

**Brunswick Hills Township
Board of Zoning Appeals
Public Hearing Meeting Minutes – January 8, 2020**

Open Public Hearing Meeting

Chair Kersten called the Brunswick Hills Township Board of Zoning Appeals Public Hearing meeting to order at 7:15 p.m. A roll call of the board was executed.

- **Board Members in Attendance:** Cliff Kersten, Chris Schigel
- **Alternate Board Members in Attendance:** Daryl Lucien, Robert Murphy
- **Board Members not in Attendance:** Kimberley Hall, Jesse Murphy
- **Others in Attendance:** Evelyn Czyz, Zoning Inspector, Trustee Christina Kusnerak, Zoning Liaison

Chair Kersten said a quorum is present with a board of four members. Chair Kersten noted that with a board of four members, the board has to give the applicant the opportunity to be heard tonight or continue to the next month with a full board of five members. Secretary Milanko stated if there is a vote of 2 yes and 2 no votes, the motion does not pass. Chair Kersten stated the Brunswick Hills Township acts within the regulations of Section 519 of the Ohio Revised Code.

APPROVE MINUTES - Approval of the December 4, 2019 Meeting Minutes

Motion: Mr. Schigel made a motion to accept the minutes as written. Mr. Murphy seconds the motion. **Roll Call:** Mr. Lucien-yes; Mr. Kersten-yes; Mr. Murphy-yes; Mr. Schigel-yes.

NEW BUSINESS: Public Hearing for a Variance Request at 3132 McCracken Trail.

1. **Area Variance request by Jim Buzinski, 3132 McCracken Trail, Brunswick Hills, OH** for construction of a third car garage for a five (5) foot setback from common ground as opposed to 10 feet per Sec. 403-4 (C) Yard Requirements of the Brunswick Hills Township Zoning Resolution. PP#001-02D-13-059; Zoning District: R-1 Residential.

Chair Kersten called the applicant forward to ask how they wished to proceed. Mr. and Mrs. Buzinski stated they will have the case heard tonight. Mr. Kersten asked them to present their case.

Jim and Karen Buzinski, 3132 McCracken Trail, Brunswick Hills were sworn in. Mr. Buzinski stated I would like to put in a third car garage and 10 feet is the requirement for the garage and I am asking for 5 feet from the common ground instead of 10 feet. He said I got approval from our Homeowner's Association, but I have to get approval from the township so that is why I am here.

Questions by the Board

Mr. Lucien asked if the HOA gave him approval in writing. The Buzinski's said they got approval in an email but wanted to get approval from the township first, but we heard from them first. Mr. Kersten said technically by law, we do not recognize Homeowner's Associations. He said that is a private matter between you and your association.

Mr. Murphy asked what they want to do there because he said the reason they want 10 feet there is to get fire safety back there. Mr. Buzinski said the builders could put in a fire wall in but there is plenty of room back there. He said from my common ground you are looking at maybe 50 feet from the house.

Mrs. Buzinski said there is a lot of common area between from where their house ends and the property line. He said its common ground so there is a lot of space between there. Mr. Buzinski said the house that is next to me on the left side would be triple from what is already there so there is a lot of space. He said if necessary, my builder said they could put in a fire wall. Mr. Murphy asked for the garage? They said yes. Mr. Murphy said he wasn't talking about that, he was talking about getting equipment in between the properties if there was a fire. Mrs. Buzinski said there is probably more room on the side where we want to add the garage than on the other house that is already physically there. Mr. Buzinski confirmed there is room there.

Mr. Schigel said you already have that side driveway leaning to where it would be. Mr. Buzinski said yes, exactly where that is at is the garage and I can't go any further so normally a third car garage is 14 or 15 feet. He said I have to make it smaller so that is why I am going behind the house to go to the morning room so I can have some space for storage and pool equipment. Mr. Buzinski said we have a pool in the back yard and it looks sloppy because we ran out of room with two cars in the garage. He said we have a daughter who will be driving so we want to make sure she will be safe and have the third car garage.

Mr. Schigel said I noticed your property sort of slants off so did you look into how far you would have to set it back to be within the guidelines? Mr. Buzinski said if I didn't get approved, I would have to go all the way behind the garage and that would be my next thing, but either way I would have to put something up to bust out the back. He said I could put a car in it and storage, but then it defeats one, two and three. He said I really don't want to sell the house.

Mr. Murphy said so you could sit that third car back there without doing what you wanted to do, right? Mr. Buzinski said no, it won't fit back there and I have to go behind the garage. Mr. Murphy said right, but you could put it back there. Mr. Buzinski said right, but it really wouldn't be a third car garage it would be a storage room. He said I would have to make a decision on selling the house or putting that back there. Mrs. Buzinski said we were offered the third car option when we built the house but it was 20 years ago and we didn't have the financial means to do it at the time so that is why we didn't do it. Mr. Buzinski said I looked into my notes and they had a variance. He said they took the house and they made it 10 feet further to the street, which I didn't realize that at the time. He said my yard is 10 feet bigger, and now I realize that is how they would have gotten the third car garage on if I could have afforded it when I was younger. Mr. Schigel looked at the map and said it looks like the building is L-shaped and it would curl around behind the garage. Mr. Buzinski said yes and it will match the house completely. Mrs. Buzinski said they are Amish builders and very reputable. Mr. Schigel said so you are not extending the back side of your garage, that is just going to be a separate room back there, correct? Mr. Buzinski said yes because there is a garage (utility) door there, so it would be separate so we can get out to the back.

Mr. Lucien said so they were going to set your house 10 feet further from the right-of-way to the back of the property? Mr. Buzinski said yes when we built it, I remember them taking the house and they moved it forward 10 feet. He said I don't know the reason why. Mr. Lucien said you used the word variance when you said they were going to do that. Mr. Buzinski said I used the word because I had to sign something back 20 years ago when we built the house from Ryan Homes. He said when I looked back over my paperwork I wondered if they hadn't done that it would have changed the game now. Mrs. Buzinski said we wouldn't have to get the variance because the house would be 10 feet further back. Mr. Lucien said the reason I am asking this is mathematically this 13 feet right here (on map) tells me that if you had your entrance back 13 feet - if there was no variance when they were going to move your house, you're aware they were going to put that door there anyway. Mrs. Buzinski said what we are trying to say is everything was moved back 10 feet and with that slant on the side of the property we probably wouldn't

have had to come to you. Mr. Lucien said when they were moving your house, is this east? Mrs. Buzinski said no; it was definitely back because if you look at our street, we are very close towards the front and probably have one of the smallest front yards.

Discussion by Board and Zoning Inspector

Mr. Schigel said he had a question for the Zoning Inspector. Chair Kersten swore in Evelyn Czyz, Zoning Inspector under oath. Mrs. Czyz said the variance is for a 5-foot side lot variance; it has nothing to do with the open space. She said we cannot say just because you have open space next to you that you can encroach on that open space. She said you have to be 10 feet from the structure to the side property line. She said so what they are asking for is a 5-foot variance. She said I do agree with the comments about what if something happens there and our safety forces need to get back there. She said it will be really hard to get a piece of apparatus there. Mrs. Czyz said we can not as a township say what you can do or what apparatus can go on there and if there is not a tanker truck and there is not water accessible that tanker truck will have to go back that and it will damage the open space. She said but what they are asking for is not to the common ground, it is to their side lot line and that is 5 feet. Mrs. Czyz stated she just wanted to make sure that is noted it is to their side lot line requirement. Mr. Schigel asked if there were any previous variance records for this property? Mrs. Czyz said I do not have a prior variance record for this property. Mrs. Czyz noted to the board that when this property was built, it was built before I was the Zoning Inspector so the previous Zoning Inspector would have been the one who approved this home. She said if it didn't meet the 50-foot setback, and allowed the 40-foot, it was done by the previous Zoning Inspector and I do not have any record of that other than it was 50-feet.

PUBLIC COMMENT:

1. **Tina and Tim Pereces, 2069 Longmeadow, Brunswick Hills were sworn in.** Mrs. Pereces said we received a letter from the board. She said our only concern with the variance is how the structure will hinder the swale in between the houses. She said we purchased our home in 2016 and the previous owner did not disclose that there was a draining issue and after moving in, we found that our back yard is virtually unusable. Mrs. Pereces said in researching the issue, we submitted a stormwater and drainage complaint to the Medina County Engineer's Office and they came out and looked at it to access the situation. She said the issues are due to when the original development was set up and now people have put pools in so the grading has changed. She said we are one of the last three houses in the development so it all goes down towards us. She said because of all the changes, the original swales that were put in place to control the flow and prevent flooding is now not happening. Mrs. Pereces said at our own expense we had to hire to install a drainage plan. She said my concern is that their property sits uphill to the left of us and with the new structure that is going to be put in place, I am concerned on the impact that it will have on the water drainage after just putting in \$20,000 into this situation.

Mr. Lucien asked what the distance is between the houses and asked if they are on different street? Mrs. Pereces said here is their house and they have their pool, there is a common space and then our house is here. Mr. Pereces said there is a house in between us so everything is going to roll from their back place down in into the common area which then comes into our yard. Mr. Murphy said so you live on the side where they want to do this work at. Mr. Pereces said no, we are just concerned about a variance on the property and if you are going to build up any kind of structure, you're going to change the way the water is going to flow. He said any change in that water, even in the back of the common area, will come and affect our property because all of their water flows through our property. Mr. Pereces said I don't want to make changes in a \$20,000 drainage that I currently have that is keeping up with the water now, but I don't want any more water into my back yard. Mr. Pereces said that is our main concern. We have no

issue over the structure, our biggest thing is the drainage. Mr. Pereces said it was a bad design by the developer at the time and we are still dealing with it now.

Mr. Murphy stated I am just trying to get an idea of where your place is compared to their place. Secretary Milanko pulled out the tax map address map and identified the properties for the board to review. Mr. Lucien said right now there is nothing in this location that they've designed out, so whatever rain comes from the sky does what it does. He said so if they put a building there with gutters and downspouts and it goes into the drainage system, and it goes out underneath the road, how does that damage your property? Mrs. Pereces said I don't know; I just want to make sure it doesn't. She said so if the swale is there and he puts in a structure that is going to impede that, where is that going to go? Mr. Pereces said I understand what you are saying when you say it might go more into the sewer part of it, but we are more worried about changing the grades of the land. He said if you build something up, there obviously has to be a down pitch and if it doesn't go down the sewer it's going to go in the open area which will flow onto our property. Mr. Lucien said you are leading me to believe where this building is going is low and they need to build it up higher to put the building there? Mr. Pereces said there are natural swales that go between all of the houses. Mr. Lucien said I understand, but their variance is for a building in a certain location. Mr. and Mrs. Pereces said we just want to make sure our concerns are heard because we are pursuing the previous owners in regard to the non-disclosure issue per the ORC. Mr. Pereces said we've spent a lot of money into this.

Mrs. Czyz said one of the things I had concerns with is since there is only going to be 5 feet, where is that water going to run off? She said even if it runs off into open space, it cannot run off onto someone else's property. She said the open space is not their property, it is everyone's property collectively, it is not the single property of one person. She said so we have to concern ourselves with that. She said if this is approved, permits will have to be pulled from the Medina County Building Department and hopefully the Storm Water Management and Sanitary Engineer's will also look topography and the layout of the land and how the building is going to sit because it will probably sit higher than the land is now. Mr. Lucien said the county storm water runoff, those folks are the final say so. Mrs. Czyz said correct. Mr. Schigel said so whether we approve or don't approve, the water, if they don't feel is right, the county is going to say no anyway. Mrs. Czyz said correct. Mrs. Czyz said they would make that property owner make the right corrections. Mrs. Pereces said that helps ease my mind.

Mr. Buzinski returned to the podium and asked if the map showed where their house is (Pereces) and where our house is on the next street over? The board confirmed they saw the location. Mr. Buzinski approached the board to look at the map. Mr. Buzinski said I have an in-ground pool and if I drain the whole pool next to that the way they graded everything it wouldn't even make it that far because that ground is higher than the neighbor's house. He said it would actually go to the neighbor that is right behind me. He said I'm trying to keep everything professional. I had our HOA board approve it and sometimes there are other agendas. If you came to the house you would see where the water would go and understand. He said if I don't put this there that means I have to go behind my garage even further and I'm allowed to do that but it would actually be worse for everybody. Mrs. Czyz said when you say you build it anyway would it be behind the pool? Mr. Buzinski said it would be behind the garage. Mrs. Czyz said you still have to be 15 feet either way from the pool.

REVIEW OF THE DUNCAN FACTORS FOR AN AREA VARIANCE

Sec. 1005-1 Area Variances

1. **Whether the property in question will yield a reasonable return and whether there can be any beneficial use of the property without the variance.** All board members said yes.
2. **Whether the variance is substantial.** All board members said yes.
3. **Whether the essential character of the neighborhood will be substantially altered and whether adjoining properties will suffer interference with their proper future development and rights as a result of the variance.** Mr. Lucien-no; Mr. Schigel-no; Mr. Murphy-yes; Mr. Kersten no.
4. **Whether the variance will adversely affect the delivery of governmental services.** All board members said no.
5. **Whether the property owner purchased the property with knowledge of the zoning restriction.** Mr. Murphy said yes. Mr. Kersten said we did not ask the owner this question. Mr. Murphy said he said he knew about the possible third car garage when he got up and spoke. Mr. Kersten asked the applicants if they knew of the zoning laws when they purchased the property. Mrs. Buzinski said no. Mr. Kersten said we didn't ask them prior so this is blank. Mr. Murphy said then maybe we should take this one off the list. Secretary Milanko said we can't. We are not allowed to change the Duncan Factors. Mr. Kersten said we will have to start asking the question. Mrs. Czyz asked what is the answer on this one? Mr. Kersten said it's no; we didn't ask them.
6. **Whether the property owner's predicament can be obviated through some method other than a variance.** All board members said yes.
7. **Whether the spirit and intent of this Zoning Resolution will be observed and substantial justice done by granting the variance.** Mr. Murphy-no; Mr. Schigel-yes; Mr. Lucien-yes; Mr. Kersten-yes.
8. **Whether the property in question has unique or exceptional circumstances or conditions that do not generally apply to other properties in the vicinity and within the same district.** Mr. Lucien-no; Mr. Schigel-no; Mr. Murphy-no; Mr. Kersten-no.

Chair Kersten stated any person who is adversely affected by a decision of the Board of Zoning Appeals of Brunswick Hills Township may appeal to the Court of Common Pleas Court of Medina on the grounds that such decision was unreasonable or unlawful within 30 days the date the decision letter is signed.

Motion to Approve Area Variance for Jim Buzinski at 3132 McCracken Trail, Brunswick Hills Ohio

Motion: Mr. Schigel made a motion to approve an area variance request for Jim Buzinski at 3132 McCracken Trail for a 5-foot side yard setback to the property line. Mr. Lucien seconds the motion. **Roll Call:** Mr. Lucien-approve; Mr. Murphy-no; Mr. Schigel-yes; Mr. Kersten-yes. Secretary Milanko said we have 3 yes votes to 1 no vote; majority rules.

Discussion on the Motion

Mrs. Czyz, Zoning Inspector requested the applicant send her a copy of the approval from the Homeowner's Association. Mr. Buzinski agreed. Secretary Milanko also requested a copy.

Chair Kersten asked the Secretary to explain the procedure following the meeting to the applicants. Secretary Milanko stated the board will meet on Wednesday, February 5, 2020 to approve the minutes and sign the decision letter. The letter along with a copy of the minutes will be sent to you by Certified

Mail. Chair Kersten said if there is someone who objects to our decision tonight they can still appeal to the court in Medina. Mr. Lucien said correct so you shouldn't do anything for 30 days. Mr. Schigel said it says 30 days from the date the decision letter is signed and the decision letter will not be signed for another 30 days so technically you are almost waiting 60 days. Mr. Buzinski said so if someone wanted to come in about this decision, they would have to have a reasonable reason, right? They can't just come in and say they don't like it. Mr. Kersten said if they go to court, they have to prove it. Mr. Buzinski said so it has to go to court it won't come back here. The board said no.

ADDITIONAL BUSINESS:

1. Mr. Kersten asked if any applications came in for next month. Mrs. Czyz said no.
2. Trustee Christina Kusnerak stated I am your Zoning Liaison for this year so please think about what kind of training you would like to have and let me know next month so I can try to put something together for you and maybe jointly with the Zoning Commission. Mr. Schigel said the training he went to for the Mock BZA Trial was really good so if there is another one like that this year, he found it very informative.

ANNOUNCEMENT OF NEXT MEETING DATE: Wednesday, February 5, 2020 at 7:00 p.m.

MOTION TO ADJOURN

Mr. Lucien made a motion to adjourn. Mr. Murphy seconds. **Roll Call:** All in favor. Meeting officially adjourned at 7:58 p.m.

Respectfully Submitted,
Mary Jean Milanko, Zoning Secretary

Cliff Kersten, Chair

Date