RECORD OF PROCEEDINGS

Minutes of AUBURN TOWNSHIP BOARD OF ZONING APPEALS—REGULAR Meeting

GOVERNMENT FORMS & SUPPLIES 844-224-3338 FORM NO. 10148

Auburn Township Administration Building
11010 Washington Street

Held February 13, 2024 1
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MEMBERS PRESENT: ROBERT FORD, MICHAEL VARLEY, LEWIS TOMSIC, BRIAN STEWART, DOUG HOGAN, BEN TIMMONS

MEMBERS ABSENT: DAVID PARKER

MEMBERS HEARING THE CASE: Stewart, Tomsic, Varley, Ford, Hogan

CASE FILE: The case file is included as part of the official record, As is the Auburn Township Zoning Resolution

BZA-2023-09v--an appeal requesting a variance, submitted by Rick and Vicki Donley from the Auburn Township Zoning Resolution, Article 4.03(a) Districts and Main Uses: Lots and structures shall be used in compliance with Schedule 4.03(k) Residential District Schedule and 4.03(a) Districts and Main Uses: Only the permitted main uses defined…and specified on the Schedule…shall be permitted… for a landscape business and proposed Christmas Tree Farm located on PPN 01-001960, Messenger Road, Auburn Township, Ohio 44023 in an R-2 zoning district.

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

It was noted for the record that: still pending on the agenda was **BZA-2023-08v**--an appeal requesting a variance, submitted by **T & B Development LLC, Bruno Frate,** from the Auburn Township Zoning Resolution, **Article 4A.07(a)(1) Building Setback Requirements, Front Yard--**required 75'; grandfathered at 58' 3-3/4", proposed 46', for a proposed addition located at **17720 Ravenna Road**, Auburn Township, Ohio 44023 in a **B-1A** zoning district.

Continuing with the meeting.

Roll call was taken with the following members present: Lewis Tomsic, Michael Varley, Robert Ford, Ben Timmons, Doug Hogan and Brian Stewart. The five members hearing the case were: Ford, Hogan, Stewart, Tomsic, Varley.

Fire Chief, John Phillips; Frank Kitko, Auburn Township Zoning Inspector and Jane Hardy, in her capacity as BZA Secretary, were also present for the Township.

The Pledge of Allegiance was recited.

Mr. Ford swore everyone in who was planning on testifying during the variance request hearing.

Chairman Ford also discussed the meeting protocol for this hearing and the order of testimony for the hearing. He explained that the applicant/applicant's attorney will present their case without interruption, questions and comments. Mr. Ford further explained that the Board of Appeals will then ask questions of the applicant. After that, contiguous property owners can offer their comments.

Mr. Ford read the following opening statement:

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.

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.

The applicant was asked to present his case.

Attorney Chris Horn introduced himself to the Board members. He indicated that he was representing the Donleys who had purchased this property in July 2023, and the property was identified as Permanent Parcel Number 01-001960, and address 16241 Messenger Road.

A discussion took place regarding the 16241 Messenger Road address not being in Geauga County data base, so the property was going continue to be identified by its Permanent Parcel Number of 01-001960.

Attorney Horn indicated that The Donley's purchased the property in June 2023 and leased the property in November 2023. He explained that the Donley's plan was to fix the building up and for the long-term develop a Christmas tree farm and in the meantime create revenue through leasing out the building. They testified that currently the leasing is for the storage of equipment for a landscaper.

Attorney Horn indicated that he felt the Donleys met all the factors required for a use variance to be granted and he outlined them accordingly.

Mr. Horn indicated that according to Geauga County records, the building on the Donley property was constructed in 1976. Mr. Horn also commented that there is no residence currently on the property. In addition, there is no water, or septic and no gas on the 3.5 acre parcel.

Mr. Horn also indicated that there were cows and other farm animals located there and Arnold masonry and for many decades it was known as the Arnold family farm.

Mr. Horn also explained that the Donley's have put on a new roof and added new gravel on the property for when the Donley's have their tree farm.

Mr. Horn again explained that the Donley's entered into a lease with the landscaper in

2023. He noted that it is one-year lease and his client is just in the first quarter of the lease. He also noted that the building will be used by just the one business.

Mr. Horn further commented that there was a similar use of the building prior the current owner.

Attorney Horn read through part of Article 6.05 of the Auburn Township Zoning Resolution, which were the standards used in determining a use variance.

1. Whether there are conditions unique to this lot; he felt that this lot was very unique since it had been previously used in the same capacity as his client is using it. Again Mr. Horn felt that it is the same use for storage as it had previously been in this same zoning district, the current use is similar to the prior use.

2. Did the applicant create these hardship conditions… no his client did not create the hardship conditions; it is currently being used as the prior use.

3. Whether granting the variance would adversely affect the rights of adjacent owners, Mr. Horn commented that it would not since the building is being used the same as the prior use.

4. Whether the variance would affect the public health, safety and general welfare; again he noted that it would not, since there is no expansion of the use, it is still being used as it was.

5. If the variance sought is the minimum which will afford relief to the applicant, they are continuing to use the building as it had been used.

6. Is there another economically viable use for the lot which is permitted within the zoning district. The use is staying the same, it was built as a garage.

7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. Yes, he claimed that since the use is staying the same substantial justice would be done.

After Mr. Horn's presentation, Mr. Donley testified that he planned on fixing the building up for his future tree farm. Mr. Donley also commented that in the meantime he wanted to create revenue from the building by leasing it out for storage.

Mr. Tomsic asked if the storage of the landscape equipment was from the former Naturescape's business and was the equipment going to be picked up and dropped off. Mr. Donley commented that the equipment would be picked up on the landscapers way to work and then the landscaper would drop it back off for storage after work.

Mr. Tomsic explained that the property is being used as a business location running a company out of it. Mr. Tomsic commented that if the building was being used for "storage", the equipment would be stored inside all winter and the equipment would not be pulled out until Spring, "that is what actual storage is."

Mr. Stewart commented that not all the equipment was being stored indoors and that much was being stored outside.

Mr. Stewart also asked what the broad scope for the property was going to be.

Landscaper, Brandan Jeffries, from Stoneworks, who the Donleys leased the property to, was not present, but his partner was. Mr. Donley explained that the individuals leasing the property are friends of Mr. Donley's son.

It was explained that the equipment is stored outside so it is ready for snowfall and

because not all the equipment will fit inside the building.

Mr. Ford also commented that it appeared that they are running a business from that lot since they are going in and out every day.

It was noted that the landscapers "grab" trucks in the morning and they are back at 5:00-6:00 PM at night at the latest. Mr. Stewart asked about maintenance on the vehicles. The comment was that the maintenance would be done after hours.

Mr. Hogan asked if there was a copy of the lease available and if the Board could be supplied with a copy.

Mr. Horn passed out copies of the lease agreement.

It was noted that the lease does allow for the equipment to be stored outside. A discussion took place regarding everything that the lease allowed—all the maintenance on the building, repair and daily maintenance.

Mr. Hogan asked about other buildings that are used by the landscaper.

It was noted that the landscapers were going to bring in a port a potty. It was also noted that since there actually is a well with a hose hookup, the landscapers will also be cleaning the trucks there.

Mr. Hogan asked if Mr. and Mrs. Donley received legal advice before entering into this agreement. Mr. Donley indicated it is a lease that they have used for their other business properties.

Mr. Hogan asked if anybody figured out what the zoning classification was for this lot and investigated the zoning use, prior to purchasing or entering a lease. It was apparent that they did not.

Mr. Ford asked how much of the equipment will be located inside the building. It was noted that there will be two (2) dump trucks, one (1) pickup truck, hand tools and hand equipment. It was explained that the rest of the equipment will be located outside, and the outside equipment included numerous tractors, and five (5) or six (6) trucks.

It was also noted that there will be seven (7) employees.

Mr. Stewart commented that there are three (3) bays that can be seen from the street and what will those three bays be used for?

Frank Kitko, Auburn Township Zoning Inspector, testified regarding the history of the property. Mr. Kitko indicated that the building was built in 1977 and the building was in use before Mr. Kitko became zoning Inspector.

Mr. Kitko explained that the previous zoning inspector "brought him up to speed on the property." Mr. Kitko continued by testifying that the zoning office never received a zoning complaint regarding the building when the previous owners owned it.

Mr. Kitko further commented that over the years there were cows and alpacas kept at the site. This building was part of the Arnold farm.

Mr. Kitko also commented that over the years, the Arnolds had always used the building as an accessory use, since the Arnolds lived around the property. Mr. Kitko also explained that he was advised by a prior judge/prosecutor and has always been told that whatever existed before his tenure to leave it alone unless it becomes a problem.

Mr. Kitko testified that the current use by the landscapers is a totally different use than what had been on the property and the use has definitely expanded. It is not family owned, there are no animals, and both the storage and lot coverage has increased dramatically. Mr. Kitko also noted that there is no tree farm yet, and with the increase in lot coverage, there is probably only 2 acres of land left that can be used for the farm, and it will be 10-12 years before they can reap a visible income from the tree farm.

Mr. Kitko commented that at this time it is not agriculture because landscaping is not considered agriculture; that is how he views it and why they were cited. Mr. Kitko also commented that the use has changed and has increased dramatically. He indicated that there is a considerable increase in the amount of equipment at the location, and the snowplows go out at 3:00 AM.

Mr. Kitko stated that he feels that no one did their due diligence before the property was purchased or leased. Mr. Kitko also commented that over the years it was used as an accessory use, there were horses there, never had a complaint, it was quite and neat. The current owner leased it, there is not a tree farm, if there was a tree farm then it would not be an issue because it would be agriculturally exempt. Mr. Kitko also noted that landscaping is not agriculture, and there are court cases that are out there verifying this fact.

Mr. Ford took statements from the audience. He reminded everyone to speak up.

Bridey Matheney introduced herself and was representing the property at 16365 Messenger Road. John Nicastro, 16365 Messenger Road, is a contiguous property owner and strongly objects to the variance. He explained that this is a residential zoned area and the current use on the subject property is commercial. He further commented that this use will lower property values. Mr. Nicastro described the outdoor storage that is there are pickup trucks, an ATV, shipping containers, a flat-bed truck to name a few.

Mr. Nicastro further testified that no one wants to look at that [all the outdoor storage]. He indicated that they are operating a landscaping company from the location, they park on the road many times and when they are snowplowing, they are in and out all day and night, it is unsightly, and it is disturbing to all the residents in the area.

The prior use was a family use because the Arnolds lived there. Mr. Nicastro had photos taken and supplied them to the board. He explained that he has lived there for 15.5 years and most of the time it was an alpaca farm, there was no vehicles and only a small amount of outside storage.

Mr. Nicastro described the other set of pictures from December 29th showed the drastic increase in activity; a ½ acre of gravel was put down to the rear of the building. The last group of pictures showed a bobcat spreading gravel. Another set of pictures showed the view from Mr. Nicastro's yard and he explained that it shows triple the amount of gravel and landscaping equipment, snow plows and cars.

He further commented that there is a lot of open burning and that there is someone that rides a dirt bike on the back portion of the property, that is very noisy. Mr. Nicastro further commented that if a variance is granted to continue this use, there is no limits to the growth or expansion of the use and storage and how they use. He noted that right now, the current use is devaluing the property in the neighborhood, and it is important to protect the value of our property,

Mr. Hogan asked if the lease could be tightened up and would Mr. Nicastro have objections if something could be done with noise levels, traffic increases. Is it ok to run their business out of there, lot of factors to consider.

Property owners continued to testify.

Mike Herendeen, 16145 Messenger Road testified that he lives to the east of the Donley property and they "open burn" on the property and the smell of what they are burning is noxious. He protested in that this is a residential district, and no one knows if there are chemicals being stored in the structure and how do we know they are not poisoning our water wells; this use is a safety issue, and we do not want more traffic on the road. He commented that they did not do their research before they bought the property, it is an eye sore with all the equipment.

Jim Dhayer, 16319 Messenger Road, testified that they have lived on Messenger Road for forty-five (45) years, and they do not agree with the property being leased to a landscaper. Mr. Dhayer is concerned that this use will affect their property value in a negative way.

Mary Hurley, 16205 Messenger, testified that her concerns were the drop in property value especially with the heavy equipment. Mrs. Hurley commented that it is a residential district, there is additional traffic that can be dangerous when people are walking their dogs.

John Borsukow, 16150 Messenger Road testified that he grew up on Messenger Road and the Arnold Family Farm was a low-key use with their alpacas and the masonry business. He commented that this is residential property. It sold quickly and then there were trucks and excavators coming in.

A discussion took place regarding the landscaping equipment and client list being bought from Naturescape.

Brenda Krul, 16405 Messenger Road, indicated that she lives right next door to Ray Arnold. She also commented that there is a lot of outdoor equipment storage that is very visible from her property. Ms. Krul also submitted pictures to the Board.

Tamara Stachowiak, a realtor with Century 21, introduced herself to the Board members. She commented that she has been a licensed realtor since 2001. Her verbal analysis of the landscaper's use of the Donley property was that it would lower property values. She indicated that the noise and traffic and the commotion at all hours of the night and the outdoor storage would hurt property values. She further explained that potential future buyers do not want to live by commercial businesses and don't want to see equipment storage on the property; it will be a bad impact on a residential neighborhood.

Bridey Matheney indicated that this is a non-conforming use, it is not at all an agricultural use and not intertwined with the storage.

Ms. Matheney also discussed the Duncan factors regarding the use. She explained that this use is not by any means a hardship.

She commented that it is not a permitted accessory use; they are allowed to use the property as residential and since there is no dwelling on the property, it is the primary use, not an accessory use.

1. **Whether there are conditions unique to this lot**; She explained that there are no unique conditions on the property—it is 3.5 acres with a two-acre minimum and it can be used as residential.

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2. **Did the applicant create these hardship conditions**: Yes, the Donley's created the hardship themselves, they didn't ask for approval, they just moved forward and still operate with an intentional and significant increase in the use.

3. **Whether granting the variance would adversely affect the rights of adjacent owners:** Yes, this use has a significant impact on the whole neighborhoodsiince it is a commercial business in a residential area, the snow plowers are coming in and out at 3:30 AM, with continually loading and unloading and making noise.

4. **Whether the variance would affect the public health, safety and general welfare:** Yes, the health and safety are significantly impacted with in/out traffic all hours of the day.

5. **If the variance sought is the minimum which will afford relief to the applicant,** No, appellants can operate a landscaping business from the industrial district in the Township, which the I-1 district allows such use.

6. **Is there another economically viable use for the lot which is permitted within the zoning district.** Yes, there are other viable uses for this residential property, they could build a house on it.

7. **Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.** No, this residential zoning district was established to be a residential rural area and running a landscaping company (a commercial use) is not allowed and granting a variance for this purpose would be an injustice and would be destroy what the district is setup for; it would not promote the spirit and intent of zoning. An injustice will be done if this variance is granted.

Chris Horn indicated that his client recognized the concerns expressed during the meeting. Mr. Horn explained that they do want to be a good neighbor. He would have the equipment as inside storage. He would also try to lessen the number of vehicles going in and out.

A discussion took place.

Mr. Hogan asked if Mr. Horn would like to withdraw his request.

A discussion took place.

Mr. Horn indicated that his client would like to withdraw their variance request.

With the request being withdrawn, the hearing ended.

Mr. Ford suggested that there be a short recess.

Minutes submitted by

Jane Hardy, BZA Secretary

Minutes Approved on:

March 12, 2024

Robert Ford, Chairman