

**MINUTES OF THE
CITY OF PATASKALA BOARD OF ZONING APPEALS**

Tuesday, December 8, 2020

The City of Pataskala Board of Zoning Appeals convened in Council Chambers, Pataskala City Hall, 621 West Broad Street, Pataskala, Ohio, on Tuesday, December 8, 2020.

Present were:

Alan Howe, Chairman

William Cook

Christine Lawyer

TJ Rhodeback

City of Pataskala Planning and Zoning Department Staff:

Scott Fulton, Planning and Zoning Director

Jack Kuntzman, City Planner

Lisa Paxton, Zoning Clerk

Mr. Howe opened the hearing at 6:30 p.m., followed by the Pledge of Allegiance.

Present were: Alan Howe, William Cook, Christine Lawyer and TJ Rhodeback.

First on the Agenda, Conditional Use CU-20-010, 50 Vine Street, Request to Table.

Mr. Cook made a motion to table Conditional Use CU-20-010. Seconded by Ms. Rhodeback. Ms. Rhodeback, Mr. Howe, Mr. Cook and Ms. Lawyer voted yes. The motion was approved.

Next on the Agenda, Variance Application VA-20-018, Request to Table.

Mr. Howe made a motion to table Variance Application VA-20-018. Seconded by Mr. Cook. Ms. Lawyer, Mr. Cook, Mr. Howe and Ms. Rhodeback voted yes. The motion was approved.

Next on the Agenda, Conditional Use CU-20-011, 50 Vine Street, Request to Table.

Mr. Cook made a motion to table Conditional Use CU-20-011. Seconded by Ms. Lawyer. Mr. Cook, Ms. Rhodeback, Mr. Howe and Ms. Lawyer voted yes. The motion was approved.

Next on the Agenda, Variance Application VA-20-019, 50 Vine Street, Request to Table.

Ms. Rhodeback made a motion to table Variance Application VA-20-019. Seconded by Mr. Cook. Mr. Howe, Ms. Rhodeback, Mr. Cook and Ms. Lawyer voted yes. The motion was approved.

Next on the Agenda, Variance Application VA-20-020, 218 Vine Street, Request to Table.

Mr. Howe made a motion to table Variance Application VA-20-020. Seconded by Ms. Lawyer. Mr. Cook, Mr. Howe, Ms. Lawyer and Ms. Rhodeback voted yes. The motion was approved.

Next on the Agenda, Variance Application VA-20-021, 100 Amber Road SW.

Mr. Kuntzman gave an overview of the Staff Report, noting the Applicant is requesting to split the 12.48-acre parcel into two, creating one trapezoidal lot that will be 0.022-acres in size and approximately 20-feet in width. The Applicant's Narrative Statement notes the lot split would allow any future owners of 94 Amber Road to access the rear yard. Currently, the existing structure at 94 Amber Road is located in such a way that there is only a few feet on either side of the structure to the property lines with no access to the backyard. The concrete patio of 94 Amber Road encroaches onto 100 Amber Road. Area map was reviewed. Departmental and Agency comments were noted.

David Collins, 100 Amber Road SW, was placed under oath.

Mr. Collins stated the variance would allow access to the backyard of 94 Amber Road. It was also noted Mr. Collins purchased both properties prior to Pataskala and Lima Township merging.

Findings of Facts were reviewed.

Ms. Lawyer made a motion to approve Variance Application VA-20-021 with the following conditions:

1. The Applicant shall obtain all necessary permits from the City of Pataskala and the Licking County Building Department within one (1) year of the date of approval.
2. Applicant will address all comments from the Licking County Health Department.

Seconded by Ms. Rhodeback. Mr. Howe, Mr. Cook, Ms. Rhodeback and Ms. Lawyer voted yes. The motion was approved.

Next on the Agenda, Appeal Application AP-20-002, 0 Mink Street, Parcel No. 063-141666-00.000.

Mr. Fulton gave an overview of the Staff Report, noting the Applicant is appealing the Director of Planning's decision that pick-up volleyball games on the Intra-National Home Care, LLC, property, a vacant parcel, located on Mink Street, Parcel No. 063-141666-00.000, does not constitute a "use" under the Zoning Code. It was noted the Planning and Zoning Department received complaints in the Summer of 2020 regarding noise from the property owned by Intra-National Home Care, LLC. The Zoning Inspector investigated and stated the noise was not a Zoning matter, and to contact the police. The Planning and Zoning Director received a letter from the Applicant's attorney requesting the Zoning Inspector to investigate and take appropriate action. The Director of Planning responded with a letter stating a pick-up game of volleyball on an unimproved property is not a "use" under the Zoning Code and until a "use" under the Zoning Code is established the zoning code does not apply.

A discussion was had regarding pick-up volleyball and "use" as defined by the Zoning Code.

Mr. Howe inquired as to zoning codes for undeveloped properties.

Mr. Fulton noted there are codes, to some degree, but there are too many variables to say yes or no.

Ms. Rhodeback noted her concern regarding liability, and authorization of people being on the property.

Mr. Fulton stated that would be a police matter.

Wes Fortune, Esq., 1010 Jackson Hole, Suite 200, Blacklick, was placed under oath.

Mr. Fortune read from Section 1203.03 regarding structure and use definitions. Attorney Perko's letter was noted. Pictures of the parcel were reviewed. Concerns regarding trash, noise and parking were noted.

Ms. Rhodeback inquired as to how frequently the volleyball games occur.

Mr. Fortune stated five to six times a week, 3:00 to 5:00 o'clock until as late as 8:00, 9:00 p.m.

Leatrice Guttentag, 280 Charles Road, Pataskala, was placed under oath.

Ms. Guttentag stated she contact the police approximately May and began keeping a log in June. It was also noted two of her neighbors also started logs. The property is being used five to six days a week, after work until dark. It was stated the noise starts off quiet and gets louder as it progresses. Trash, beer and liquor bottles are being discarded onto her property. There was one volleyball net at the beginning and by the end of summer there were two nets. Noise from the property can be heard from inside the houses with the windows shut. Ms. Guttentag noted the Zoning Code regarding noise. Concerns regarding motorcycles revving, loud music and whistles were noted. Police reports note the property owner was notified, but stated the property is commercial and noise is not an issue. Attorney Perko provided a compromise regarding the parking and the volleyball nets, but it was not accepted. Ms. Guttentag read from a neighbor's statement noting their concerns.

Mark Pheister, 201 Daley Drive, Pataskala, was placed under oath.

Mr. Pheister also noted his concerns with the loud noise from the subject property and being able to hear it from his property.

Mr. Howe made an assumption that the people using the property are employees or related to the owners of the property. Mr. Howe also noted the definition of a structure, in his opinion, has to do with buildings.

Mr. Cook noted a fence post would then be considered a structure; however, he stated he doesn't see it that way.

Mr. Howe agreed with Mr. Cook's statement.

Ms. Rhodeback noted her concern that this is a business and the Board holds other businesses to certain standards, including parking, lighting, times they can do business, being good neighbors.

Ms. Lawyer noted "structure" definition from Merriam Webster.

Mr. Howe stated the first issue is "Use". if he were a neighbor, he would not like it, however, he believes it's an enforcement situation and not a zoning issue.

Ms. Rhodeback indicated zoning is about safety.

Mr. Howe stated safety isn't what is being discussed; it's noise and parking.

Ms. Rhodeback noted parking is a safety issue and the business would be liable.

Mr. Howe stated that it is the business that is allowing it.

Ms. Rhodeback further noted her concerns regarding safety issues.

Mr. Howe stated he is not suggesting ignoring safety but questioning if it's the Board's responsibility or more of an enforcement situation.

Ms. Rhodeback noted needing to do more research and tabling the Application.

Mr. Howe inquired as to requirements for undeveloped land.

Mr. Fulton noted trash can be enforced by the Zoning Inspector.

Ms. Rhodeback inquired as to the need for parking and lighting regarding a business.

Mr. Fulton stated that it comes down to the "use" and there is nothing in the Code that defines volleyball as a "use" of a property.

A further discussion was had regarding use of the subject property.

Mr. Howe stated understanding the issues, but the Board must act within what their scope is from a zoning perspective.

Mr. Fortune noted case law.

Ms. Rhodeback made a motion to table Appeal Application AP-20-002 to the January 12, 2021 meeting.

A discussion was had regarding the January 12, 2021 hearing. It was also requested to contact the owner of the subject property.

Ms. Lawyer, Ms. Rhodeback, Mr. Howe and Mr. Cook voted yes. The motion was approved.

Next on the Agenda, Findings of Fact.

Variance Application VA-20-021:

- | <u>Yes</u> | <u>No</u> | |
|------------|-----------|--|
| ✓ | | a) <i>Whether the property in question will yield a reasonable return or if there can be a beneficial use of the property;</i> |
| ✓ | | b) <i>Whether there are unique physical circumstances or conditions that prohibit the property being developed in strict conformity with the zoning regulation such that a variance is necessary to enable the reasonable use of the property;</i> |
| ✓ | | c) <i>Whether the variance requested is substantial;</i> |
| ✓ | | d) <i>Whether the essential character of the neighborhood would be substantially altered or the adjoining properties would suffer a substantial detriment as a result of the variance;</i> |
| ✓ | | e) <i>Whether the variance, if granted, will substantially or permanently impair the</i> |

- appropriate use or development of adjacent property;*
- ✓ f) *Whether the variance, if granted, will be detrimental to the public welfare;*
- ✓ g) *Whether the variance, if granted, would adversely affect the delivery of government services;*
- ✓ h) *Whether the property owner purchased the subject property with knowledge of the zoning restriction;*
- ✓ i) *Whether the property owner's predicament can be obviated through some other method than variance;*
- ✓ j) *Whether the variance, if granted, will represent the minimum variance that will afford relief and represent the least modification possible of the requirement at issue; and,*
- ✓ k) *Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.*

Mr. Howe made a motion to approve Findings of Fact for Variance Application VA-20-021. Seconded by Mr. Cook. Ms. Rhodeback, Mr. Cook, Ms. Lawyer and Ms. Howe voted yes. The motion was approved.

Next on the Agenda, Approval of TS Tech Decision.

The decision letter from the November 10, 2020 BZA hearing was submitted by the City Attorney.

Ms. Lawyer made a motion to accept the decision letter. Seconded Mr. Cook. Ms. Lawyer, Ms. Rhodeback, Mr. Howe and Mr. Cook voted yes. The motion was approved.

Next on the Agenda, Other Business.

Mr. Howe introduced Jenna Kennedy, the new Board of Zoning Appeals member.

Mr. Howe made a motion to adjourn the meeting. Seconded by Ms. Rhodeback. Mr. Cook, Ms. Lawyer, Mr. Howe and Ms. Rhodeback voted yes. The meeting was adjourned at 7:42 p.m.

Minutes of the December 8, 2020 regular meeting were approved on

_____, 2021.
