

AGENDA  
BUTLER COUNTY BOARD OF ZONING APPEALS  
BUTLER COUNTY ADMINISTRATION CENTER  
130 HIGH STREET  
HAMILTON, OHIO 45011  
November 20, 2012

I. Opening

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

II. Approval of Minutes

- A. September 18, 2012  
B. October 16, 2012

III. Old Business:

- A. BZA12-20V      Robert Myers  
                         2710 S. Main Street  
                         Middletown, Ohio 45044

IV. New Business:

- A. BZA12-21V      Igor Osatuke  
                         3746 Pamajera Drive  
                         Oxford, OH 45056
- B. BZA12-22V      Johanna Johnson  
                         7308 Stillwell Beckett Road  
                         Hamilton, OH 45013
- C. BZA12-23V      Lee McGee  
                         6945 Michael Road  
                         Middletown, OH 45013

IV. Adjournment

**REGULAR MEETING:** Tuesday, November 20, 2012  
Butler County Government Services Building  
Conference Room 1  
315 High Street, 1<sup>st</sup> Floor  
Hamilton, OH 45011

**CALL TO ORDER:** Mr. Bevington called the meeting to order at 7:00P.M.

**ROLL CALL:**

Present: Mr. Thomas Bevington  
Mr. Alan Daniel  
Mr. Henry W. Philpot  
Mr. Gary Salmon

Absent: Ms. Lee Steenken

**STAFF MEMBERS:** James Fox, Zoning & Floodplain Manager

**APPROVAL OF MINUTES:**

Mr. Salmon made a motion to approve the draft Meeting Minutes from the September 18, 2012 meeting as submitted. Mr. Philpot seconded the motion. Motion carried 4-0.

AYES: Salmon, Philpot, Daniel, Bevington

NAYES: None

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Mr. Philpot made a motion to approve the draft Meeting Minutes from the October 16, 2012 meeting with a minor change on page two (2). Mr. Salmon seconded the motion. Motion carried 4-0.

AYES: Philpot, Salmon, Daniel, Bevington

NAYES: None

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Mr. Bevington said because one (1) of the Board Members is not present applicants have the option to table their case until all Board members are present. If any applicants wish

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to table their application, please let the Board know before the hearing starts. In the event there is a tied vote (2 to 2), the case will automatically be denied.

**OLD BUSINESS:**

**BZA12-20V**

**Robert Myers  
2710 S. Main Street  
Middletown, OH 45044**

Mr. Robert Myers, 883 Middletown Eaton Road, Middletown, Ohio, said he is here tonight because he owns a building in Middletown, the address is 2710 South Main Street, and he is here to request a delay in the parking lot pavement at his lot – he does not want it to be waived he would just like to have it delayed to allow him time to get the money to pay for the parking lot. He said he sent a letter to Mr. Fox about a month ago.

Mr. Fox told the Board when he originally discussed this, he was under the impression Mr. Myers was asking to have the hard surface requirement to be waived totally, not necessarily delayed, so, after this Board tabled the meeting last month, he spoke with Mr. Myers and he made it clear that he wishes to delay the hard surface requirement and not waive it entirely, so it does not change the Staff Report, but when you look at the legal advertisement it says the request is to not have the hard surface, which was a clerical error on my part.

Mr. Bevington asked Mr. Myers how long he has owned the property.

Mr. Myers replied 12 years and built the building 12 years ago and opened it up as a driving range and it just didn't take off at the time, Mr. Mark Rutherford was the building inspector and he let us open it up but asked for a paved parking lot and I told Mr. Rutherford we would do it later on and we just never got the money and stuff. Since then we've closed the building down and have tried to open a new business as a an A2, which is a reception type building for meetings and functions in it, and hopefully the money that we generate off that will help us pave later.

Mr. Philpot asked Mr. Myers how much area he has to pave.

Mr. Myers replied 24 parking spots – for \$8,000.00.

Mr. Fox said he did not receive a copy of the chart and asked Mr. Myers to distribute it to the Board members and one for his records.

Mr. Myers distributed the information and said he would like to delay it a while to maybe get this business up and going and just had the usage changed.

Mr. Fox said it isn't actually a zoning change just the usage change. The architect has had the plans to convert it from a driving range to a reception hall and it has been approved.

Mr. Philpot said it's been 12 years, and asked Mr. Myers how much time he thinks he will need to be able to do this if he wants to keep this building as a business.

Mr. Myers said he believes the new venture they are getting into will generate the revenues in a few years.

Mr. Philpot said he understands it is a hardship, but, he can't just stand and wait for the revenues to generate – he's got to get something done and asked Mr. Myers how much of an extension does the applicant need? Mr. Philpot stated the applicant said he would borrow money if he had to in order to do it. Mr. Philpot said he does not want to see anyone under such hardship, but, it can only be limited for so long and it's been twelve years... and so his question is how long Mr. Myers thinks he can go if he doesn't generate the revenues and he needs to give this Board some sort of time frame.

Mr. Myers said with the news business starting up he thinks within a few years he would have the money to do it... two years probably.

Mr. Philpot asked Mr. Myers if the Board were to extend it, would the applicant have it done by the end of two (2) years.

Mr. Myers replied two (2) years or sooner.

Mr. Philpot said two (2) years or sooner if this Board was to extend it.

Mr. Myers replied yes.

Mr. Salmon asked Mr. Myers if he has already remodeled the building.

Mr. Myers said yes the building is in good shape and is 5,660 square foot building and nothing was wrong with the building as far as code.

Mr. Salmon asked Mr. Myers if then he would be ready to open it as is.

Mr. Myers replied yes.

Mr. Fox said if the Board decides to do something like that its fine, but keep in mind, that does not include handicap parking because that is the Building Code. The Building Code is going to require the handicap spaces to be hard surfaced today and just wanted to clarify that and we will not give out a Certificate of Occupancy – it would be denied. The Building code requires that the hard surface parking is in place for the handicap

parking. It is required under the Code and Mr. Myers need to talk to (inaudible) about that because it is part of the code.

Mr. Fox said he just wanted it understood that whatever the Board of Zoning Appeals decides, it does not include the handicap parking, which is required under the Building Code.

Mr. Bevington said to Mr. Myers twelve years ago you promised the inspector that you would do it fairly soon. Now, you are coming in and asking for us to extend it out another twelve years?

Mr. Myers replied no, two (2) years at the most.

Mr. Bevington responded to Mr. Myers, that he did not get it done in twelve years and how can he guarantee on two (2) years.

Mr. Myers said he can't guarantee it but he is hoping to and the timing the way it is...

Mr. Bevington said if you have groups of people coming in and you want them to walk in a dusty parking lot.

Mr. Myers replied it is graveled and he has had no complaints.

Mr. Bevington asked if he has been using it and has he had cars driving in and out.

Mr. Myers replied yes.

Mr. Bevington said you have, and asked for what purpose.

Mr. Myers said they have had a few groups there already.

Mr. Fox said they've rented the place out, yes.

Mr. Fox said if you get three (3) approvals to extend it two (2) years, he would rather extend it not to put it in at all because there is a good chance that it may not happen and leaves it for him to remember in two years.

Mr. Daniels said if he got two (2) years to put it in and he does not put it in, hypothetically, then he would get shut down or puts the black top in; and asked is that a viable statement to make as a Board member, if a person were to make a motion to give two (2) years and if you do not get it done in two (2) years you will be shut down or black topped.

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Mr. Fox said he understands the question and knew it was coming. Mr. Fox said he would do everything in his power that it would get hard surfaced and if he had to take him to court and take this tape to do so he would.

Mr. Daniels said well if he agrees to it and he is a business man, whom Mr. Daniels has known for a few years.

Mr. Fox said ultimately, it is the Board's call to decide. Mr. Fox said if the Board were to approve it he would prefer to say eighteen months and not two (2) years.

Mr. Philpot said the question is does the building having a different usage now, right. If he were to sell the building it would revert back.

Mr. Fox replied it all depends on who is using it. If Mr. Philpot were to buy it to run a church in there, then you would be looking at similar to what Mr. Myers is doing – a change of use, and you would have to get an architect and they would have to look at the code to see what is required by Code for use as a church. It was approved as a driving range, approved for a driving range and now he wants to use it as a reception hall/meeting facility.

Mr. Philpot asked if Mr. Myers sold it to someone else, they would have to comply and they would have to get it black topped or be gone or whatever we will give him.

Mr. Fox said the variance is run with the property, so whoever he sells it to would be responsible but if you are going to do something like that, he would suggest that again, you get into spending money on attorney fees and sells it to Joe Schmo, how do they know they would be required to have it hard surfaced – he would like to see that in the Deed when they sell the property.

Mr. Philpot said he agrees, but we don't cover that.

Mr. Fox agreed. And added if Mr. Myers sold the property he would have to go after the new owner to get it hard surfaced.

Mr. Philpot said yes, he agrees but we don't cover that.

Mr. Fox agreed and said yeah, so if Mr. Myers sells the property, then he goes after the new property owner to get it hard surfaced.

Mr. Philpot said yes, that is what he was saying.

TESTIMONY IN FAVOR OF: None

TESIMONY IN OPPOSITION OF: None

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NEUTRAL TESTIMONY: None

STAFF COMMENTS:

Mr. Fox said Case No. BZA12-20V, Mr. Robert Myers, 2710 South Main Street, Middletown, Ohio 45044, is requesting to delay the hard surface parking requirements.

Staff Comments are as follows:

1. The property is zoned B-3 General Business District.
2. This area is business and 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 and with no proof that an unnecessary hardship will prevail staff will recommend denial.

Mr. Philpot asked Mr. Fox if he is not pleased with having to monitor this situation.

Mr. Fox replied that is correct – but if the Board recommends approval with whatever years for delay, we will follow through with whatever this Board decides but that is why we provide staff recommendations.

Mr. Bevington said some of the cases we do have a yearly check on.

Mr. Daniel said we have done that quite a few times.

Mr. Daniel made a motion to allow this request to delay for eighteen months and would like for it to be written however Mr. Fox feels is proper, and feels there is a hardship here. The handicap parking will be paved as per the Building Code regulations and anyone else who wants to add to this he is willing to listen it.

Mr. Philpot asked Mr. Daniel if he is saying that it should be brought back in eighteen months if it is not done.

Mr. Daniel said yes, he has to reappear before this Board within eighteen months.

Mr. Philpot said with the help of computers we can put it in as pop-up, right? He added he understands some of this stuff is hard to keep up with.

Mr. Fox said that is no problem.

Mr. Daniel asked if it would be out of line to approve this motion with the condition that at the end of eighteen months if the applicant does not put in hard surface the business is

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to be shut down or until he paves it - is that possible? It will get paved one way or the other in eighteen months.

Mr. Fox said so within eighteen months it has to be paved as a condition and if it is not, the business is to be shut down – mandatory.

Mr. Daniel agreed with Mr. Fox.

Mr. Salmon seconded the motion.

Mr. Fox said he wishes to write up the new comments prior to roll call. Mr. Fox said he will write it up so that it is professionally polished, but basically Mr. Daniel wishes to include an eighteen month review where the applicant must come back in before this Board if it is not hard surfaced to explain, when he sat here and promised to get it done, why he didn't do it; handicap parking will be paved now per Building Code; eighteen month delay for hard surface parking is approved; at the end of eighteen months, parking will be hard surfaced per submitted plan, and applicant must come back to the Board of Zoning Appeals if the parking lot has not been paved. Mr. Fox asked Mr. Daniel if that sounded correct. Mr. Daniel replied yes sir.

Mr. Fox said we have a motion and a second, and then proceeded with roll call.

AYES: Daniel, Philpot

NAYES: Salmon, Bevington

Mr. Fox said that is a 2-2 tied vote so it is an automatic denial of this case, and so the hard surface parking must be done now.

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**NEW BUSINESS:**

**BZA12-21V**

Igor Osatuke  
3746 S. Main Street  
Oxford, OH 45044

Mr. Igor Osatuke, 3746 Pamajera Drive, Oxford Ohio, 45056, said he is here because he would like to build an addition to his house, another garage, and this idea has been developing over several years and he ended up with a foundation that is too close to the property line. I was ignorant at the time of the rules and thought it was ten feet (10') to the property line and it turns out ten feet (10') is only good for the back yard and this is in the front yard. The contractor didn't tell me that. But the foundation is good though and it passed inspection with flying colors.



Mr. Osatuke said they need the storage area because they have so much stuff: a utility trailer, three (3) cars; construction materials, swimming pool maintenance tools and lots of stuff that is ugly and he attached a map to his drawings and he does not see another good place to build a storage because to the south of the house is a septic tank, and the Health Department objects to driving over the leaching field. In the back yard there isn't enough room because of the swimming pool so another building in the back yard would not look good and there would be no access to it back there. According to the Health Department, the front yard is reserved for a replacement leaching field. That leaves this area, which is marked for proposed structure to the north of the house and this area was used for storage by the previous owners and by us, so a natural and logical step would be to build a roof over it and put up a door to cover the junk and enjoy the view so, since the foundation is there he is asking this Board to allow this variance to build storage and this structure will look exactly like the house – the same style and same materials and the front will be a garage door so aesthetically it will look exactly like the existing structure. Use wise, it will increase the value because of the way the house is arranged.

Mr. Osatuke said the only problem is the foundation is too close to the property and that is why he is asking for the variance. He added that he even asked his neighbor to sell him some land but he likes his land.

Mr. Fox asked Mr. Osatuke if he's talked to his neighbor whom this mostly affects.

Mr. Osatuke replied yes, he asked the neighbor last summer and he said he did not object to the building but he wanted me to move quickly on it. But he is not doing it himself he is hiring people and he has a company on hold for a couple of months now.

Mr. Fox asked if the neighbor is here tonight.

Mr. Osatuke replied he did not see the neighbor present.

Mr. Fox said the Building Permit is in and it has been approved, the foundation has been approved and has been there a while.

Mr. Philpot asked how long has the foundation been there.

Mr. Osatuke said about five (5) years maybe.

Mr. Fox said you could never tell the foundation is there unless went up there.

Mr. Salmon asked Mr. Osatuke if he will be able to fit all of his "stuff" inside and that would likely alleviate the need for any more outside storage there.

Mr. Osatuke replied yes that is the plan and the way things are right now he does not see why he would need extra storage.

Mr. Salmon asked Mr. Osatuke if he plans on running a business from this.

Mr. Osatuke replied no.

Mr. Salmon asked Mr. Osatuke if he will run electric to this building.

Mr. Osatuke replied yes – for a light and garage door.

Mr. Bevington asked about water service.

Mr. Osatuke replied no water or heat – it is not a dwelling.

Mr. Fox said staff received just one (1) call and he believes it was from the neighbor across the street and she somewhat objected to it – she wanted to know what they were doing and was more worried about in the past he has had zoning violations on a property once and he's cleaned it up and she wasn't happy with the overall picture the way the property is and Mr. Fox said he explained to her we do not do property maintenance type stuff and told her he was adding on to the house and it was a setback variance and he explained to her what he was doing and she said "ok" and that was the end of the conversation and he is not sure if she is here tonight or not – and he did not get her name for which he apologized. Mr. Fox added she never really said she objected to what he was doing, she was more or less complaining about the condition of the property.

Mr. Philpot said Mr. Osatuke is trying to improve that.

TESTIMONY IN FAVOR OF: None

TESTIMONY IN OPPOSITION OF: None

NEUTRAL TESTIMONY: James Kowarsch, 3770 Pamajera Drive, Oxford, Ohio

Mr. Kowarsch wanted to know if there is any timeframe on this project to be completed.

Mr. Fox said the Building Code gives them one (1) year from the time the applicant takes out the Building Permit, which can be renewed for a certain price, but in theory it is a year.

Mr. Kowarsch said some construction was done, and it was well over five (5) years to get the pavers put in his driveway and there are still piles and that is my question.

Mr. Philpot commented to Mr. Kowarsch that he just wants to see it get done quickly.

Mr. Kowarsch replied yeah, and said he has photographs if the Board wants to see the property and shared the photos with the Board.

Mr. Philpot asked Mr. Kowarsch if then his main motive is to see it get done quickly.

Mr. Kowarsch said yes and if the Board could put a time frame on it he would be satisfied.

Mr. Salmon asked Mr. Kowarsch if he is the closest neighbor to the applicant.

Mr. Kowarsch replied yes.

Mr. Kowarsch asked if there would be any utilities on the property line.

Mr. Fox replied he does not believe there are any utility easements down that property line, now there may be some down in the back but it is not going to be affected by this specific construction project.

No further questions or testimony.

**STAFF COMMENTS:**

Mr. Fox said Case No. BZA12-21V, Igor Osatuke, 3746 Pamajera Drive, Oxford, Ohio 45056, is requesting to build an addition closer to the side property line 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 condition:
  - A. A Building Permit is required.

Mr. Salmon made a motion to approve Case No. BZA12-21V, Igor Osatuke, 3746 Pamajera Drive, Oxford, Ohio 45056, with the following conditions: A Building Permit is required; no business is to be run from the building; the building is not to be used as a residence. Mr. Philpot seconded the motion. Motion carried.

AYES: Salmon, Philpot, Daniel, Bevington

NAYES: None

**Case No. BZA12-22V**

Johanna Johnson

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7308 Stillwell Beckett Road  
Hamilton, Ohio 45013

Ms. Johanna Johnson said she is here to ask for permission on three (3) variances: first is to be allowed to have farm animals without proper road frontage; they own one (1) horse now and want to purchase a second one; the second variance is to have a pole building too close to the property line than what zoning allows; and last, to have a third accessory building.

Ms. Johnson said they have applied for Building Permits and applied for this for hardship because we are carrying two (2) house payments and board for the horse at the moment and the plan was to move to the country and (inaudible) so we are kind of stuck between a hot rock and a hard space the past few months waiting to get this building built and get the horse out from where they board it.

Mr. Daniel asked Ms. Johnson how many acres she has.

Ms. Johnson replied 3.6 acres, and we have plenty long way just not enough in front of the road.

Mr. Salmon asked how much of the 3.6 acres will be used for the horses.

Ms. Johnson said at least three (3) of it, we've only got half from the existing shed forward to the house.

Mr. Salmon asked if they would need to put up a fence.

Ms. Johnson said they have partial fencing up and said some will have to be put up and repaired. She added there will be no water or plumbing or electricity – just a barn and eventually two (2) stalls.

Mr. Fox asked Mr. Johnson if she would have just two (2) farm animals.

Ms. Johnson replied yes, but she can only afford one (1) right now because they are boarding it and they would like to purchase another one (1) but paying to board two (2) right now just is not feasible and her daughter is in 4H and shows throughout the year.

Ms. Johnson said when they bought the property they specifically asked about having horses and they watched it for a while to move to the country and do 4H and we dropped permits and Mr. Fox called and said we aren't allowed.

Mr. Fox said he explained the whole thing and said Ms. Johnson did the right thing by applying for the variance.

Ms. Johnson said originally they started with one (1) variance and it just kept growing.

Mr. Fox said as he was explaining what the code allows her to have, the variances just started growing.

Mr. Salmon asked if the applicant could possibly move the new building to the east so that she could get farther than 18 feet.

Ms. Johnson replied they could and that is one of the variances they are asking for because the building itself would only be eight feet (8') wide.

Mr. Fox said he thinks what Mr. Salmon is asking is she has 117 feet and is there any way you could scoot the building over a little farther.

Ms. Johnson said she understands, and that is the most level ground area and yes, we most certainly can move the building.

Mr. Philpot asked how far.

Ms. Johnson replied as far as the board tells her to.

Mr. Fox said the reason why they picked that spot is because it is the flattest.

Ms. Johnson said they could move it further back but didn't like the idea of trudging through snow up there and carrying water.

Mr. Salmon asked the applicant if they would build it themselves.

Ms. Johnson replied they will build it themselves – family and friends and it may not happen until spring with the ground freezing and all.

Mr. Salmon said so we are talking about one (1) horse we are dealing with and possibly two (2) and the second one may never show up.

Ms. Johnson replied yes, exactly.

Mr. Salmon asked the applicant if she bought this from a realtor.

Ms. Johnson replied yes we did.

Mr. Philpot said so the realtor assured you that you could do that.

Ms. Johnson replied yes, we said we were buying this property to put a horse on it, and he said, "oh, that would be a good idea with a horse out here." And nobody ever said anything about road frontage or fence – we're coming from Lindenwald where my yard is like 12' wide and I'm not too keen on zoning regulations which is our mistake and we

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should have checked it before we bought it, but we were just so excited to afford the property with acreage.

Mr. Salmon asked what the road frontage is on that.

(Inaudible - multiple Board members speaking at same time).

TESTIMONY IN FAVOR OF: None

TESTIMONY IN OPPOSITION OF: None

NEUTRAL TESTIMONY: None

STAFF COMMENTS:

Mr. Fox said Case #BZA12-22V, Ms. Johanna Johnson, 7308 Stillwell Beckett Road, Hamilton, Ohio, the request is to build a third accessory building on property, build accessory building closer to the west side property line than zoning allows and the keeping of farm animals on property without proper frontage.

Staff Comments are as follows:

1. The property is zoned A-1 Agricultural.
2. This area is residential and 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 there was a hardship shown with the realtor telling them wrong information, staff will recommend approval with the following conditions
  - A. Two (2) horses only allowed on the property, no other farm animals (no chickens, goats, pigs, etc.)
  - B. Building Permit is required
  - C. Waive the ten (10) day waiting period for the Building Permit.

Mr. Salmon made a motion to approve the variances requested for Case #BZA12-22V, Ms. Johanna Johnson, 7308 Stillwell Beckett Road, Hamilton, Ohio, subject to staff conditions as presented by Mr. Fox. Mr. Daniel seconded the motion. Motion carried.

AYES: Salmon, Daniel, Philpot, Bevington

NAYES: None

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BZA12-23V

Lee McGee  
6945 Michael Road  
Middletown, Ohio 45042

Mr. McGee, 6945 Michael Road, Madison Township, Ohio said he is here with the purpose of possibly developing a new lot off of his existing lot that he lives on which consists of 6.7 acres of land and would like to take 2 ½ acres of land from that and develop a new lot.

Mr. McGee said the reason why he is asking for a variance is because he has 200 feet of road frontage at this time on Michael Road, and if he develops two (2) lots he still only has 200 feet of frontage on Michael Road and he would like to develop it if I can get the variance to have 150 feet on the (inaudible) and 50 foot on the existing lot the reason why he is wanting to split it 150/50 is because there is a 25- or 30-foot barn on the existing land that would go with the new lot. That is not a lot of road frontage on Michael Road but he has used that land for 52 years for access to his property and the big enticement for this lot is Middletown's Sportsmens Club Lane – it's a private driveway and it is for the use of Middletown's Sportsmens Club and the general public to go back and forth to the gun club now the land is an easement that was taken off of the original property owners', which he owns part of it now, so part of the road you might say belongs to him and it's being used by the Middletown's Sportsmens Club through an easement.

Mr. McGee said he has used that land for 52 years for his access to his property. He said he has never entered that property on Michael Road with an automobile because there is no enticement to go that route. The best part of the land is on Sportsmens Club Lane and that is where we put our driveway – there are three (3) families that use that road currently as their access to their property and he is one (1) of them (he made reference to #25, 24 and 31 use that as their principal access to their property). This new lot, if he can develop that, would also come off of the Middletown Sportsmens Club Lane and he presently owns 614 feet of frontage on Daisy Lane and this (inaudible) get 170 frontage on Daisy Lane, so he is asking for a variance so he can develop this property with the smaller amount of Road frontage on Michael Road.

Mr. McGee said there are two (2) reasons why he would like to develop it is in 1960 when he bought the property he was only 26 years old and he could work and do anything he wanted to do and never slowed down, but that was 52 years ago, so he is looking for someone else to do a part of that work so if he could develop it into another lot and he could let someone else maintain that property. He said he has a financial reason for doing this as well, he has had some rough times in the past five (5) years, he had a business that he retired from and turned it over to his children. Mr. McGee said after running it for 52 years, and they ran it for 18 months, I made money, and they left me with a three (3) million dollar bill so he is in the process of paying off the debt so anything he gets today will help pay off the debt.

Mr. Fox asked Mr. McGee if he had anyone in mind to purchase it.

Mr. McGee replied no, the only thing he can say is his daughter owns a home on (inaudible) Lane, which is another private road, it's a big 2-story home, and what they want to do is sell their home and move into a small home because their children are gone and they are at the age they where they want to consolidate it, so the possibility exists that they might build a small home on that, but that I can't say, because we really haven't talked about it – and that would be a place where they could build it and be close to mom and dad and take care of us.

Mr. Fox said he wanted to make something clear in his mind, the easement that the Sportsmens Club have to get from Michael Road back to their property, who owns that easement?

Mr. McGee said they own the easement but we own the property that the easement is on.

Mr. Fox asked “who” owns the property that the easement is on.

Mr. McGee replied the adjoining property owners on the lane, in other words, I own 614 feet of it; and (name in audible) owns part of it back here; Jean Adams owns this part right here, and the girl by the name of (inaudible) owns this over here.

Mr. Fox said he wants to make sure that if the Board decides to approve this, the Sportsmens Club owns the easement, but do they give the right to a new property owner to come in and out of their property.

Mr. McGee said yes they do.

Mr. Fox asked Mr. McGee if on his whole 6 acres, is there an ingress and egress easement described in the deed or was it just a hand shake thing.

Mr. McGee said it was just a deal that we owned the property and there was no gate to keep anybody out.

Mr. Fox, said to Mr. McGee, here is my concern, if you sell it to somebody, and for some reason they do something against the Sportmens Club and the Club says they are not allowed to use their easement and have no right to use it - you don't think that will happen.

Mr. McGee replied no, he has a letter from Barry Levy when he bought the property, stating that.

Mr. Fox said ultimately he can get access. If the Board decides to approve it, he can get access to Michael Road. He may have to tear down a bunch of trees and it may not be the best of things, but he wants to make sure that the new buyer has legal rights to, and



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wasn't sure if the applicant would have attorney's put an easement on this like it did on your original one, down here on the original deed it says, "Subject to the legal right-of-way of Michael Road and an easement for roadway purposes granted to the Middletown Sportsmens Club, Inc." and said he is okay with it, but just wanted to make the Board aware of all of the facts.

Mr. Philpot asked he is correct in thinking even though the easement is owned by the Sportsmens Club, the property still goes along with the sold property.

Mr. Fox said the easement does not run though that property, it runs adjacent to it. In theory, and his opinion, unless it is written in the deed that the new owner has access to this Daisy Lane, the property line is here, the easement is here, the Sportsmens Club could put up a chain link and say they aren't allowed to use the land. He added he would like to have some verbiage put included to say it has legal road frontage on Michael Road and it has access by the Sportsmens Club.

Mr. McGee said he has a letter from (name inaudible) from when we bought the property.

Mr. Fox said he just wants to make sure that whoever owns the land does not come back to this Board saying you gave them approval to use this but I can't. So if you have it all worked out that is fine.

Mr. Salmon asked the applicant if it is a possibility that he would build the new house and sell the existing one.

Mr. McGee replied no, he would not be downsizing himself so he will stay there. He added that he owns the property behind this also and the only thing that separates him from the farm is (name inaudible) has a 50-foot easement up through here to his property and that is between him and Mr. McGee.

Mr. Salmon asked if that is the one that is abandoned.

Mr. McGee replied yeah, right.

Mr. Daniels said for the record, the Township Trustees are not against this.

TESTIMONY IN FAVOR OF: None

TESTIMONY IN OPPOSITION OF: None

NEUTRAL TESTIMONY: None

STAFF COMMENTS:

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Mr. Fox said the request, Case #BZA12-23V, Lee McGee, 6945 Michael Road, Middletown, Ohio, is to split property without proper road frontage.

Staff Comments are 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 and with no proof that unnecessary hardship will prevail staff will recommend denial.

Mr. Salmon asked Mr. Fox if the Board were to decide to approve this, is there any language that he would want to adjust regarding the easement.

Mr. Fox said Mr. McGee is confident that when he subdivides that property, his letter from his attorney or from whoever that gentleman was, is sufficient enough to have the new property owner have legal rights to the property by that lane, then that is fine and even if they do, they still have 150 feet of road frontage on Michael Road where they could create a new driveway if they chose, and they would not be land locked because they would have access to Michael Road somehow. If there was no road frontage on Michael Road whatsoever, then yes, he would want something in deed stating they have legal rights to use that easement.

Mr. Philpot said that adding the verbiage to the deed would be to Mr. McGee's advantage for selling it too.

Mr. McGee replied ok.

Mr. Fox said even Mr. McGee's property, even if something happens where whatever he has in writing is not binding in some sort of court or law in twenty years, he still has that 50 feet to get a driveway back to his house, so we are covered both ways.

Mr. Fox also said he read the easement really quickly and he has legal rights from his existing acreage now.

Mr. Philpot made a motion to approve BZA12-23V, Lee McGee, 6945 Michael Road, Middletown, Ohio, 45042. Mr. Daniel seconded the motion. Motion carried.

AYES: Philpot, Daniel, Salmon, Bevington

NAYES: none

**ADJOURNMENT:**

Mr. Salmon made a motion to adjourn, which was seconded by Mr. Daniel. 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  
November 20, 2012

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Tom Bevington, Chair

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James M. Fox, Secretary

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Lee Margraf