discussion. **Roll Call:** Mr. Wetterman-yes; Mr. Schigel-yes; Ms. Kuenzer-yes; Ms. Barron-yes; Mr. Kersten.

Motion #3 by Mr. Wetterman: Mr. Wetterman made a motion that in a meeting where the application is presented by either one of the Zoning Inspectors, the one (ZI) that takes the application would be in attendance at our meeting when it is presented.

Discussion on the motion. Mr. Kersten stated you just said presented by the Zoning Inspector and we just passed a motion that everything that is presented must go through the Secretary. Your motion says presented by the Zoning Inspector. They would not be presenting it, so that should be taken out of your motion. Mr. Wetterman said the Zoning Inspector that takes the application should be present at the meeting.

Mr. Schigel expressed concern on the timeline because let's say the Zoning Inspector that takes the application is on vacation the week we are meeting, or an illness happens, an applicant should not be punished due to that and have to wait another 30 days. That's my concern because things do happen. Mr. Wetterman said understood but at the same time, if that person is not in attendance, we cannot question them. He said if Evelyn Czyz takes an application, we have the right to question her so shouldn't we have the same right if Wes Humphrey were to take in the application? Mr. Schigel said it puts the applicant in the middle and board members can go up to the zoning office to talk to them prior to the meeting.

Ms. Czyz asked, what happens if a Trustee accepts the application? She said that has happened if I am on vacation. She said we accept and give to you what they present us. The questions come out after you have reviewed it at the hearing. Mr. Kersten said Ron wants the motion stated that whoever takes the application that they be here in case there are questions. Mr. Schigel stated I voiced my concerns for the record.

Revised Motion #3: The Zoning Inspector, or whoever takes the application, is to be in attendance at the meeting. Mr. Kersten seconds. **Roll Call:** Ms. Barron-yes; Ms. Kuenzer-yes; Mr. Wetterman-yes; Mr. Schigel-yes; Mr. Kersten-yes.

Secretary Milanko and Chair Kersten made a motion to close the Organizational Meeting business and open the public hearing. Mr. Wetterman seconds. **Roll Call:** All in favor.

NEW BUSINESS: Public Hearing

Chair Kersten opened the public hearing meeting at 7:14 p.m. with the same board members in attendance. He said we have a quorum and explained the vote on the application before the board. A Majority YES vote is in favor of the applicant and a TIE vote of four and an abstained vote is not in favor. Brunswick Hills Township Board of Zoning Appeals acts within Sec. 519 of the Ohio Revised Code.

APPROVAL OF MINUTES

1. January 5, 2022 Organizational Meeting Minutes

Motion: Mr. Wetterman moved to accept the January 5, 2022 Organizational Minutes as read. Ms. Kuenzer seconds. **Roll Call:** Ms. Barron-yes; Mr. Wetterman-yes; Ms. Kuenzer-yes Mr. Schigel-abstain; Mr. Kersten-yes.

2. January 5, 2022 Regular Meeting Minutes

Motion: Ms. Kuenzer moved to accept the minutes. Mr. Wetterman seconds. **Roll Call:** Mr. Schigel-abstain; Ms. Barron-yes; Ms. Kuenzer-yes; Mr. Wetterman-yes; Mr. Kersten-yes.

Zoning Receipt # 2022-004 VARIANCE REQUEST FOR FAMILY TAVERN, 1868 Pearl Road, Brunswick Hills, (PP#001-02C-10-002: Area Variance to enclose an existing pavilion structure request per Sec. 303-6 General Regulations of Structures and Constructions, D. (1) Accessory Building. Current Zoning District C-3.

1. William Eugene Fonseca, (Applicant) 2026 Plum Creek Parkway /Family Tavern, 1868 Pearl Road, Brunswick Hills, OH 44212 was sworn in. Area Variance to enclose an existing

pavilion structure request per Sec. 303-6 General Regulations of Structures and Constructions, D. (1) Accessory Building. Current Zoning District C-3.

Chair Kersten stated everyone will have an opportunity to speak, but you must wait to be called upon and will be sworn in with your full name and address. All comments are to be directed to the board.

TESTIMONY & EVIDENCE

1. William Eugene Fonseca, (Applicant) 2026 Plum Creek Parkway, Brunswick Hills was sworn in.

Mr. Kersten asked the applicant if he has read and understands the zoning as to why he is here tonight. Mr. Fonseca said to the best of my ability. Mr. Kersten said so to the best of your ability, you understand why you are here tonight. Mr. Fonseca said to be perfectly honest with you, I don't know why I am here tonight. Mr. Kersten asked him to state what he is asking for in his area variance request.

Mr. Fonseca said I do not understand the area variance to be honest. Mr. Kersten asked the Zoning Inspector to explain an area variance. Ms. Czyz provided background information on the variance request and said it was once an open porch / pavilion and when you enclose it, it becomes an accessory building. An accessory building has to be at least five (5) feet from the side lot line; five (5) feet from the rear lot line and 15 feet from any structure. Ms. Czyz said this structure is not, therefore he is asking for an area variance because the side of the building to the property lot line is probably less than two (2) to three (3) feet.

Mr. Kersten said if you don't understand an area variance, then how did you submit your application? Mr. Fonseca said I was instructed to go see Ms. Evelyn Czyz (ZI) and she directed me to apply for an area variance. He said so that is what I did and she helped me fill out the forms, I paid the money, submitted them and here I am. Mr. Kersten asked what do you want to use the area variance for? Mr. Fonseca said I don't have a clue. I was just doing what I was directed to do so I can continue to enclose the pavilion. Ms. Czyz stated I did not assist him in filling out the paperwork; I guided him through everything that had to be filled out and the questions that needed to be answered. She said I gave him a copy of the Duncan Factors and you can see on the application that he filled out some of them. Ms. Czyz said the Duncan Factors are a good guide to what he might want to put in his letter of intent. Ms. Czyz stated I believe it was the Fire Department that found the infraction.

Questions by the Board

Mr. Wetterman asked the applicant how long he's owned the building. Mr. Fonseca said it will be five years on May 12th. Mr. Wetterman asked if he knew when the picnic pavilion was built. Mr. Fonseca said in 1980. Mr. Wetterman said so it's been there for 42 years. Mr. Wetterman asked, when you purchased the property, were you advised of any encroachments or anything of that nature by your property, or on your property? Mr. Fonseca stated no. Mr. Wetterman asked if he has a valid title to the property. Mr. Fonseca said I do and said I have the deed here. Mr. Kersten said you are under oath so we will take your word for it. Mr. Fonseca said on the deed it states that it was surveyed and mentions something about the guarantee of the survey and I can share it if the board wants to see it.

Mr. Wetterman said the building has been there for 42 years and he and the previous owner have been paying taxes and the county is well aware of the building. Mr. Wetterman said he went to the Medina County Building Department and the Tax office so they are clearly aware of where the building sits. Mr. Wetterman said I was confused by the application because it sounded like you (applicant) were concerned about the usage and the safety of your property. He said I understand you've had some water issues with water coming off the roof of the Hollo's building. Mr. Fonseca said the gutters are wasted and the water just pours out of them. He said the water actually comes into the pavilion and it's going to rot our posts out.

Mr. Wetterman said you have a bar back there and asked if he had a liquor license for that. Mr. Fonseca said yes. Mr. Wetterman said in essence, it's is part of your business. Mr. Fonseca said it is a vital part of the business because our tavern is small and this gives us more room. He said we have 110-inch big screen TV and a stage with music equipment back there. Mr. Wetterman said I don't know how the other board members feel, but to call this an "accessory building" is a little confusing because I feel it is a part of your business, which would make it a commercial building and a commercial building would basically be allowed to be built on the property line. Mr. Wetterman said in my opinion, I don't think we have a problem here. Mr. Fonseca said back when Mr. Stofko owned it, he had beadboard all up around it and he used to put plywood panels around it and some doors and they used to have tailgate parties back there.

Mr. Wetterman said I appreciate your comments, but we have a zoning department issue here. He said you admitted you made a mistake and started some work without a permit which you got slapped on the wrists for, but the rest of it you will have to go to the Medina Building Department. Mr. Kersten said the two issues you have right now is (1) you have an issue with the Medina County Building Department and (2) you are going to have to put a fire wall up between you and Hollo's Paper Crafts. Mr. Wetterman said that is between him and the building department.

Ms. Kuenzer asked about fire suppression and asked when you enclose it, will there be any type of fire suppression in case there is a fire? She asked will you be cooking in there? Mr. Fonseca said there is no cooking in there, we cook outside by the road. Ms. Kuenzer said what do you foresee will be done in that enclosed area now? What is it going to be used for because an open picnic pavilion people can just go out there and put things on tables, etc. Mr. Fonseca said it won't be totally enclosed because there are garage doors that up. He said the only wall that will be in there is the wall that is on the southside now and that is mainly to protect our building and posts from all the water. He said the other three walls will have garage doors on them that open up and it they will only be closed during the winter time. Ms. Kuenzer said so you will be selling things out there much like you do in the tavern. Mr. Fonseca said yes.

Mr. Kersten asked if he is still calling this an accessory building. Mr. Fonseca said it is still an accessory building or pavilion, however you want to refer to it as. Mr. Kersten said under accessory buildings, it says they shall not be located closer than 15 feet from the principal building. Mr. Wetterman said, again, I think that is a definition issue whether that pavilion is an accessory building or is it a commercial building because of his business. He said he is conducting business out of it; it has a bar in it. Mr. Kersten said I understand that, so would it be an accessory building. Mr. Wetterman said it isn't to me.

2. Matthew Payne, Fire Prevention Officer, Brunswick Hills was sworn in. Officer Payne said I'd like to shed some light on this and said I think we are getting away on the focus as why we are here today. He said this is not a fire department violation, this is a zoning violation. Officer Payne said this whole situation here has been an oversight from many agencies over several years. He gave a history on how this all began and said three years ago, I was hired to enforce fire codes for the township. Since that time, I have worked with the business owners in the township to help them become compliant with the fire code. It is my job to help the business owners meet the fire code standards in an economical way without causing a hardship in a timely manner. Officer Payne said I treat all business fairly regardless of the violation.

Officer Payne said the first time I went to the Family Tavern for a fire inspection, they had the building in the back. He said being new, the township tier here is somewhat unique because there are some grandfather clauses and some other things. He said there are buildings here that have been there far before the zoning and building codes, so to penalize some of the business owners is not fair. He said though Family Tavern had the pavilion out back, it was open air at that time, so I was willing to work with it. He said I did not know if it ever had a permit or if it was ever zoned. Officer Payne stated I did not feel it was really my business to dig into it. I felt that we could make it safe by having fire extinguishers, exit signs and plenty of exits, which there were at that time. He said I was made aware that it was being enclosed; then it becomes my problem. Once they started enclosing it, I stopped and talked to Willie (Fonseca), but that is out of my

hands. I don't take responsibility for that building until after it is finished and issued and Occupancy Permit and it's been inspected by the building department and then they turn it over to the fire department. Officer Payne said then it is my job for annual inspections and make sure they stay in compliance with what it was built for.

Officer Payne said so that being said, I contacted the building department, because that was out of my realm, and the building department came out and issued a Stop Work Order (Exhibit 1/Brunswick Hills Township). Officer Payne said I called the building department today and I got a letter from them stating that as far back as 1980, they don't have a building permit for the building. Officer Payne said we need to stay focused here tonight and said this isn't about the building at this time; it isn't about them enclosing it; this is about a zoning issue for a variance that they are applying for. This has nothing to do with the building or what's there tonight. He said I will go back to my opening statement and say this is not a fire department violation; this is a zoning violation. He asked if this helped clear up how and why we got here?

Questions by the Board

Ms. Barron said no, actually it makes it more muddy for me and said so it is not about the building? Officer Payne said it's not about the building as to why we are here tonight, it's about an area variance for the property; not about the building or the pavilion tonight. Ms. Barron said but he wouldn't need a variance if there wasn't a building. Officer Payne said correct, the building is there and he is trying to get an area variance for the building and then he has to go to the building department and get permits, etc. Ms. Barron clarified if by building department you mean the Medina County Building Department. Officer Payne said yes, because the township does not have a building department and it is about an area variance and not about the building.

Ms. Barron said so if we grant him the variance and allow him to construct the building, then if there is a problem, you would write him up? Officer Payne said I don't write them up, that is in the building departments hands at that point. He has to make it right with the building department. Ms. Barron said so you are enforcing the fire code but you are not enforcing it on this particular property; Medina County is? Officer Payne said I'm not enforcing the fire code because the building hasn't been turned over with an Occupancy Permit. Ms. Barron said so let's say he goes ahead and completes it, and doesn't have permits... did I hear you say that? Officer Payne said correct, not on record. Ms. Barron said so he builds it and then he has even more of a hardship because he would not then be compliant with the fire code. Officer Payne said that is between him and the building department. Once he goes to the building department and gives them his plans and they give him the okay to finish it, then once it's finished, they will give him an Occupancy Permit; then it becomes my responsibility after that.

Mr. Kersten said if he goes to the building department with plans, they will enforce fire walls and regulations? Officer Payne said I don't regulate that; that is all with the building codes. Mr. Kersten said when they issue him a permit to build, will it specialize the need for a fire wall and all of those things? Officer Payne said I am not a building inspector or a plan reviewer, so that is all up to the building department. Mr. Kersten stated the letter from Fire Chief Strazzo (Exhibit 2/ Brunswick Hills Fire Department) states a fire wall had to be built between him and Hollo Craft. Officer Payne said Chief Strazzo may have had conversations with the building department, but I can't attest to that.

Mr. Wetterman asked Officer Payne, as far as you were concerned, as long as the building hadn't been touched and it was put back into an "all open" position the way it was before he started working on it, it would be okay? Officer Payne said if it hadn't of been touched, I was willing to continue working with it like we were. Mr. Wetterman said I did have a discussion with the Chief of the Medina County Building Department myself, and he said we have to clear up our issue before he can even go back and talk to them. Officer Payne said that is what I am here telling you.

Ms. Barron said help me understand this, so who is the person, again, assuming this is a structure, who is the person that says you can only have 20 people in here; or you can't smoke in here; or if you have more than 50 people you have to move 30 of them outside? She asked what entity is that; Medina County? Officer Payne said you have several questions, but to answer your first question as to how many people in a building, that is the building department and when they issue the Occupancy Permit, they will say how many people can be in the building. They have a calculation and formula for that. If they can smoke in there, that is me. If they get an Occupancy Permit for 50 people and I get a complaint and go there to check it and there are 60 people in there; 10 of them go out. Ms. Barron asked what if there are people outside, are there regulations for that? Officer Payne said it is strictly for inside that building. Ms. Barron said so you could have 50 people hanging out in the parking lot and there is no problem? Officer Payne said the fire department does not regulate over that.

Mr. Kersten stated so you said since 1980, there have been no permits issued on that property? Officer Payne said correct; the letter says the building department says the records go back to the mid 1980's. Mr. Wetterman said both the tax office and the building department have records on the building from 1980 and he's been current on everything; they are aware of it being there. Nobody has ever challenged him or given him violations. Officer Payne said correct, and as I stated there have been deficiencies in several agencies over many years. He said it was an open-air pavilion, the fire codes really don't address open air pavilions so they had extinguishers, signs to exits and at that point in time I felt it was safe to continue operating the way they were operating. He said once you put up walls, that's a different story. He said I am also trying to look out for the business owner as you've all heard about nightclub fires and it's ugly.

Mr. Kersten said to break it all down, if we give him a variance, the Medina County Building Department would regulate everything on that property as it is being built. Mr. Wetterman said Officer Payne could say no to him, or would tell him what would have to be done.

Ms. Barron asked Officer Payne if he was out to the site. Officer Payne said yes. Ms. Barron asked if there is a full foundation laid. Officer Payne stated I don't know that. Ms. Barron asked, did you see concrete? Officer Payne said there is a concrete pad, I will tell you that. Doesn't mean there is a foundation. Ms. Barron asked how close is the concrete pad to the Hollo building? The board members looked at the drawing in the packet which indicated approximately 48 inches.

Evelyn Czyz, Zoning Inspector, said the Hollo's building is about one (1) foot off their property line; and this pavilion is probably two (2) feet from the property line. Mr. Wetterman said with the overhang. Ms. Czyz said I'm talking about the wall that is to the ground to the property lot line; not the overhang. Mr. Wetterman said so his drawing he rendered is incorrect or not measured correctly, is that what you are saying? Ms. Czyz said no, I am not saying that, but just from what Hollo's had and what he had.....and remember, during this time it may have very well been snowing so you are not going to get an exact measurement, but it is not the five (5) feet that is required. Mr. Wetterman said no, it's 45 inches. Ms. Czyz said to say that the building department might not have received applications for permits, permits have been obtained since for a fence permit and a sign permit and those permits would not normally go to the building department. Ms. Czyz stated so there have been permits issued for the property. Ms. Barron asked if the fence permit was for the fence the board approved last time. Ms. Czyz said correct and back in 1984 there was a permit issued for a free-standing sign. She said there were other sign permits so she wanted to clarify that just because the building department doesn't have a record of those miscellaneous permits doesn't mean that they have not obtained permits for them because they have.

Officer Payne said when Hollo's was built, they did file for a variance to build a foot off the property line, so back then the regulations were different then they are today. Mr. Wetterman said on Hollo's plans for the extension the plan called for zero feet and their latest map that I have does show it one foot, three inches for the variance. Mr. Wetterman said I did not see a variance in the Hollo's file. Ms. Czyz said I did not either. Mr. Wetterman said to Officer Payne, you have a copy of a variance that we do not? Officer Payne

said it was in the Hollo's file and we have a copy of it. Officer Payne said that is not why we are here tonight anyway. Mr. Wetterman said I think it comes down to the definition of whether that pavilion is in fact an accessory building which none of the three commercial districts mention, let alone a side setback for them. He said I see no mention of accessory buildings in C-1, C-2 or C-3 Districts and since it is part of his business, I would interpret it as a commercial building. Ms. Czyz said but before the building department issues a permit, Mr. Fonseca knows that he will have to get a permit from my office and then go to the building department to get permits from them. She said so his next step would be to get a permit from my office first and then the building department and he knows that because the moment it went from an open pavilion to an enclosed structure it became an accessory building. Look in your packet on page 21 under Accessory Buildings. It says *accessory buildings shall conform to the minimum building setback line and shall not be any closer than 5 ft to the rear and side lot lines*. Mr. Wetterman said I understand that but what I am saying is by definition is it an accessory building? Ms. Czyz said it is because it is an accessory to the main building. Mr. Wetterman asked, it's not considered a commercial building? The building has its own liquor license and he serves food back there. Ms. Czyz said even if it does have its own liquor license.

Mr. Kersten asked how many liquor licenses are issued for the property. Mr. Fonseca said one. He said the gentleman came out and looked in the tavern and then went out to look at the pavilion and I'm sure we have the paperwork for that, but the pavilion has a liquor license. Ms. Barron asked if it was an open-air pavilion at that time. Mr. Fonseca said yes. Ms. Barron asked about the deed that he said had a survey and said normally, if there is a survey that is in existence and if it doesn't meet the property line boundaries, then they have the person who is buying that property look at that survey and sign off that it is okay; or if there is some kind of an easement or problem with the survey. She asked Mr. Fonseca if he got a copy of the survey. Mr. Fonseca asked if he could show her the deed. Ms. Barron said the deed isn't that helpful but if it references a survey, then usually there is a date. She said if you are the person that bought it you should have seen a survey. Most lenders won't lend unless there is a survey from one party to another. Mr. Fonseca provided Ms. Barron the deed to review. Mr. Kersten asked if she had questions about the document. Ms. Barron said it is just the deed and I was asking if there was a survey done because it would say if there is a boundary problem, so that was one of my questions. Ms. Barron said I don't see where it says there was a survey.

Mr. Schigel said, so to clarify, we are here because a Stop Work Order happened due to there being no work permit, correct? Mr. Kersten, correct. Mr. Schigel said so we have a building that is less than five feet (from the boundary line) and Mr. Wetterman is asking if we can consider this a commercial building. Mr. Schigel said even if it was a commercial building, he would still need a variance because it has to be a certain number of feet away anyway. Mr. Wetterman said no. Mr. Schigel said if we are going for an accessory building, he is asking for 7 inch or 6 1/4-inch variance and said my question is what is the code for a commercial building separation? Mr. Schigel said is it one foot, two feet? I'm looking in the zoning code but I can't find it yet. Mr. Wetterman said, well, if it's not there then it doesn't exist, does it? Mr. Schigel said I would have to believe there has to be some type of code because you can't build right on top of your property line. Mr. Wetterman said they do it all the time in other townships and in Cleveland the buildings are right on top of each other.

Mr. Kersten said I am confused on your question, but accessory buildings are not to be located closer than 15 feet from the principal building. Mr. Wetterman said if you read that, it is commercial to residential; and it's commercial to commercial over there. Ms. Czyz stated no, and referenced page 18 /119: **Sec. 303 Regulations Applicable to All Zoning Districts**

Sec. 303-6 General Regulations of Structures and Constructions

D. Accessory Building

- 1. Accessory Building - Accessory Building(s) shall not be located closer than fifteen (15) feet from the principal building. Accessory buildings shall conform to*

the minimum building setback line and shall not be any closer than five (5) feet to rear and side lot lines. Accessory Buildings shall not occupy more than twenty percent (20%) of the required rear yard.

Mr. Kersten asked if it would occupy more than 20% of the required rear yard? Ms. Barron said I don't think so as I was trying to do the math on this. Ms. Barron referred back to the deed and said I don't see a survey, but that just means when you purchased the property, there was no reason to question it because it was open-air, is that correct? Mr. Fonseca said yes. Ms. Barron said so this is only happening because you decided to enclose it. Ms. Barron said I'm not saying that you shouldn't do that, but there should be things that you should think to do like a survey, plans and specs, etc. She asked how tall the structure he is intending to put in is? Mr. Fonseca said I honestly couldn't tell you. Ms. Barron said we have some pictures here. Can you tell us what you estimate the height of the building to be? Mr. Fonseca said maybe 14-15 feet to the peak.

3. Trustee Trica Murphy asked to speak and said they are just looking for an area variance, so right now you are not looking at the size of the building. She said if they want to build the accessory building and it is not up to code, then at that time they would have to come back, but right now we are just looking at the area variance and the zoning issues. Trustee Murphy asked the board to just focus on that.

Mr. Fonseca said I was just trying to put it back to how it once was and said it was enclosed before and I honestly didn't think I was doing anything wrong, but I guess I did.

4. Patricia Pyros (business partner / Family Tavern, 2109 Overlook Drive, Medina, OH 44256 was sworn in. Ms. Pyros said when the liquor license people came in when we first bought the bar, we had a wooden fence up at that time, but any liquor was allowed behind that fence. Not in the parking lot, but anywhere behind the fence which is where our pavilion is and a huge open area too. She said I just wanted to let you know we are allowed to have liquor back there as long as it is behind the fence.

Mr. Wetterman said the whole property is commercial and a commercial use and I don't see in any of the C-3 districts any comments about accessory buildings. Ms. Czyz said, but it does have it under General Provisions for All Zoning Districts. Ms. Barron confirmed that section details the principal, accessory buildings, maximum height, permitted exceptions, etc.

Mr. Wetterman asked Evelyn Czyz if she is declaring this a non-conforming structure because of the area that it is in. Ms. Czyz said correct. Mr. Wetterman said what if we switch this over to a non-conforming structure permit instead of a variance? Ms. Czyz said I do not have a non-conforming structure permit. Mr. Wetterman said all he has to do is switch it over; withdraw this one and give him a credit. Ms. Czyz said but this is what he is applying for so it has to be addressed. Mr. Wetterman said why are we addressing it? Give him a non-compliance. The building has been there since 1980. Ms. Czyz said he still does not meet the setbacks for the lot lines. Mr. Wetterman said he could go back to the building department and advise them on what he wants to do because we solved the problem, and then the building department can issue him permits, or tell him no, or tear down the portions he put up, but not the whole pavilion because by State Law, they cannot order him to take that building down. Mr. Kersten said we are getting off the subject here and asked the applicant if he had anything else to say.

Mr. Fonseca said I have a letter here I would like to present to the board and Mr. Kersten said to give it to the secretary. Secretary Milanko asked if the person who signed this letter (Exhibit 3/ Fonseca) is in attendance. Mr. Kersten called Mr. Kissel to the podium. Secretary Milanko stated the letter is in reference to the chain link fence project and indicates it was installed by the end of the day on 12/21/21 by eight volunteers.

5. Richard George Kissel, Kissel Konstruction, Inc., P.O. Box 113, Litchfield, Ohio was sworn in.

Mr. Kersten asked Mr. Kissel to read the letter he submitted to the board. Mr. Kissel said basically I am here to answer any questions that you would like to know. Mr. Wetterman said give us a summary of the letter. Mr. Kissel said I've known Pat and Willy (Family Tavern owners) since the time they purchased the Family Tavern. He said I live in Litchfield and have owned a construction company for 30 years. I am a referral business and I do a lot of good things in the world. Mr. Kissel said he's seen Pat and Willy do the same thing. They've helped families who lost someone to cancer, helped people who have gotten hurt and I've seen them do good more than 90% of the businesses I work with in four counties. He said they take less so they can give back to other people.

Mr. Kissel testified there was a question about a fence and I addressed it in the letter that they were trying to make the place look better. He said it is very difficult to run a business these days with Covid and keeping social distance. Mr. Kissel testified they finished the fence project that was in question on New Year's Eve Day with eight people, many of whom are in the audience tonight. He said there is no money being passed by, we aren't getting paid for this, people are coming out of generosity to help make it a nicer place. He said they do a lot of good in the community and you have an opportunity now, and all you are saying is if he can have a zoning permit because there is no liability on you after you do that. After you do that, this gentleman goes to Medina County and they are going to say you have to have a fire wall, you have to have this and this. He said you are just allowing this gentleman to keep doing the things he's been doing that most people don't do to make the world a better place and help people out. He said they take next to nothing to do these functions and asked how much money do you think it takes to get things ready for these people? He said they put up a nicer fence and it wasn't the nicest place when they bought it, but they are making the place look nicer. They are doing these things out of the goodness of their heart. Do you know how much it is to clean up the pavilion, to empty trash cans, mop the place and clean it all up? How much does it cost to rent a place out? These people do it out of the goodness of their heart and take nothing for it. Mr. Kissel said my personal opinion is that these are the type of people that you want to help. He said every business has a learning curve; you learn things when you make mistakes and that is how you get better at it. Mr. Kissel summarized that on New Year's Day, this fence was completed to make it a nicer place. He asked if there were any questions. (No questions)

6. Charles Taylor, 3915 Grafton Road, Brunswick was sworn in. Mr. Taylor said I served quite a few years in the service and served in two different conflicts. He said coming back to this nation, I believed in the American dream. He said they (tavern owners) have done nothing but pour their heart out to people, My son was one who passed away last year on June 14th and they charged nothing. We had a celebration of life here at our Family Tavern with all of the family and it was a wonderful time. They both work so hard and I've known them since they've owned the bar and all they do is give from the heart, but they are happiest when they are helping everyone. Mr. Taylor said they want to make it a good and safe place where families can come and not be afraid of what's going on.

Mr. Taylor said I believe in the American dream and I don't understand why people want to hold their American dream back. All we are trying to do is approve this and give people a safe place to go. He said from the bottom of my heart, I really don't understand why it hurts to hear this. Mr. Taylor testified that he is not trying to belittle anyone who talked up here, but I believe his name is Mr. Payne and I've been in multiple conversations where he has talked to the Family Tavern and I was privy to the conversation and it changes sometimes from week to week on what he wants. He said it is kind of hard and asked, how can you do that and then come back the next week and say, no, that is not good enough? I want this here and I want that there. Mr. Taylor said tell them what they need to do so they can do what they are supposed to and stay inline. Mr. Taylor said that is all I have to say and it is very frustrating to see people go through that. Thank you. Secretary Milanko asked for the record if Mr. Taylor was in the meetings with Officer Payne and the owners. Mr. Taylor said yes, I did hear them. Secretary Milanko said so you were in attendance during the meetings. Mr. Taylor said yes, I did witness them. Officer Payne asked, what conversation was that, Sir? Mr. Taylor said, which one? Mr. Kersten asked Mr. Taylor to please sit down

and asked Officer Payne for comment. Officer Payne said no, I don't know what he is talking about, but this is not about that, it is about the area variance. End of public comment/testimony.

Comments by the Board

Ms. Kuenzer said she is speaking for herself and not the board and said it is not the fact that we don't appreciate what you do, because we do. It is not that we don't want you to have your business or to have that building, but we have to follow what we have to work with, which is the zoning codes and things. She said we have to follow those because it gets to be a real slippery slope, because if we do it for one then we have to do it for someone else and I'm sure you understand that. She said so it is not that we are picking on you or we don't appreciate what you do, because we do. Ms. Kuenzer said it is not that we don't want you to have that pavilion. The problem that you are having, and we know it was built a long time ago, but we can't move it. She said things were different then and we understand that too. She said the thing that we are concerned about is when it went from just the open-air pavilion to the enclosed and there is where all of this started. Ms. Kuenzer said, again, I don't want you to think we are picking on you but that is where the issue came in.

Mr. Fonseca responded and said that emotions are running high and it is all good. He stated it is like you said, the building has been there since Moby Dick was a minnow. Mr. Fonseca said we are here to get some closure and move on to the next step; we appreciate you.

Ms. Barron said my problem is that I have to assume that the building department is going to take care of their business and as being a public sector, I am not sure that I trust that. Ms. Barron asked if it is possible for us to get a copy of something that shows this fire wall or plans and specs that show that we are not approving something that is just going to go to the county and they say well, if they approved it, we will just stamp it and then we've got a fire problem and these people are going to have to pay for that problem because everybody just approved it along the way. She asked if that a possibility to do?

Mr. Kersten asked Ms. Czyz if she knew. Ms. Czyz said I do not. Mr. Wetterman said I think if the proposal is worded correctly that we are giving him his area variance, not to complete the building, but to give him authorization to clear this problem up so that he can then go to the building department and straighten out things there. He said it is up to the building department to say yes you can do it or no, you can't. Mr. Wetterman said all of the fire codes are up to the building department, per Officer Payne. Mr. Kersten stated that any of the problems he has with the building department is none of our business. Mr. Kersten said we are voting on an area variance, I am not worried about the walls or anything else, in my opinion.

Ms. Kuenzer asked if the township can be held responsible, or could somebody come back after the township down the road if we give him a variance and the building department gives him a permit to build and finish – can they come back to the township because somebody might come back and say well you gave him the initial variance. Mr. Kersten said we can give him a variance for whatever he wants to do, but the final say so on the whole thing is the Medina County Building Department. He said they issue the permits; we don't issue any permits. Ms. Czyz stated we are here to address the area variance. She said let's think positive. He gets his permits, then he waits 30 days and he can apply for the building permit. She said everything goes okay, he has the variance, he gets the permits, his next step is the building department and then it is in their hands. Ms. Czyz said the first step is to either approve or deny the area variance. Mr. Kersten said the question was can the township be held liable for anything if we give him the variance? Ms. Czyz said giving him the variance is saying it is okay to build it this close to the property line. Mr. Wetterman said it is already there and keep in mind regarding liability that Hollo's is so close to their property line. He said they've already had three fires in that building and fortunately there wasn't any damage to the Family Tavern property. Mr. Wetterman said their latest extension was because of fire and they rebuilt that building in 2006, so any liabilities caused by a fire would be handled through their insurance company anyway. Ms. Czyz agreed. End of discussion.

REVIEW OF THE DUNCAN FACTORS

- 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.** *Mr. Schigel-yes; Ms. Barron-yes; Ms. Kuenzer-yes; Mr. Wetterman-yes; Mr. Kersten-yes.*
- B. Whether the variance is substantial.** *Ms. Kuenzer said yes because of where it is and what he is asking for; Ms. Barron-yes; Mr. Wetterman said no because it is already there; Mr. Schigel-yes; Mr. Kersten-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. Wetterman-no; Ms. Barron-yes; Mr. Schigel-no; Ms. Kuenzer-yes; Mr. Kersten-yes.*
- D. Whether the variance will adversely affect the delivery of governmental services.** *Ms. Kuenzer-no; Mr. Schigel-no; Mr. Wetterman-no; Ms. Barron-yes; Mr. Kersten-no.*
- E. Whether the property owner purchased the property with knowledge of the zoning restriction.** *Mr. Schigel-no; Ms. Barron said I don't really know; Ms. Kuenzer-no; Mr. Wetterman-no; Mr. Kersten-no.*
- F. Whether the property owner's predicament can be obviated through some method other than a variance.** *Ms. Barron-yes; Mr. Schigel-yes; Mr. Wetterman-no; Ms. Kuenzer-yes; Mr. Kersten-yes.*
- G. Whether the spirit and intent of this Zoning Resolution will be observed and substantial justice done by granting the variance.** *Mr. Kersten-abstain; Mr. Schigel-no; Ms. Kuenzer-no; Ms. Barron-no; Mr. Wetterman-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.** *Ms. Barron-yes; Ms. Kuenzer-no; Mr. Wetterman- yes because the condition of his pavilion is being severely damaged by the rainfall coming off the roof of the Hollo's building; Mr. Schigel-yes; Mr. Kersten-yes.*

MOTION FOR AREA VARIANCE FOR 1868 PEARL ROAD – FAMILY TAVERN; PP# 001-02C-10-002

Before the vote, Mr. Kersten stated that any person adversely affected by a decision of the Board of Zoning Appeals may appeal to the Court of Common Pleas of Medina County on the grounds that such decision was unreasonable or unlawful. They have 30 days from the date the decision letter was signed to appeal.

MOTION: Mr. Wetterman moved to approve the area variance on Zoning Receipt #2022-004, property known as the Family Tavern, and the approval be turned over to the building department for their final say in what happens for building. Ms. Kuenzer seconds the motion. **Roll Call:** Ms. Barron-no; Mr. Schigel-no; Mr. Wetterman-yes; Ms. Kuenzer-no; Mr. Kersten-no.

Mr. Kersten stated it is a 4-1 vote to disapprove the application request. Mr. Kersten stated to Mr. Fonseca, if you feel you are being adversely affected, you have the right to appeal to the Medina County Court to overturn our decision. You have 30 days in which to do that. Mr. Kersten said that anyone else in the room can also file within 30 days to the Medina Court; it doesn't have to be just the applicant that may challenge the board's decision.

ADDITIONAL BUSINESS

1. Secretary Milanko stated Evelyn Czyz received an application request for the April BZA meeting and distributed copies.
2. Secretary Milanko also distributed a revised BZA board member contact sheet to the board.
3. Mr. Kersten signed the approved January, 2022 minutes.

PUBLIC COMMENT: None

ANNOUNCEMENT OF NEXT MEETING DATE: Wednesday, April 6, 2022

MOTION TO ADJOURN: Ms. Kuenzer moved to adjourn. Ms. Barron seconds. **Roll Call:** All in favor. Meeting officially adjourned at 8:35 p.m.

Respectfully Submitted,
Mary Jean Milanko, Zoning Secretary

Cliff Kersten, Chair

Date