

MEMBERS PRESENT: BRIAN STEWART, MICHAEL VARLEY, ROBERT FORD, BEN TIMMONS, LEWIS TOMSIC, DOUG HOGAN

MEMBER ABSENT: DAVID PARKER

MEMBERS HEARING THE CASE: BRIAN STEWART, MICHAEL VARLEY, ROBERT FORD, LEWIS TOMSIC, DOUG HOGAN

CASE FILE: The case files for BZA-2025-03v and BZA-2025-04zi (Determination #1 through #7) is included as part of the official record, along with the Auburn Township Zoning Resolution

BZA-2025-04zi--appeals alleging Zoning Inspector error for the following:

Determination #1--Auto Service Station including restaurant, does not include tractor-trailer servicing per Article 2.02 Definition-Auto Service Station;

Determination #2—Use variance request can be submitted...within twenty (20) days of receipt of letter...Applicant appeals because it does not need a use variance;

Determination #3—Application is incomplete 6.01(c);

Determination #4—Article 3.05(c)(1) ZI has no authority to request a Storm Water Management plan;

Determination #5—Article 3.05(d)(1) ZI has no authority to request compliance with State & Federal Regulations;

Determination #6—ZI has no authority to require lot consolidation on a development plan ...for granting of a zoning certificate;

Determination #7—Proposed use, building height, lighting, parking, setbacks and lot coverage cannot be verified without structure prints is an error.

The meeting was called to order by Chairman Robert Ford at 7:00 PM.

Roll call was taken with the following members present: Hogan, Stewart, Varley, Tomsic, Timmons and Ford. Parker was absent.

Frank Kitko, Auburn Township Zoning Inspector and Jane Hardy were also present.

The Pledge of Allegiance was led by Chairman Robert Ford.

Mr. Ford verified that everyone in the attendance was signed in.

Mr. Ford then proceeded to swear everyone in who was planning on testifying.

Chairman Ford read the following opening statement for the record:

The BZA is a quasi-judicial body and as such, its role is similar to a judge in a court case. The Board will hear evidence and testimony that is factual and will make decisions based upon the facts, which are presented, the rules as set forth in the resolution and principles of law.

RECORD OF PROCEEDINGS

MinutesAUBURN TOWNSHIP BOARD OF ZONING APPEALS--REGULAR

Meeting

GOVERNMENT FORMS & SUPPLIES 844-224-3338 FORM NO. 10148 Auburn Township Adam Hall
Washington Street

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The Ohio Revised Code Section 519.13 requires that any Township that has adopted a zoning resolution, which Auburn Township has, appoint a five-member Board of Zoning Appeals and 2 alternate members. This Board is empowered to hear and decide appeals and to authorize variances from the strict terms of the zoning resolution where the variance will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the resolution will result in an unnecessary hardship or practical difficulties. The BZA is also permitted to authorize variances where the spirit and intent of zoning is upheld and substantial justice will be done.

With this being stated, the Board’s proceedings are relatively informal; but, in order to conduct an orderly meeting and allow all parties of interest, mainly contiguous property owners, or their legal representatives, the opportunity to present the evidence, certain procedures need to be followed:

All interested parties must be sworn in. The applicant will be asked to present evidence to support the requested appeal, the Board will ask questions, and then all interested parties (contiguous property owners) may present evidence concerning the appeal and ask questions regarding previously presented evidence.

It is the applicant’s burden to produce evidence to support the application. The Board will not make the applicant’s case for them. In order to prepare appropriate meeting minutes, each person, who speaks, will need to state, for the record, his/her full name and address. The meeting may be continued by either the applicant or the Board.

The Board must base their decisions upon facts and not on expressions or concerns or non-factual matters. The action of the BZA does not become final until 30 days, after the date of the meeting that the minutes were approved.

Mr. Ford commented that the official record for this meeting will be the minutes of the Board of Zoning Appeals Secretary. Mr. Ford also noted that included in the official record are the case files for BZA-2025-03v and BZA-2025-04zi--Determination #1 through Determination #7.

BZA-2025-04zi includes seven separate allegations (separate cases) of Zoning Inspector error, identified as Determination #1 through #7. Mr. Ford explained that each allegation will be read separately and voted on individually.

Ron Dinardo, a principal in the 44 East LLC, confirmed that he requested the agenda be modified so that the Board of Zoning Appeals hears the alleged zoning inspector error cases (BZA-2025-04-zi) Determination #1 through Determination #7 before the Board hears BZA-2025-03v, a variance request for lot coverage.

It was noted that the placement on the agenda is in the order that the requests were received. There was no other discussion, questions, or comments regarding modifying the agenda.

Motion by Doug Hogan to modify the May 13, 2025, Board of Zoning Appeals meeting agenda which would include changing the order that the cases will be addressed by the Board of Zoning Appeals. The motion was seconded by Michael Varley. Vote: Stewart, yes; Ford, yes; Tomsic, yes; Varley, yes; and Hogan, yes. The motion was granted.

The meeting proceeded to: **BZA-2025-04zi--Determination #1--** alleging Zoning Inspector error that Auto Service Station including restaurant, does not include tractor-trailer servicing per Article 2.02 Definition-Auto Service Station.

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Mr. Ford again noted that each allegation will be treated as a separate case. He commented that each case will be presented and then a vote will be taken.

Attorney Ben Ockner introduced himself to the Board of Appeals as counsel for 44 East LLC and asked if the Board wanted him to stand when he spoke. Mr. Ockner continued to address the Board of Appeals. He explained that he was with the law firm of Berns, Ockner and Greenberger. He also commented that to his left was Attorney Jordan Berns, a partner in the law firm, and to his right was Mr. Dinardo, Jr. and Mr. Dinardo, Sr.

He further explained that Mr. Dinardo, Sr., was also a property owner in the case,

Mr. Ockner commented that the property being discussed is located at 17845 Ravenna Road, in Auburn Township's B-3; Retail/Motorist Services Zoning District. He indicated that the use in this zoning district is for restaurants and auto services as a conditional use.

He further explained that the Dinardos have owned the property for years and have been unable to use it; so they are now proposing this use.

He added that we and the Dinardos have been in touch with Zoning Inspector Frank Kitko in efforts to move this project forward.

Mr. Ockner proceeded to explain that it appears that the disagreements are largely procedural disagreements and the first two inspector error determinations can be resolved quite easily.

Mr. Ockner further explained that to get the zoning permit, the Zoning Inspector has requested multiple things, some of which are listed in the zoning resolution and some of which are not. He further explained that some of the requested submittals are extremely expensive and it does not make sense because these requirements will make the development of the project cost prohibitive if it cannot proceed.

He further commented that they want to be able to proceed in a way that makes them "feel good and gives the Township reassurance that they are dotting all the I's and crossing all the T's."

Mr. Ockner explained that at the end of the appeal, they will have enumerated all of the things that have not yet been provided, but will eventually be provided, if the project moves forward. He again commented that it is cost prohibitive to supply these requirements, if they "can't move forward."

Mr. Ockner indicated that he was going to ask Mr. Dinardo to describe his proposal, what he has done so far, and to also explain his background in development.

Ron Dinardo introduced himself to the Board and indicated that he has been both an architect and a realtor for the past 30 years. Mr. Dinardo also thanked the Board members for coming to the meeting and indicated that he himself has sat on a board before, and that he is a building inspector and master planner for residential and commercial planning.

Mr. Dinardo explained that with the project "we are looking to get a zoning certificate with some contingencies on it." He further explained that the additional items, on the application, that are being requested are "the cart before the horse." He commented that it does not make sense to spend the money on those items, if the project cannot proceed.

Mr. Dinardo also commented that years ago this location had an auto service station.

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Mr. Dinardo indicated that they would like to go through these Determinations of Zoning Inspector error one by one; that there are items needed so the project can move forward. Mr. Dinardo indicated that he needs a zoning permit. He explained that he cannot get a building permit or approval from Geauga Soil and Water. He explained that he cannot move forward without a zoning certificate, and he would like a zoning permit contingent on these requirements.

Mr. Dinardo commented that on the March submittal of the project and asked if there were any questions.

Mr. Dinardo continued to explain that the grading of the property will drain toward the road. He also offered to go through the plan. Mr. Dinardo again asked if any member had any questions regarding the master plan?

Mr. Stewart asked which zoning plan Mr. Dinardo was referencing; because there were multiple plans submitted starting back in January; and which one are you talking about as the master plan.

At this point in the meeting, it was suggested that the meeting get back to discussing the issues on the agenda that this meeting was being held for.

Mr. Ford redirected the meeting to the agenda items. Mr. Ford again indicated that the Board would be following the order of the revised agenda, starting with BZA-2025-04zi Determination 1.

Mr. Hogan asked why they thought Mr. Kitko erred.

Mr. Ockner commented that he appreciated the indulgence and that he will get right to the First Determination.

Mr. Ockner felt that Mr. Kitko’s error was when he said that this project does not apply in auto services and that zoning permits are not issued for a project that does not appear to comply with zoning.

Mr. Ockner further explained that they have not asked for tractor trailer services, and he further commented that he does not know where Mr. Kitko got this from.

Mr. Dinardo agreed and he further explained that the plan just mentions gas pumps for automobiles and trucks and not overnight truck parking.

Mr. Hogan asked Mr. Kitko for his response.

Mr. Kitko commented that he does not have a problem with the auto service station or the restaurant; but the proposed development site plan has a weigh station, tractor trailer parking, and tractor trailer fueling and by definition that proposed use is a truck stop and it is not permitted according in Auburn Township zoning (5.05a), that is Number 1.

Mr. Kitko also explained that he has been doing this since 1977 and that he has never issued a zoning permit on a conceptual plan and that is what is being asked of him.

Mr. Kitko further commented that this submitted plan is a conceptual plan on usage, it is a conceptual plan on lot coverage, road frontage, and there are 4 lots involved that are not combined and nothing can be verified without having the four (4) lots combined.

Mr. Hogan commented that you are stating that in Auburn’s zoning resolution “auto” is defined it could mean automobile like it says in the definition like gas station and that tractor trailer services are definitely defined in a different district but could be considered in the auto services definition.

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Mr. Kitko indicated that in I-1 Zoning District, it specifically states that is where tractor trailer services are, including fueling.

Mr. Kitko indicated that he has no problem with the service station or the restaurant but when you have a weigh station and overnight parking by definition it is a truck stop. That is number one.

Mr. Dinardo commented that ten years ago there was a zoning use change request to put a gas station in and that was approved. He further commented that we are zoned by right for this and back then you changed the zoning to allow this across the street.

Mr. Stewart asked who did the rezoning? A discussion took place.

Mr. Ockner commented that the definition in the Resolution is where fuel is stored, electric vehicles are charged. The definition also includes automobile repairs. This definition is not confined to automobiles, it is about motor vehicles. Mr. Ockner again disagreed with Mr. Kitko that trucks would not be allowed.

Mr. Hogan again clarified that Mr. Ockner’s statement is Mr. Ockner’s opinion of the definition.

Mr. Berns corrected Mr. Hogan by saying that that is the definition.

Mr. Hogan commented that it was stated in his opinion, that it includes tractor trailers.

A discussion took place.

Mr. Berns indicated that the definition says “motor vehicles” not just “automobiles.” He further commented that we are not proposing to use it for lodging and your code does not let you prohibit something out of fear of how it will be used in the future.

Mr. Berns again commented that they are proposing to use it for only dining and fuel. Mr. Berns indicated that the fear of using it for lodging is a reasonable concern in that we do not know what will be happening in the future.

Mr. Berns continued with comments regarding using a home as a business address and not as a structure for a dwelling. Mr. Berns also commented that they did not submit a plan with the level of detail that Mr. Kitko likes, but it is a plan that is used to build, what is permitted, a fueling station and restaurant.

Mr. Ford asked why there needed to be a weigh scale?

Mr. Dinardo commented that he could not speak to that, but it was included when they were laying out the plan to make it usable and scalable for the trucks. Mr. Dinardo indicated that that was a request from the person he is working with when they were talking about building the project.

Mr. Stewart inquired about what brand the Dinardos were working with.

Mr. Dinardo indicated that that information could not be divulged, but he did note it was a national brand.

Mr. Ford again asked what the scale was for and do they need it.

Mr. Hogan also commented that in other districts where tractor trailers are allowed, it is spelled out specifically in the definition [schedule of uses].

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Mr. Hogan also indicated that it is specifically detailed in what zoning district that tractor-trailers are allowed and in the B-3 district it specifically states just auto. He noted that when zoning districts were laid out, that it was intentional that the two uses were in separate districts.

Mr. Kitko indicated that is how he interpreted what was in the zoning resolution.

Mr. Kitko also noted that he was accused of not approving a conditional use and that he cannot issue a conditional use for an auto service station that it has to be brought before the Board of Appeals to decide on.

Mr. Stewart commented that in reading from tractor-trailer service section, that definition does not include auto services.

Mr. Ockner again commented that they are not proposing tractor-trailer services just fueling [of tractor trailers].

Mr. Berns indicated that they are just proposing an establishment where motor vehicles are fueled like it says in the definition and motor vehicles, where fuel will be dispersed, includes trucks. The zoning resolution includes auto service stations which include trucks.

Mr. Stewart commented that everything is being lumped together is under auto service station.

Mr. Berns corrected Mr. Stewart by indicating that they are not lumping things together, it is a gas station.

Mr. Stewart commented that they have diesel fuel and you sell diesel fuel at a gas station.

Mr. Berns indicated that the location is on the side of Highway 422 and it is a common thing to see refueling and a restaurant.

Mr. Ford asked if there was any other comment and if Mr. Kitko had anything further to add. Mr. Kitko did not.

Mr. Hogan asked that the Zoning Inspector's alleged error be summarized.

Mr. Ockner indicated that the Zoning Inspector's error was in determining that the proposed use included a tractor trailer servicing option and that use is not what was proposed.

Mr. Ford indicated that in his opinion there is no mistake by the Zoning Inspector, there is a weigh scale, a place for the trucks to park, there is a concern.

Again, the attorneys question how Mr. Kitko can say they are proposing tractor trailer services when they are not.

Mr. Ford commented that we need to make a motion stating that we do not have a problem with Mr. Kitko's interpretation.

Mr. Ockner commented that the part of Mr. Kitko's decision that is being questioned is that it cannot be tractor trailer services if they are not proposing tractor trailer services.

Mr. Hogan again indicated that is your interpretation and that is different from Mr. Kitko's interpretation. Mr. Hogan also commented that auto services is different from tractor trailer services and fueling tractor trailers is not part of that use. Mr. Hogan also indicated that he thought Mr. Kitko was correct.

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Mr. Dinardo again added that back in the 2013 case that was previously approved for something similar, was going to be allowed, but you are going to make a motion that the Zoning Inspector did not error.

A discussion took place.

Mr. Hogan indicated that they are going to make a motion that the Zoning Inspector is not in error and that Mr. Dinardo’s interpretation of gas and auto is different.

Mr. Berns commented that the Board of Zoning Appeals needs not to interpret that they need to apply what is written in Auburn Township’s own definition; and that sometimes interpretation is needed, but this is not one of those instances.

At this point, it was noted that the verbiage “auto” in the definition of auto services , is short for automobile, the fact that tractor-trailer is separate and has its own definition and is permitted only in a different zoning district, this implies that tractor trailers are separate from automobiles. Again, tractor trailers has its own definition and is not included in auto services.

Mr. Stewart commented that language is important and everything that has been said is correct. There may possibly be a conflict in the resolution, but that’s how it stands now.

Mr. Ockner again commented that this is not going to be a repair or overnight facility, so it is not for tractor trainer services. He further commented that he disagrees that this is not allowed in auto services and that the Board has the ability to decide what is stated in the language.

Mr. Ockner further commented that if the Board makes the decision to interpret, when it comes to interpreting the law is that any ambiguities get resolved in favor of the private property owner, not in favor of the governing body.

He commented that zoning laws by nature violate property rights and prior to zoning, people could do whatever they wanted to do on their property. He indicated that that is still part of the law and when you are looking at something, saying what does it mean, you have to revert to that.

Mr. Tomsic commented that he believes the opposite that zoning was adopted to protect the community.

Mr. Ockner also commented that in this instance, when there is ambiguity, you must favor the property owner.

Mr. Hogan questioned that every time a claimant comes in, the judge rules in their favor, no questions asked? Mr. Barnes indicated yes, the Ohio Supreme Court has sided with the property owner; and the job of the Zoning Board is to protect and uphold the zoning resolution.

Mr. Hogan commented that Mr. Kitko does not feel that there is any ambiguity.

Mr. Dinardo directed a comment to Mr. Tomsic and noted that his father purchased this property back in the 1970’s and none of this ambiguity was in there. It was added to the Resolution. Mr. Dinardo indicated that at the end of the day, they are looking for a zoning certificate.

Mr. Ockner indicated that they are not agreeing that it is ambiguous, it refers to motor vehicles, not just “auto”mobiles. He indicated that this does not become ambiguous because there is another part of the code that defines tractor trailer in a certain way. He further commented again that motor vehicles includes tractor trailers given the definition in the Resolution.

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Mr. Hogan commented that a vote should be taken on whether or not Mr. Kitko erred.

Motion by Doug Hogan that the Zoning Inspector’s original interpretation was correct. The motion was seconded by Robert Ford.

Mr. Dinardo asked for it to be clarified, what is his initial interpretation.

Determination #1--Auto Service Station including restaurant, does not include tractor-trailer services per Article 2.02 Definition-Auto Service Station;

The official determination was read.

Mr. Berns commented, “woah woah woah” Mr. Berns explained that they are not taking issue with the notion that auto use does not contain tractor trailer servicing; we are proposing that we are allowed to have a fuel station.

Mr. Hogan commented that no, you stated that Mr. Kitko made an error.

Mr. Berns indicated that no, “we are not proposing tractor trailer services, we are just proposing fueling of trucks.” Mr. Berns further elaborated that we are saying the Zoning Inspector is wrong in his interpretation that this is tractor trailer servicing. We are only proposing fueling, which includes fuel for trucks. The plan does not propose any servicing area for tractor trailers.

Mr. Ford indicated that the contention is with the scales and overnight parking.

Mr. Berns indicated that there is no overnight parking allowed.

Mr. Kitko questioned when there is proposed parking for semi-tractor trailers that there will not be overnight parking?

Mr. Dinardo indicated that there will be signage.

A discussion took place regarding overnight parking. Mr. Stewart commented that there will be overnight parking. Mr. Berns indicated that “you are not here to prevent us from breaking the law in the future.”

Mr. Berns also commented that their plan is not to operate in violation of the law; it is to operate in accordance with the law. Mr. Berns further explained that “we do not want overnight parking because it is not a permitted use.” He also commented that if the Board wanted to insert that into a condition that would be acceptable.

Mr. Ford indicated that there is a motion on the floor and a vote needs to be taken.

The determination of Mr. Kitko’s allege error was read to clarify.

Mr. Ockner commented that he thinks what alarmed Mr. Kitko was an area where trucks can idle and we are not going to have that. There is a place on the plan where they can park temporarily and get something to eat. He further elaborated that what this comes down to is that trucks cannot use this facility then. He further questioned, “is that what the objection is?”

Mr. Tomsic commented that truck drivers are only allowed to operate so man hours per day and that is why you see trucks parked everywhere. He explained that the trucks drivers are required to stop and get some sleep.

Mr. Ockner commented that he does not know much about truck drivers and he will take Mr. Tomsic’s word for it.

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Mr. Hogan commented that the Zoning Inspector's point is that there are no tractor trailers allowed in this zoning district because that use is permitted only in the I-1 zoning district.



Mr. Berns commented that Mr. Kitko's concern is that there will be truck parking and we do not intend to allow that.

Mr. Ford asked if this case should be tabled and maybe come back approaching the project in a different way.

Brian Stewart commented that this proposed use, for an auto service station, is a conditional use; so they will be required to come back to us regardless; Mr. Stewart further commented that this is just the beginning of seeing these gentlemen in front of us to get this all resolved.

Chairman Ford commented the restaurant, and the gas station are not the issue; but the truck stop is where we are hung up.

Mr. Hogan again commented that the point is, did Zoning Inspector, Frank Kitko, make an error or not.

Mr. Hogan said that there is a motion that Mr. Kitko, in this instant and this specific issue, did not make an error.

Mrs. Hardy asked if that was an official motion.



Mr. Hogan commented that there is a motion, so the Board can vote on if there was an error or not and at that point they can make their adjustments and changes and come back before the Board of Zoning Appeals.

Mr. Berns inquired if the deciding point is that if diesel fuel being supplied is OK, then would there be something that can be modified in the application to make it clear that only fuel is being offered and there are no other truck stop services offered. We can do that.

Mr. Hogan again commented that the question here is whether or not Mr. Kitko made an error and the question that Mr. Berns is currently asking about is totally different than the issue at hand.

Mr. Tomsic asked if a yes vote means that the Zoning Inspector did not make an error. **Motion that the Zoning Inspector did not error in his interpretation for BZA-2025-04zi, Determination #1. Vote: Hogan, yes; Ford, yes; Tomsic, yes; Stewart, no; and Varley, yes; Motion granted.**

For the next item on the agenda, Mr. Stewart commented that there is no variance required because a restaurant is permitted and auto services is conditional use.



Mr. Dinardo indicated that if this is turned down, he cannot move forward with the project.

Bob Brosnan from the audience asked if he could ask a question. Mr. Ford responded "not at this time". Mr. Ford explained that the public will be allowed to ask questions later in the meeting.

Mr. Ford moved on to BZA-2025-04v, Determination #2. -- **Use variance request can be submitted...within twenty (20) days of receipt of letter...Applicant appeals because it does not need a use variance;**

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Mr. Ockner commented that that was all they had on that one. Mr. Ockner indicated that since their interpretation is that the proposed uses are allowed and/or are conditional, he does not believe that they needed a use variance. He indicated that they were not looking for a use variance, he again explained that they think that these uses are already conditional and permitted uses.

Mr. Stewart explained that Determination #2 Zoning Inspector error is not about a use variance.

Frank Kitko indicated that based on what they were applying for and what was submitted, he made a decision to deny the application; because of his decision to deny, he needs to inform the applicant that they have the legal right to apply for a variance within a 20-day window from receipt of their denial letter. He further explained that was their legal right to apply for a variance if they wanted to, and they chose not to; and at this point they missed that window.

Mr Ockner again indicated they did not need a use variance because their opinion is that the proposed use is conditionally permitted.

Mr. Hogan asked what they need to do for a variance. Mr. Kitko explained they just have that option after receiving the denial letter.

Mr. Dinardo commented that since the first zoning inspector error was “shot down”, if there is a variance request, “I guess it would be a use variance to allow tractor trailer fueling and he also asked how that worked.”

There was a recap of what was applied for originally and that the Zoning Inspector denied the application and the denial letter was sent March 20, 2025. The Zoning Inspector offered that option to apply for a use variance because they submitted for a zoning permit and not for a conditional use permit.

It was also explained that based on what was submitted on the application and on the site plan, that the Zoning Inspector, Frank Kitko, felt it was a truck stop because it included amenities such as a weigh station, parking, fuel and food.

Mr. Dinardo indicated there is none of that on this particular plan.

It was suggested that a discussion take place for lot coverage. Mr. Stewart said the only variance that I'm aware of is for lot coverage. Mr. Kitko agreed.

Mr. Stewart indicated then the second point of Zoning Inspector error regarding the use variance is a moot point.

Mr. Ockner commented that he thought that they had applied for a conditional use permit.

Mr. Kitko indicated that they did not.

Mr. Ockner explained that the applications on the Auburn Township website for a zoning permit and a conditional use permit are virtually identical, so I thought that's what we applied for.

Jane Hardy explained that the zoning permit application has a list of required documents. She also explained that the two applications may require similar information but the titles of the two applications are definitely different

Mr. Dinardo asked if they could amend them.

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Mr. Hogan brought the meeting back to Determination #2 and asked where did Mr. Kitko make an error? Mr. Ockner again indicated that he erred with the statement that we need a use variance.

Mr. Hogan again explained that Mr. Kitko felt that this proposal is a truck stop and now the applicant states that this isn't going to happen.

Mr. Ockner indicated that he did not deny it because we are selling diesel fuel, we don't need a variance for that, this is not a proper subject for a use variance, so we didn't need one so that was his error.

Mr. Kitko explained, "if I deny an application, the person has the right to request a variance within 20 days after denial and that's passed now."

Mr. Ockner indicated it seems like you include language around this as a matter of course.

It was decided that Determination #2 was a moot point and the Board moved on to Determination #3 6.01(c).

Mr. Ockner indicated, with no disrespect intended, that the application is still incomplete, but we have not received a list of what is not included. We have an idea of what is not included and those things have not been included for various reasons.

Mr. Ockner further commented that the zoning permit requires a legal description of the lots, then maps, if requested by the zoning inspector. We have provided the lot descriptions and a lot of detail and it complies with current regulations, we've provided a list of current owners and what's there. We've provided proof of ownership.

Mr. Ockner commented that one of the objections and concerns is providing architectural drawings because it is cost prohibitive.

Mr. Hogan commented so basically in BZA-2025-04zi--Determination #3, you're asking us to ignore Determination 4-5 and 6?

Mr. Berns commented that "no" to Mr. Hogan's comment that in Determination #3 "we're saying the application is complete."

Frank Kitko commented that, based on what was submitted, the building is on one lot and that does not meet zoning. So I can judge if the plan is acceptable or not, the problem is there are multiple lots, Mr. Dinardo has known since 2018 that these lots needed to be combined and it has not been done. Mr. Kitko further indicated that there is a reason that these lots have not been completely combined.

Mr. Dinardo indicated that he needs a zoning permit to move forward.

Mr. Berns commented as a precondition to getting a zoning permit, we have to combine the lots so we do that and then might not get approval. Mr. Dinardo indicated that they will combine the lots after we have all our permits.

Brian Stewart commented that they will not be able to get a building permits without combining the lots first.

Mr. Ford commented that you are looking for a zoning permit on a lot that does not currently exist.

Mr. Ockner indicated that they are looking for a conditional zoning permit.

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Mr. Ford commented that it appears you cannot get a conditional zoning permit because the Zoning Inspector cannot issue a permit if the lot does not meet zoning. Once the lots are combined then the Zoning Inspector can review it, potentially approve it, and send it to the Board.

Mr. Ford again commented that you're asking us to rule on lot coverage for a lot that does not exist and a building that we don't know what is in it.

Mr. Berns commented that the notion that architectural plans would be required for a zoning permit is not required anywhere else in northeast Ohio, the development plan tells you all you need to know, all the details like building height, lot coverage, etc..

Mr. Berns further commented until we have a zoning permit, who would spend 10s of thousands of dollars to get an architectural drawing before they have the permit to proceed.

He further commented that the permitting issue is based on information in front of the zoning inspector and do these things comply, the lot coverage, the use, that's what we've presented.

The other information that Mr. Kitko has asked for, some is not required under your zoning resolution, some is only required based on Mr. Kitko's discretion and some of what he asked for, like stormwater plans, are governed by state law and Mr. Kitko is not going to question that.

Mr. Hogan asked if they have to get a stormwater plan.

Mr. Berns responded that they do, but they need a zoning permit before Geauga Soil & Water will look at it.

Mr. Kitko commented that everyone else who submits for commercial prints follows the rules and supplies all required data.

Mr. Ford indicated that everyone is able to do this on every job.

Mr. Dinardo, Sr. indicated that he already consolidated all these lots under the ownership of one person.

Mr. Ford replied that if these lots were consolidated, we might not even be here having this discussion.

Mr. Ockner commented that if you look at the drawing of this, you can figure all of this out, before the property is consolidated. He further commented that saying we have to consolidate the lots first denies us the property rights because what if we don't get the permit and then we are stuck with the lots being combined.

Mr. Tomsic commented if you don't combine the lots, the Board has to just take you at your word that you are going to follow through with your plan and the Board cannot do that.

Mr. Ockner indicated that I've never run into this before that lots have to be combined prior to getting a permit, the permit is conditional.

Mr. Berns also commented that a condition could be included for a zoning permit.

Mr. Ford replied that seems backwards.

Mr. Berns indicated you can put conditions on a zoning permit.

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Mr. Stewart commented that he's been on the board for almost 25 years and we've never put a condition on a zoning permit.

A discussion took place regarding conditions for variances versus a conditional use and that the two permits are separate things.

Mr. Stewart commented that a conditional use permit is different from a zoning permit.

Mr. Berns commented that those are conditions that are on our property plan.

Mr. Ford commented you are asking our Zoning Inspector to make an approval on four different plots. Mr. Berns indicated that yes, because you can see it is on the plans.

Mr. Hogan commented that saying you want us to approve something with conditions contingent on them doing XY and Z.

Mr. Kitko commented that he is being asked for a conditional permit which Mr. Kitko explained that he cannot approve according to the Assistant Prosecutor. Mr. Kitko indicated that this cannot be approved without the lots being combined.

Mr. Dinardo indicated that "yes, you can do that."

Mr. Kitko stated that no, he could not do that; again, according to the prosecutor it either meets zoning or it does not and I approve it or you go for a variance. He further commented that what you submitted does not meet zoning so it cannot be approved.

Mr. Dinardo indicated we need to clarify what he said and be specific. Mr. Dinardo indicated that the drawing in front of you has a lot of detail. He further commented "you guys had plenty of time to review it, it has setbacks and green location and height requirements, this is a signed, sealed legal document, it's stamped and sealed you need to review this in its entirety and approve it."

Mr. Kitko indicated that there is detail but it is four separate lots, it is not one consolidated lot.

Mr. Dinardo, Sr. again indicated that it is one lot and that he combined them.

Again, Mr. Ockner indicated that if we combine the lots and then you say no to the zoning permit, you have greatly eliminated our property rights.

Mrs. Hardy commented that the Auburn Township zoning resolution Article 5.03 (j) says if you meet these conditions for auto services, the conditional use would be approved, that way so you know ahead of time what needs to be met after the lots are combined. Mrs. Hardy corrected her statement to 5.03 (i) auto service station, conditions are listed, if you applied for a conditional use permit these are the conditions that need to be met.

Mr. Ockner questioned the statement; "so you're stating that we haven't applied for a conditional use permit?"

It was noted that the application was for a zoning permit, not a conditional use permit that is why Mr. Kitko said no; At the point that the drawings are submitted, then Mr. Kitko can review and verify that this actually is going to be a restaurant in a gas station and have something to review for approval.

Mr. Dinardo indicated that they do meet those conditions.

Mr. Stewart commented on page 28 article 5.03(i)? Mr. Stewart further commented that OK so you're looking at the maintenance standard.

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MinutesAUBURN TOWNSHIP BOARD OF ZONING APPEALS--REGULAR

Meeting

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Held Washington Street

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Mr. Ockner commented OK and whispers to Mr. Dinardo, the Board reviewed what was in the resolution for an Auto Service Station and the items that would be included as conditions.

Mr. Ockner commented to the Board that he was wondering “if we can table this discussion so that we can take into account some of the things that you have enlightened us with.”

“Can we table this and explore if there is another way to approach this?”

Mr. Ford commented we would like to see something like this happen. Mr. Ford indicated that he would like to table it, just to be honest with you, let's be real clear zoning permit without putting the lots together, we don't do that.

Mr. Dinardo indicated we could do that and make it conditional and get the permit.

Mr. Berns commented that we will look into that and see if you can issue this legally.

Mr. Stewart commented that his color-coded map is showing the lots and the plan but there are only three (3) parcels that are being talked about being consolidated and where is the 4th.

Mr. Dinardo, Sr. explains what is on the map. A discussion took place.

Mr. Kitko was concerned that if we do this before the lots are combined and issue a permit, how can we make it legally binding?

Mr. Hogan asked, for the people in the audience, if a site plan could be shown to them.

Mr. Ford asked if they were in agreement to table this.

Mr. Dinardo asked, so to be clear, we are tabling this and Mr. Berns commented that they will either be back before the Board with options or will withdraw.

A discussion took place whether everything was being tabled or just the zoning inspector errors.

It was also noted that they can only amend what they have currently submitted or else they have to reapply.

Mr. Berns indicated that they're tabling everything since the minutes have not been voted on.

Mr. Hogan commented that we already determined and took action that Mr. Kitko did not make any error on the first point that was discussed, and that item will not be withdrawn.

Chaos ensued.

Motion by Lewis Tomsic to approve the meeting minutes for the May 6, 2025, BZA-2025-01v for Dave Bitterman for Golden Pond. The motion was seconded by Lewis Tomsic. Vote: Stewart, yes; Ford, yes; Tomsic, yes; Varley, yes; and Hogan, yes. The motion was granted.

Motion by Lewis Tomsic to approve the findings of facts for the May 6, 2025, BZA-2025-01v for Dave Bitterman for Golden Pond. The motion was seconded by Lewis Tomsic. Vote: Stewart, yes; Ford, yes; Tomsic, yes; Varley, yes; and Hogan, yes. The motion was granted.

RECORD OF PROCEEDINGS

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There was no further business.

The next meeting will be June 10, 2025. This date was confirmed with the attorneys.

Motion by Brian Stewart to adjourn the meeting. The motion was seconded by Michael Varley. Vote: Stewart, yes; Ford, yes; Tomsic, yes; Varley, yes; and Hogan, yes. The motion was granted.

The meeting was adjourned.

Minutes submitted by

Jane Hardy

Jane Hardy, BZA Secretary

Minutes Approved on:

June 10, 2025

Robert Ford, Chairman