

AGENDA
BUTLER COUNTY BOARD OF ZONING APPEALS
BUTLER COUNTY ADMINISTRATION CENTER
130 HIGH STREET
HAMILTON, OHIO 45011
September 20, 2011

Opening

- A. Roll Call Mr. Gary Salmon
Mr. Thomas Bevington
Mr. Alan Daniel
Mr. Henry W. Philpot
Ms. Lee Steenken

Approval of Minutes

June 21, 2011

New Business:

- A. BZA11-13V Charles L. McHargue
6534 Hamilton Eaton Road
Somerville, Ohio 45064
- B. BZA11-14V Matt Lee
1097 Leonard Avenue
Hamilton, Ohio 45013
- C. BZA11-15C Venice Cemetery Association
3951 Layhigh Road
Hamilton, Ohio 45013
- D. BZA11-16V Creed Holler
2224 Wade Court
Hamilton, Ohio 45013
- E. BZA11-17V Robert B. Sheely
7119 Hetzler Road
Middletown, Ohio 45045

Adjournment

REGULAR MEETING: Tuesday, September 20, 2011
Butler County Government Services Building
Conference Room 1
315 High Street, 1st Floor
Hamilton, OH 45011

CALL TO ORDER: Ms. Steenken called the meeting to order at 7:00P.M.

ROLL CALL: Mr. Thomas Bevington
Mr. Alan Daniel
Mr. Gary Salmon
Ms. Lee Steenken

MEMBERS ABSENT: Mr. Henry W. Philpot

STAFF MEMBERS: James Fox, Zoning & Floodplain Manager

APPROVAL OF MINUTES:

Ms. Steenken made a motion to accept the Meeting Minutes of June 21, 2011 as submitted. Mr. Salmon seconded the motion subject to some minor corrections. Motion approved.

AYES: Steenken, Salmon, Daniel, Bevington

NAYES: None

Mr. Fox said there are only four (4) Board members present and wanted to make sure that the applicants are aware that if two (2) members approve a case, and the other two (2) deny the case, it would be an automatic denial of the case. Three (3) members or more must approve the case in order for the request to be approved.

Mr. Daniel said if any applicants would prefer to wait until next month when all five (5) members are present they may do so.

Case # BZA11-13V

Charles L. McHargue
6534 Hamilton Eaton Road
Somerville, Ohio 45064

Mr. Charles McHargue, 6534 Hamilton Eaton Road, Somerville, Ohio, 45064 and Ms. Kim McHargue, 6534 Hamilton Eaton Road, Somerville, Ohio and Mr. Jeff Thien, 4190 Hamilton Cleeves Road, Fairfield Ohio, the Land Surveyor that did the work for the applicant, came to the microphone and introduced themselves.

Mr. Thien said this property was two (2) tracts. Tract #1 was rental property, the McHargue's actually live on tract 3 and wish to keep most of the acreage with the possibility of selling off tract #1. They recently lost their jobs and thought if they needed the money they would be able to sell off track #1 but want to keep as much of the acreage as possible.

Mr. Thien said the other item that came in to play was the existing gravel drive on the north side of tract #3 they were hoping to keep that because that is the easiest access back to tract #2, the 2.492 acres. They are hoping to get a variance for tract #1 so that they would be able to keep the existing drive, originally when they first built that house on tract #3 they did have a variance for that and was (inaudible) feet and the other tract was a little over 200 feet. Now what they are wishing to do is create a variance for tract #1 and have the 200 foot on tract #3 and then tract #3 and tract #2 would basically go together and track #2 would not be a separate buildable parcel.

Mr. Salmon asked if the applicant did not have a purchaser for tract #1 in other words they would sell tract #1, live in tract #3 and when they redo the deeds then tract #2 would not be sold out.

Mr. McHargue replied yes sir; there is a note right on the deed that it is not a separate buildable parcel without the approval of (inaudible).

Mr. Fox asked Mr. Thien if it was rental property.

Mr. Thien replied yes that is correct.

Mr. Fox asked if there was someone in there now.

Mr. Thien replied yes.

Mr. Bevington asked which is the rental part, tract #1 or tract #3.

Mr. McHargue said tract #1 is the rental property.

TESTIMONY IN FAVOR: None

TESTIMONY IN OPPOSITION: None

NEUTRAL COMMENTS: None

STAFF COMMENTS:

Mr. Fox said staff comments are as follows:

Case No. BZA11-13V, Charles L. McHargue, 6534 Hamilton Eaton Road, Somerville, Ohio 45064, the request is to split property without proper road frontage.

Staff Comments:

1. The property is zoned A-1 Agricultural.
2. This area is rural in character.
3. The applicant is seeking a variance, said applicant shall be required to establish to the board, proof by a preponderance of the evidence that an unnecessary hardship will prevail unless the variance is granted.
4. The spirit and intent of the zoning resolution is not to allow this type of variance, but since this will not change the character of the area the staff will recommend approval.

Mr. Salmon asked Mr. Fox when the variance was given for approval on the house.

Mr. Fox said he did not know.

Mr. Thien said it was in 1982, this is what was printed out when I came to talk about it.

Mr. Salmon made a motion to approve case BZA11-13V, 6534 Hamilton Eaton Road, Somerville, Ohio, 45064; the request is to split property without proper road frontage. Mr. Daniel seconded the motion. Motion carried.

AYES: Salmon, Daniel, Steenken, Bevington

NAYES: None

Case # BZA11-14V
Matthew Lee
1097 Leonard Avenue
Hamilton, Ohio 45013

Mr. Matthew Lee, 1097 Leonard Avenue, Hamilton, Ohio, 45013, said he is trying to start a business from his detached garage on his property and it is zoned for commercial zoning and would like to change that to work out of his garage. He plans on doing most of his business through shipping and receiving and will not have a store window and hopefully not a lot of foot traffic or people just driving up and he will have store hours.

Mr. Fox asked Mr. Lee what he does.

Mr. Lee said he will be refinishing and restoring modern and antique firearms and gave a descriptive catalog to Mr. Fox to keep for the record.

Mr. Daniel asked Mr. Lee if this will be his primary income and said he has been out of work for a year and this has been a hobby of his since before he lost his job, and wants to try and make it on his own and feels he is good enough at it and feels there is enough of a customer market out there that he feels he can do it and after being out of work for a year he feels this is his best opportunity at this time.

Mr. Fox asked Mr. Lee to explain and provide the Board with a little more detail as to what is involved in refurbishing and the tools and acid he will be using, and whether he will have a paint booth, etc.

Mr. Lee gave a brief overview of the services he intends to do, including taking antique firearms apart, degrease and remove all the oil out of the metal, then sandblast it to a bare finish and for some he will use a manganese phosphate solution mixed 1:4 ratio with water then heats it dips the metal in which provides a dark brown finish. The water evaporates and he stores the remainder in a five-gallon bucket for reuse. Once the metal is Parkerized he can oil it or put any paint that is in the catalog, lets it dry in his garage where there are two (2) fans right above where he sprays and the paint that is leftover gets dumped in the garbage can. The only other two (2) chemicals he uses in the process is fresh water to clean off the Parkerizing solution and uses a garden hose to clean it, and he also has a five-gallon bucket of (inaudible) cleaner to degrease everything using an aerosol can for the initial degreasing to get the gunk out and he does use an ultrasonic cleaner for small parts and that is pretty much the process.

Ms. Steenken asked Mr. Lee what the purpose of the exhaust fans is.

Mr. Lee said it is so when he is spraying in the garage he does not want to have the barn wide open and have the wind come blowing in and blowing everything around. He added that he wears a respirator while he paints but the fans keep fresh air floating through the garage and moves the excess out.

Mr. Steenken commented that it doesn't necessarily generate air pollution then.

Mr. Lee said it just makes it a lot easier to breath and he does not want to take the chance and does not trust the respirator 100%. Ventilating is not a requirement but since

he is using it two to three (2 – 3) times a day, he wants to plan for the long term a little better even though the paint is basically dry to the touch in 5 – 10 minutes.

Mr. Daniel asked if it was water-based or oil-based paint.

Mr. Lee said it is its own specific combination which he could not tell but the majority of it is self-lubricating and is a Teflon based paint that you mix it with. Most of the fumes dry to the trusses inside his garage.

Mr. Bevington asked Mr. Lee how he will be receiving these firearms.

Mr. Lee said based upon approval here, this will be his make it or break it. If he does not get zoning approval then obviously he can not do anything with this so he could not have a federal (inaudible) license. Per approval at this meeting, he would then apply for the business license and would get a Federal Firearms License (FFL) Application going and once he received the federal license he will receive a handgun or long gun or both classified weapon. Without that, he would have to pay another FFL fee to have someone ship it to that person and pay them to pick that gun up and then have it shipped back and he would not want to waste the application fee if he could not get approval for this variance because that would be the first thing required.

Mr. Lee said he does not want a lot of foot traffic at his house or around his garage and does not want to take a chance with a lot of people knowing what he has or what he is doing. He went around and has told his neighbors and got their opinions and as far as he knows they are all ok with it. The unoccupied house behind him has been vacant for two (2) years and can't get them to mow the grass let alone answer a phone call to say, "Ok".

Mr. Bevington asked Mr. Lee if his street is a through street.

Mr. Lee said it dead ends immediately, in the original planning it was supposed to go all the way through and there are actually two (2) Leonard Avenues in Hanover Township and because he has three (3) pipelines through his back yard they have put an end to the road going through there and there is a very large vacant lot, just over 30 acres, someone had bought and tried to develop that last spring and the day the (inaudible) everything was stopped that evening and I guess he did not bother to check there was a jet fuel line and a couple of gas lines there so nothing will be built there and he has been assured that by Texas Eastern and he had water drainage problems long before this but the Butler County Engineers Office issued him a permit to go through the right-of-way if he needed to do to drain water off of and they gave him the assurance that the road would never go anywhere else and so he does not have a ton of traffic in front of his house and he has a privacy fence in the backyard.

Ms. Steenken asked Mr. Lee to identify where this property is located on the map.

Mr. Lee identified the location of his property on the map and showed where his neighbors live and said the garage is built eight inches (8") on the easement of the gas line which was there before he bought it.

Mr. Salmon asked Mr. Lee if he will have a gun safe or a place to store the guns.

Mr. Lee said he currently has a safe in the house and plans on buying a bigger one to actually mount and bolt in the garage. He said he does not currently have an alarm on the garage but does have a motion sensor light that he can see from his bedroom if it goes on.

Mr. Salmon asked Mr. Lee if this is approved will he keep ammunition or anything.

Mr. Lee replied he has his own personal stuff and only reloads two (2) calibers in very small amounts and is time consuming and has only made about 35 rounds and has less than two (2) pounds of gun powder so he does not plan on doing any large amounts.

Mr. Daniel asked Mr. Lee if he intends to sell ammunition.

Mr. Lee said at this time no. He said his plan is to be able to receive the guns and use his FFL to do that but down the road he would like to be able to buy guns directly from the manufacturer and sell them as an already customized package to someone and that way they don't have to go through somebody else – and it will be basically an online type of thing because the people that tend to want custom stuff tend to know exactly what they want from the start and not searching for one (1) specific gun. Each gun can take anywhere from 3 - 4 days to a month and he is very meticulous with the process.

Mr. Fox asked Mr. Lee what type of noise is involved in the type of activity.

Mr. Lee said the loudest noise he has is a shop vacuum.

Mr. Fox asked about sandblasting.

Mr. Lee said sand blasting is contained so it isn't that much noise except air pressure and he has that set up outside but that would be moved inside and he has not had a complaint from anybody about it.

Mr. Fox asked Mr. Lee if he has to test the guns somewhere and assumes he would not do it there.

Mr. Lee replied no, he does not shoot anything around his house and usually you can tell if something is going to work while you are putting it together and he is a member of Butler County Sportsmen's Association which is right up the street.

Mr. Fox said he just wanted to make sure he would not be shooting on his property and he would get arrested if he did.

Mr. Fox asked Mr. Lee if he felt there would be any issues with the smell of paint.

Mr. Lee replied no – it goes away so quickly.

Mr. Salmon asked Mr. Lee how many guns he thinks he might have at one time.

Mr. Lee said without an FFL you can not take in another person's receiver so he has not done anything but his families' guns or just different parts that people would want, so he would not take in a bunch of stuff and have it backlogged and just sitting in piles and predicts maybe five to six (5 to 6) at the most.

Mr. Salmon asked the applicant if the stuff would be shipped to him via UPS and would he would ship it back to them.

Mr. Lee replied yes, however he would not want to turn someone locally away if they wanted to have work done but does not want a store front or big sign "Guns Here" or anything and people driving by would not even know a business would be there.

TESTIMONY IN FAVOR: None

TESTIMONY IN OPPOSITION OF: None

NEUTRAL COMMENTS: None

STAFF COMMENTS:

Mr. Fox said Case BZA11-14V, Mr. Matt Lee, 1097 Leonard Avenue, Hamilton, Ohio, 45013; the request is to operate a small business from a detached garage.

Mr. Fox said Staff Comments are as follows:

1. The property is zoned R-2 Residential.
2. This area is residential in character.
3. The applicant is seeking a variance, said applicant shall be required to establish to the board, proof by a preponderance of the evidence that an unnecessary hardship will prevail unless the variance is granted.
4. The spirit and intent of the zoning resolution is not to allow this type of variance, but since this will not change the character of the area the staff will recommend approval with any conditions or recommendations made by the Zoning Board of Appeals.

Mr. Lee told the Board members that if there is anything that the Board would like to require of him specifically so that he does not go about this wrong he would appreciate it as this is his “making or breaking” point.

Mr. Daniel said to Mr. Lee, based on his experience, you can have fumes or you can have overspray at body shops and they usually have HEPA type filters in the fans which get changed on a periodic basis, and Mr. Lee told him he has double fans and one takes it up into the attic, then it does not even go out of the vent fan.

Mr. Lee said he put in a gabled vent fan with humidity and temperature controls but he has an override switch so that he can turn it on when he is spraying so it will go outside and the paint dries so quickly that it doesn't usually even make it outside.

Mr. Daniel said the difference between Mr. Lee's operation and a body shop is that he is working with things that are smaller.

Mr. Lee said it is an extremely small amount of paint and uses an airbrush.

Mr. Daniel said that would be his only concern.

Mr. Bevington said he was up there this afternoon and saw some of the operation going on and there really isn't any spray – you couldn't even smell anything while standing next to him and the applicant said he is going to paint inside as the weather gets colder and right now he is doing it because he can be in the sun.

Mr. Daniel said that answered his question.

Ms. Steenken asked if the Board feels any need to consider limiting business hours if the applicant is going to have drop-in traffic.

Mr. Lee said it would be by appointment only and there wouldn't be much to look at.

Mr. Daniel asked if the applicant plans on having a store.

Mr. Lee said at some point he would love to have a storefront with a shop and inventory but as of right now that is not feasible.

Mr. Bevington said one of the items in the packet is a letter written by the applicant's neighbor in favor of this request and he would be the only one affected by this.

Mr. Salmon asked Mr. Lee if he would object if the Board were to limit his walk-in business hours to 8:00a.m. to 5:00p.m. Monday through Saturday.

Mr. Lee replied no.

Mr. Fox asked if the applicant would have any objection to a condition for no expansion of the existing building where the work is being done.

Mr. Lee replied that would be no problem at all.

Mr. Fox said how about a condition that the variance is for Mr. Lee only and any transfer of property must come before this Board for approval.

Mr. Fox summarized the additional conditions placed, which are as follows:

- Walk-in business hours will be restricted to 8:00a.m. to 5:00p.m. Monday through Saturday
- Variance is for Mr. Matt Lee only and if he transfers the property, the new owner must come back before this Board for approval
- No expansion of the existing building is permitted

Mr. Fox said he would also like to add a condition that any advertising sign will be limited to twelve square feet and on the garage only.

Mr. Fox asked Mr. Lee if what type of materials, if any, does he store on the outside of the building.

Mr. Lee said he has spare grill parts and has a grill on his back porch – and his tiny sand blaster, a table and some chairs.

Mr. Fox said he wants to know about materials being stored for the business and basically does not want to see a bunch of business materials outside of the garage.

Ms. Steenken asked if they can add that as a condition, no business materials are permitted to be stored outside of the building.

Mr. Bevington said it should be with the exception of the grills.

Mr. Fox said if it becomes a problem he can address it and said no one has come and complained.

Mr. Fox asked Mr. Lee if he has any employees or if he plans to hire any employees in the future.

Mr. Lee replied no to both.

Mr. Fox said he would like to recap the additional conditions:

- Walk-in hours of operation 8:00 a.m. to 5:00 p.m. Monday through Saturday

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- Variance would be for Mr. Matt Lee only and any transfer of the property, the new owner must come before this Board
 - No expansion allowed to this existing building
 - Advertising sign would be allowed on garage only and not to exceed 12 square foot maximum.

Ms. Steenken made a motion to approve case BZA11-14V, Matt Lee, 1097 Leonard Avenue, Hamilton, Ohio, subject to all the aforementioned conditions. Mr. Salmon seconded the motion. Motion approved.

AYES: Steenken, Salmon, Daniel, Bevington

NAYES: None

Case # BZA11-15C

Venice Cemetery Association
3951 Layhigh Road
Hamilton, Ohio 45013

Mr. John Zboril, 2339 Elda Drive, Fairfield, Ohio 45014, said he is here as a Board Member of the Venice Cemetery Association, and is here tonight to request a conditional approval use to operate a cemetery on a ten (10) acre parcel of ground adjacent to the 16 acre cemetery on Layhigh Road in Ross Township.

Mr. Zboril said Venice Cemetery Association (VCA) currently has an accepted offer to purchase the ten (10) acres from the current owners pending this Conditional Use approval here. The VCA was started back in 1875 and some graves were moved from across the street to the Presbyterian Church down to the present cemetery location and there are approximately 2,000 open gravesites available on the existing 16 acres and at the present rate of internments we only have about 20 to 25 years left being able to have gravesites and this is why we are attempting to expand our cemetery so that future generations of locals can have burial access in the cemetery.

Mr. Zboril said depending on the layout of the grounds and roads, etc. statistics show that an acre of ground can hold 800 to 1,200 gravesites and if we use an average of 1,000 gravesites per acre, we would have 10,000 more gravesites to add to the existing cemetery and at the current rate of return this would give us close to 100 years of use.

Mr. Zboril said acquiring this piece of undeveloped farm ground adjacent to the cemetery and being granted a Conditional Use approval to operate the cemetery is our last hope to expand the cemetery at its current location.

Mr. Salmon asked if the back side of the cemetery will eventually be used for gravesites by where the flag pole is.

Mr. Zboril said yes, and that is primarily where the 2,000 gravesites are currently available.

Mr. Fox said on the drawing he received it was 484 by 9 and asked Mr. Zboril if he said his was 899 – so is it 899 or 999.

Mr. Zboril said it is 899.

Mr. Fox said he wanted to make sure he has the proper information when the applicant comes in for the split.

Mr. Bevington asked the applicant if the new parcel will go back and match the property line in the back.

Mr. Zboril replied yes.

Mr. Salmon asked if the sewer still exists.

Mr. Zboril said the sewer easement exists and is a 20 foot easement and goes from Layhigh Road back to the lift station so it is parallel with the road that is adjacent to the cemetery.

Mr. Fox asked what the proposed sewer easement is, are they proposing to give them an easement across from this property for future development.

Mr. Zboril said the sellers have asked us to give them one (1) access across the property, parallel with Layhigh Road, and that hadn't been determined yet.

Mr. Fox said that is irrelevant from the standpoint for this Board, he just wanted to ask.

Mr. Fox showed a copy of the easement that runs down the property line and where the current cemetery is.

Mr. Zboril said if they get the approval then it may be farmed for a few more years before they decide how they will lay it out and so forth and there is no immediate plan to develop it to grave sites.

Mr. Fox asked Mr. Zboril if he could keep the image for the record.

Mr. Zboril replied yes.

TESTIMONY IN FAVOR OF: Tom Willsey, 3421 New London Road, Hamilton, OH

Mr. Willsey said on behalf of the Ross Township Trustees, he is here in support of this expansion and said they do an excellent job down at the cemetery and they are very happy to have this society within the Township and for a natural expansion this is a good time to do it for the land's sake and who knows if it will be available in 5 or 10 years from now and the Board of Trustees unanimously approved this.

TESTIMONY IN OPPOSITION OF: None

NEUTRAL TESTIMONY: None

STAFF COMMENTS:

Mr. Fox said the applicant is requesting Conditional Use to extend the cemetery operations for burial purposes.

Staff Comments are as follows:

1. The property is zoned R-2 Residential & A-1 Agricultural.
2. This area is residential and rural in character.
3. Cemeteries require a Conditional Use from the Butler county Zoning Resolution and since this use will not change the character of the area the staff will recommend approval.

Ms. Steenken made a motion to approve the request as submitted for Case BZA-15C, Venice Cemetery Association, 3951 Layhigh Road, Hamilton, Ohio 45013 request as presented. Mr. Daniel seconded the motion. Motion carried.

AYES: Steeken, Daniel, Salmon, Bevington

NAYES: None

Case # BZA11-16V

Creed Holler
2224 Wade Court
Hamilton, Ohio 45013

Mr. Creed Holler, 2224 Wade Court, Hamilton, Ohio said he is here to request a variance of the zoning code to build a storage structure closer to the property fence line than zoning allows and he would like to build it closer to the property fence line.

Mr. Holler said when he contacted the Health Department they said it would be better in the corner for the septic system and it would not need any repairs or replacement.

Mr. Fox asked Mr. Holler if the Board of Health gave him something.

Mr. Holler replied yes, it is all part of the package. He currently has a wooden structure there now and the roof is kind of falling in and the carpenter bees have gotten to it and it is in bad shape and since he was going to replace it he wants to put a bedroom on it and the existing one was actually three (3) away from the line and he just wants to build a bigger one so he can use his garage as a garage again.

Mr. Salmon asked Mr. Holler if he plans to run a business out of it.

Mr. Holler replied that he does own a business but he will not have an office in it.

Ms. Steenken asked Mr. Holler if he plans to live in this structure.

Mr. Holler replied no, he lives right next to it.

Ms. Steenken asked Mr. Holler if he plans to run utilities out to it.

Mr. Holler replied no, not at this time. It is just for storage of equipment, mowers, decorations and things like that.

Mr. Salmon asked Mr. Holler what type of business is he in.

Mr. Holler replied he has a heating and air conditioning business.

Mr. Holler said he would like to request a 10-day waiver if he could.

Mr. Salmon asked Mr. Holler if he would build this himself.

Mr. Holler said he will have someone else build it.

Ms. Steenken asked Mr. Holler if any of his neighbors have voiced their opinion about this.

Mr. Holler said no, he talked to the guy directly next door to him and the neighbor said it was ok with him and he did not talk with the guy behind him but with the shrubs and bushes he would not see most of it.

Mr. Salmon asked Mr. Holler how many years has he lived there.

Mr. Holler replied four (4) years.

Mr. Fox said some of the senior Zoning Board members may remember that the old code but used to allow three (3) feet and now they no longer allow it, and unfortunately

if the applicant was replacing the building with the exact same size that it was he could do it, but since he wants to increase the size he is required to meet our current zoning requirements of today which are fifteen (15) and ten (10), side and rear.

Testimony In Favor of: None

Testimony In Opposition of: None

Neutral Testimony: None

STAFF COMMENTS:

Mr. Fox said Case BZA11-16V the request is to build an accessory structure closer to the rear and side property lines than zoning allows.

Staff Comments are as follows:

1. The property is zoned A-1 Agricultural.
2. This area is residential in character.
3. The applicant is seeking a variance, said applicant shall be required to establish to the board, proof by a preponderance of the evidence that an unnecessary hardship will prevail unless the variance is granted.
4. The spirit and intent of the zoning resolution is not to allow this type of variance, but since this will not change the character of the area the staff will recommend approval with the following conditions:
 - A. A Building Permit is required.
 - B. No business activity allowed.
 - C. Building cannot be used as a house.
 - D. Ten (10) day waiting period be waived.

Mr. Salmon made a motion to approve the request for a Variance, Case BZA11-16 subject to Staff Conditions. Mr. Daniel seconded the motion. Motion carried.

AYES: Salmon, Daniel, Steenken, Bevington

NAYES: None

Case BZA11-17V

Robert B. Sheely
7119 Hetzler Road
Middletown, Ohio 45045

Mr. Robert Shelly, 1900 First Avenue, Middletown, OH 45044, said he is here tonight to officially ask for a variance to allow him to see patients in his home. He said he has checked with the Health Department and they are fine with it. He has checked with the Ohio State Examining Board (inaudible) License and they are fine with it and the American (inaudible) Associations' Ethics and Practice Committee and found many offices across the country are located in homes.

Mr. Sheely said he has provided a packet of information to the Board which provides sufficient information to make a decision on this matter and said he wants to add the main reason for this request is to ultimately be able to continue his practice and his fixed overhead has not decreased and he has been able to do so by changing the way he runs his practice and it is more efficient.

Mr. Sheely said he has over a dozen large shelves in his existing office that are empty because he has digitized all of his files and purchased office management software that can be handled primarily by himself while taking care of patients and has been able to reduce staff.

Mr. Sheely said in the home office it will be himself, his wife and one (1) other worker that would remotely connect to the computer network and she would work from her home and has been able to do so for the past three (3) years.

Mr. Sheely said he has been in practice for 31 years and the economy really has affected his business. Ten years ago he was collecting 94% of everything that he provided, today he collects between 50% and 60% for the services that he provides and it is not just his situation, it seems to be prevalent in the health care provider offices. He said he needed to do something to stay ahead of this and many practitioners are having difficulty keeping up with the changes in insurance and the potential of healthcare reimbursement, insurance companies continue to cut their own expenses by arbitrarily reducing payments to providers with hopes they don't fight to get paid. Many practices would not have the option to do this, to be able to use an existing section of his home to be able to see patients. He said he is not looking for a place to see dozens and dozens of patients or to produce higher profits, he just wants to continue his practice and possibly slow down a bit and the office will see patients by appointment only and would allow patients to come in early or late for those who work the "9 to 5" jobs and he would be available for them.

Mr. Sheely told the Board they have the power to allow him to practice in a slower pace in a professional way and allow him to continue to see patients.

Mr. Sheely said he sent letters out to all of the neighbors asking if they had any concerns to contact him and they had no problems with it and even allowed them to respond with a self-addressed, self-stamped envelope. Two of them responded and said they did not have any problem with it and feels the order of the day is that there is no problem if they do not respond.

Mr. Sheely said as far as parking, he has a driveway that goes in and another exit out and he does not anticipate having more than a couple of people there at a time so there should not be a lot of traffic.

Mr. Salmon asked Mr. Sheely if there would be any prescription drugs involved.

Mr. Sheely replied no, the practice of Chiropractic is a non-drug related service and there is no medication stored there. Other than potential vitamin supplements there are no drugs.

Mr. Salmon said he wanted to know if there would be anyone that would want to break in for drugs.

Mr. Sheely said no.

Mr. Sheely said he generally sees patients three (3) times a week and occasionally there may be a person that is in a lot of pain and he may see them again the next day, but primarily it is three (3) days a week.

Mr. Fox asked Mr. Sheely if he knows what days he would like to practice out of the house.

Mr. Sheely said it is typically Mondays, Wednesdays and Fridays – but he would also like to be able to see patients on Tuesdays and Thursdays in case he sees a patient that starts on Wednesday who is acute and in a lot of pain, the proper thing to do would be to see them the next day too. Typically this is like you would see a Physical Therapist, you would see them three (3) times a week for a period of time.

Mr. Fox asked Mr. Sheely if he would be doing Saturdays and Sundays.

Mr. Sheely said well, if a person is in an emergency situation he will come in.

Mr. Fox said so the hours of operation being “by appointment only” are not necessarily true.

Mr. Sheely said if a person needs it, and they call me I will make that appointment.

Mr. Fox asked Mr. Sheely if he would have regular business hours at this residence, stating that without an appointment he would have open hours.

Mr. Sheely said he has done that for years, however, every person comes in as a scheduled appointment unless there is an emergency and they call him and he will then set up an appointment.

Mr. Fox asked Mr. Sheely, if the Board decides to approve this request and wants to allow it to only Monday through Friday, is that something he could live with.

Mr. Sheely said he would be satisfied with that only because if a patient needs it, but if a patient needs it, he wouldn't like to limit them in case he needed to see a patient on a Saturday, however, right now he does not see patients regularly on Saturdays.

Mr. Daniel said so it would be in an emergency situation.

Mr. Sheely said he has gotten up in the middle of the night many times because that is what we do.

Mr. Salmon said the way he understands it is Mr. Sheely would like to work Monday through Friday, but for emergencies he would like to be there for them 24 hours a day.

Mr. Sheely replied yes, if you want to be a good doctor.

Mr. Salmon said he understands this.

Mr. Sheely said he likes to get up early and has been known to see patients as early as 7:00a.m. and with changes in the economy sometimes you have to do things a little extra and different and he is willing to do whatever it takes.

Mr. Sheely said this is a very big step for him after practicing for 31 years. This is a great location and building but he is sure he has paid over a half a million dollars for that building's use and it's hard to leave.

Mr. Fox asked the applicant if he thinks people will drive over to Hetzler Road.

Mr. Sheely said it is only about nine (9) minutes away and he does not think it will be a problem and feels his patients of 31 years will follow.

Mr. Daniel asked about the traffic.

Mr. Sheely said it took him five (5) minutes to get out of his office because of the traffic on Route 73, and it won't be like that on Hetzler Road.

Ms. Steenken asked Mr. Sheely if he has any idea of expanding the practice at all beyond what he has described to us at this location.

Mr. Sheely replied at this point he does not see that and the space that he has is fine and is adequate and he does not feel like he has to expand.

Mr. Salmon asked Mr. Sheely if he understands it right, aside from his wife being there, there is a lady that does the book keeping that can do her job off site.

Mr. Sheely said there have been times when she will be working and we will “instant message” each other and we have been doing remote for her for the last three (3) years and she is the type of person that can work like that.

Mr. Salmon said so there won't be another employee then other than the applicant's wife.

Mr. Sheely said there is not going to be a lot of traffic and it will be spaced different.

Mr. Sheely said he is here tonight to request a variance

AYES: Dennis Beatty, 1900 First Avenue, Middletown, OH

Mr. Beatty said he is an architect, lives in Middletown, and Mr. Sheely is my doctor and was in a car wreck this summer and he would hate to see him go out of practice.

Mr. Beatty said he has had back problems all of his life and had never believed in chiropractic until meeting Rob and he is feeling better than he has in 25 years and he knows from being a patient of Mr. Sheely's, the neat thing about it is he can do everything he does with just two (2) different types of tables so the space he has now, and if he reduces his patient load, he could do everything on two (2) different tables – he can do TEMS, muscle stimulations and other procedures all on the same table and the adjustments on the other table. He added he does not see any problem with what Mr. Sheely would like to do at his house.

TESIMONTY IN OPPOSITION: None

NEUTRAL TESTIMONY: None

STAFF COMMENTS:

Mr. Fox said Case No. BZA11-17V, Robert B. Sheely, 7119 Hetzler Road, Middletown, OH 45042, Request is to operate a Chiropractic office from his property, Staff Comments as follows:

1. The property is zoned A-1 Agricultural.
2. This area is rural in character.
3. The applicant is seeking a variance, said applicant shall be required to establish to the board, proof by a preponderance of the evidence that an unnecessary hardship will prevail unless the variance is granted.
4. The spirit and intent of the zoning resolution is not to allow this type of variance, therefore the staff will recommend denial.

Mr. Daniel said he would like to make a comment on behalf of the Township Trustees, and said Mr. Sheely has been on a lot of committee in support of the Township and he has (inaudible) quite readily, sports events and has been a good neighbor to a lot of people and the rural area, be granted, as a Board, the last half mile for variances within a half mile from where he lives, they did not change the character and have not had one complaint to the Township Trustees, and hope this will also be granted because it won't change the character of the neighborhood.

Mr. Fox said Staff has the following conditions:

1. A Commercial Building Permit be required
 2. Must meet all ADA (American with Disabilities Act) Requirements if they apply.
 3. Employees will be limited to one (1) at the home/business only.
 4. The Variance is for Mr. Robert Sheely only; any change in the ownership would require the new owner(s) to come before the Board of Zoning Appeals Board.
 5. Adequate parking shall be provided on the property.
 6. No material or equipment will be stored on the exterior of the home.
 7. No expansion of the building for the use of the business.
- Mr. Sheely asked about the ADA Requirements.
-

Mr. Daniel spoke but it was inaudible.

Mr. Fox replied and said we made Jody Cole do it, a Commercial Permit for her beauty shop, and that is the only Use Variance he can remember for a business being moved into a home and they got a Building Permit and everything was approved by Mark Retherford, our Building Inspector.

Mr. Fox said it all comes down to safety and that is basically what we are looking at for his clientele coming in there and we do it for daycare centers that are run out of a home and that kind of stuff, it's just a little different scenario when you are moving a full-fledge chiropractor practice in to a house.

Mr. Daniel made a motion to approve this application, and knows he is going against the recommendations of the staff, but does not feel it will be detrimental to the neighborhood and it would be a plus factor for Madison Township.

Ms. Steenken asked Mr. Daniel what about the conditions – are they part of his motion.

Mr. Daniel said he will leave that up to the Board's discretion.

Mr. Sheely said it was brought up that someone could get killed, and he has been practicing for 31 years and has never had anyone injured and he carries Liability Insurance in his office and there would not be anything different to cause anyone any risk of injury and said he understands the need for protection.

Mr. Fox said he will put it in as a condition but it is the law - Dennis (no last name mentioned) can explain that when you move a business in to a house it must meet the Commercial Building Code. Dennis can get into that with our Building Administrator, Mr. Bill Balsinger, and it is a condition and even if you do not accept the condition, Mr. Balsinger will require you to bring the building up to the Commercial Building Code Standards and any ADA (American Disabilities Act) will apply and the bill will still require you to do it. He added that this is not a zoning Code Requirement, it is a Building Code Requirement.

Mr. Sheely said he is not doing any building and he is not changing anything.

Mr. Fox said Mr. Sheely is moving his offices to a house –period. We could deny it and just stay in Trenton in a Commercial setting not a Residential setting. It will be a requirement one way or the other, the Board does not have to put them in as a condition but before the applicant can open he will have to do that.

Ms. Steenken seconded the motion.

Mr. Salmon asked if all the conditions, stuff like parking, would be all included. Motion approved 4-0 with no conditions.

AYES: Daniel, Steenken, Salmon, Bevington

NAYES: None

Mr. Sheely asked about the process of plans and permits.

Mr. Fox told the applicant he can not operate until he has the actual building plans approved and all of the inspections that are required.

Mr. Fox told the applicant part of the Building Code includes the ADA Requirements, when you come in for your Building Permit, which will be commercially done by Dennis, he will have to meet ADA Requirements if they apply to this scenario – handicap ramps, handicap bathrooms, handicap hallways, whatever it takes will be a requirement.

Mr. Sheely said he is a little perplexed about that because that is not required at his current Chiropractic office.

Mr. Fox said in talking to his Commercial building inspector and the Plans Examiner, it will be and that is why he talked to Dennis earlier this afternoon and we talked about it. That is what he will have to get through once you apply for your Building Permit, if that is the case he will just have to work it out when you apply.

Mr. Sheely asked why he would have to have a Building Permit when he is not building.

Mr. Fox said because you are moving a business in a house and you will have to have exit signs, exit lighting, and Dennis can go over all of that with you – it is no different than when you build a building out in Trenton for a business, you have to go through and it has to be stamped and sealed by License if you are bringing the public in to this house.

Mr. Sheely asked what the cost for that is.

Mr. Fox replied to Mr. Sheely and said he does not get involved with that part of the process, but once you apply for his Building Permit and you Stamp and Seal all of the drawings and everything, the Commercial Building Code will require, and you can work that out with Karla Chaney in the Building Department.

Mr. Sheely asked about adequate parking.

Mr. Fox said he thinks that when Mr. Sheely applies for his building permit and the site plan indicates where the parking will be and how many parking spaces there will have, it will be fine, and added that he wanted to make sure that it was in there as a condition.

ADJOURNMENT:

A motion was made by Mr. Salmon, seconded by Mr. Daniel to adjourn. All in favor, motion carried.

These minutes represent a summary of the proceedings and do not purport to be the entire record. A complete transcription of these proceedings was taken from an audio tape by James M. Fox under supervision of the Secretary and may be obtained upon written request. Any charges associated with preparing such transcript shall be borne by the person requesting such same and must be prepaid.

Hamilton, Ohio
September 20, 2011

Tom Bevington, Chair

James M. Fox, Secretary

Lee Margraf