

**PAINESVILLE TOWNSHIP  
BOARD OF ZONING APPEALS  
MEETING MINUTES**

**Tuesday, December 8, 2020**

**Painesville Township Office 55 Nye Rd. Painesville Twp., OH, 44077**

**Present:** DaveENZerra, Ken Sullivan, Randy VanBuren, Dave Lindrose  
**Absent:** Tom Hill  
**Zoning Inspector:** Rich Constantine, Harley DeLeon  
**Legal Counsel:** Jason Hartzell

Vice-Chairman, DaveENZerra called the meeting to order at 6:33 P.M. The Pledge of Allegiance was not recited due to the virtual hearing. The public hearing was held by video conference due to respectful response to the coronavirus mandates in the State of Ohio. A roll call revealed that a quorum was present. Legal Advisor Jason Hartzell swore in the persons who were present to speak, and intended to testify during the public hearing.

Attorney Diane Citrino, representing Dan Rich LLC; did not need to be sworn in as she was speaking in a Representative capacity.

Scott Fernald, Renter; spoke for the request.

Kristen Wojtila, Property Manager, spoke for the request.

Zoning Inspector Harley DeLeon asked Legal Advisor Jason Hartzell if Township Staff needed to be sworn in. Jason Hartzell replied that only witnesses needed to be sworn in.

**Public Hearing:**

• **Case 20-BZA-29:**

Applicant Dan Rich LLC filed a Variance Application for property located at 206 Hawthorne Dr. (PPN 11-A-009-B-00-004-0). The request is to allow 5 persons unrelated by blood or marriage to reside on the property until termination of the rental lease in the summer of 2021 in violation of Section 14.01 and 5.65 which requires that a single family home may not be occupied by a group of more than 4 persons unrelated by blood or marriage living as a single housekeeping unit.

Vice-Chairman saw no error in the Zoning Inspector requiring a Use Variance. The Vice-Chairman asked if anyone would like to speak in favor of the request.

Attorney Diane Citrino, representing Dan Rich LLC, stated that the Property Owner was asking for the five (5) individuals, college age students, to remain living at the property until May when college would end for the session. Diane Citrino continued that the possible denial of the variance request would create a hardship for the individuals to find alternative housing during the current Covid Pandemic. Any parking issue has been taken care of for the time being, and will be fully resolved come May when the lease ends, and only four (4) individuals remain living on the property.

Vice-Chairman asked if there was anyone else to speak in favor of the request.

Attorney Diane Citrino let the Board know that individual statements from the five (5) tenants currently renting the property had been submitted with the request.

Vice-Chairman asked if there was anyone to speak against the request.

At this time, Laureen Diponto, contiguous property owner to the proposed request, joined the Public Hearing via phone call. Legal Advisor Jason Hartzell swore Laureen Diponto in. Laureen Diponto spoke against the request.

Laureen Diponto stated that parties have been held, they are late into the morning, and loud. No one was wearing a mask at the parties with the current Pandemic happening. Laureen Diponto continued that cars have been parked on her property, and the police have had to be called to remove the cars. Laureen Diponto let the Board know that she had sent a statement speaking against the request, to Zoning Inspector Rich Constantine.

Vice-Chairman asked if anyone else was present to speak against the request. Hearing none, Vice-Chairman reminded the Board to take in consideration of the Duncan Factors when making a decision for a Use Variance. Vice-Chairman stated the seven (7) Duncan Factors.

1. The variance request stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;
2. The hardship condition is not created by the actions of the applicant;
3. The granting of the variance will not adversely affect the rights of the adjacent owners;
4. The granting of the variance will not adversely affect the public health, safety or general welfare;
5. The variance will be consistent with the general spirit and intent of the zoning code;
6. The variance sought is the minimum which will afford relief to the applicant; and
7. There is no other economically viable use which is permitted in the zoning district.

Vice-Chairman asked if any of the Board members had any questions.

Randy VanBuren referencing the Duncan Factors, asked if the hardship for the five (5) individuals was not the Pandemic as stated by the representative for the applicant; but that the applicant created the hardship of permitting five (5) individuals not related by blood or marriage, to live at the property.

Vice-Chairman asked for Zoning Inspector Rich Constantine to share his thoughts on the hardship presented.

Rich Constantine replied that he had the same concern as Mr. VanBuren. Mr. Constantine continued that the Rental Agent was responsible for renting to five (5) tenants who were unrelated by blood or marriage.

Diane Citrino, representative for the applicant, stated that the applicant is a new owner to the community. Diane Citrino continued that with the property being a large home with five (5) bedrooms and two (2) bathrooms, the applicant did not know of the living restrictions of by blood or marriage. The applicant will comply with that. The hardship that is focused on is the tenants who are not at fault that the housing provider made the error. Diane Citrino was not made aware prior to the application that there were any disturbances from the tenants. Diane Citrino continued that these issues were separate from the living restrictions, and should not affect the approval of the variance request. Diane Citrino continued this request was to only go until May, and that if the Board would like to put restrictions on the tenants, the Board was welcome to.

Vice-Chairman asked if any other Board members had any questions.

Randy VanBuren stated that to his understanding there is a challenge with parking, and that the property owner stated that he would expand parking by 10%. Mr. VanBuren continued that his only concern was that that did not look like enough room for a fifth vehicle. Mr. VanBuren asked if anyone speaking for, could elaborate.

Diane Citrino, representing the applicant, replied that there was more room to park in the back of the property. Diane Citrino continued that the five (5) tenants would reconfigure their parking to fit five (5) vehicles appropriately.

Kristen Wojtila, Property Manager for Dan Rich LLC; replied parking will be fixed. Kristen Wojtila continued that the tenants were not currently living at the property, and would not return until mid January. Kristen Wojtila continued that the variance request would only be needed for four (4) months, or until May to allow the five (5) individuals to live at the property. Kristen Wojtila stated that any disturbances were separate from the request, and can be handled separately.

Vice-Chairman read a letter from the Painesville Township Trustees sent to the Board addressing the variance request. The letter stated that the Trustees object to the Board approving the variance. As the possible approval of the variance would not be in Township's best interest.

Vice-Chairman asked Diane Citrino what the ending date would be for the variance request. It was mentioned the request was until May prior in the Public Hearing.

Diane Citrino, representing the applicant Dan Rich LLC, replied it was believed to be May 31, 2021. Diane asked Scott Fernald if that was correct. Scott Fernald is one of the five (5) tenants renting the property.

Scott Fernald replied that was correct.

Vice-Chairman asked Legal Advisor Jason Hartzell or Zoning Inspector Rich Constantine what would happen if the Board were to not grant the variance request.

Zoning Inspector Rich Constantine replied that it would call for an Enforcement Action. The Zoning Office would issue a "Cease and Desist" from violating the Zoning Resolution. Rich Constantine continued that if this was not followed in a timely manner, the Zoning Office would pursue the matter in local court as a zoning violation.

Legal Advisor Jason Hartzell replied that standard procedure was sending a letter to the property owner making aware of the zoning violation. To give the property owner a deadline to address the violation. If the violation is not resolved, it will end up as a complaint in Painesville Municipal Court.

Diane Citrino, representative for the applicant, replied that the concerns brought forward before the Board from contiguous neighbors are being taken into consideration. They were a separate matter from the violation. If the tenants were related by blood or marriage, there would not be a violation.

Vice-Chairman let the Board and witnesses know that there was also another emailed statement to the Zoning Office, expressing concern of the request from another contiguous neighbor. This statement was from Vonnie Hayden.

Vice-Chairman asked if there were any other comments or questions. Vice-Chairman asked if Zoning Inspector Rich Constantine had anything more to add.

Zoning Inspector Rich Constantine asked Diane Citrino and Kristen Wojtila if they knew when Dan Rich LLC had taken ownership of the subject property.

Kristen Wojtila, Property Manager for Dan Rich LLC, replied that she did not have the exact date. That it had possibly been before the current tenants had moved in.

Zoning Inspector Rich Constantine gave a brief history of the subject property to give the Board some background of the applicant. Zoning Inspector Harley DeLeon added more information to the history of the subject property.

Vice-Chairman asked if the Board had any other questions or comments.

Randy VanBuren asked for Legal Advisor Jason Hartzell and Zoning Inspector Rich Constantine to answer his next question. Mr. VanBuren asked that since this request is brought before the Board, and in violation; if the Board was able to put conditions on the approval like they would for regular businesses. Conditions that pertain to noise ordinance and times and what not.

Legal Advisor Jason Hartzell replied that in his opinion, the Board would not have the authority to attach conditions for a variance request. Mr. Hartzell continued that if the request was a conditional use permit, then the Board could add conditions. Mr. Hartzell continued that this was a request to the variance of the Zoning Resolution.

Zoning Inspector Rich Constantine replied that from his understanding, the Board of Zoning Appeals could attach conditions on a variance. Zoning Inspector Harley DeLeon agreed with Rich Constantine.

Randy VanBuren addressed the Board that the complaints from neighbors were of time and volume. Mr. VanBuren continued that restrictions could be placed that supported the enjoyment of the neighbor's property. If the restrictions were violated, then the Zoning Office could send a "Cease and Desist".

Diane Citrino, representing the applicant, agreed that conditions would be good.

Kristen Wojtila, Property Manager added that it was a lease violation to disturb neighbors. Kristen Wojtila continued that the applicant would aid in enforcing the conditions on the variance.

Vice-Chairman asked either Zoning Inspector Rich Constantine or Legal Advisor Jason Hartzell, if the variance was approved with conditions and those conditions were violated; what actions by the Township can be taken?

Rich Constantine replied that as information or evidence was taken of the violations, the Zoning Office would report the violations to the Board. It would be the Board's decision on what course of action to take. Mr. Constantine continued it would lean towards voiding the variance.

Legal Advisor Jason Hartzell replied that by statute, the Board could hold a hearing to rescind the variance.

Vice-Chairman asked for clarification, if the Board chose to rescind the variance, if it could be at a regularly scheduled meeting, or would a special meeting need to be held.

Legal Advisor Jason Hartzell replied that the Board would need to issue a notice to the variance holder, and the holder would have the right to a hearing before the Board within thirty (30) days

of the mailing of the notice. Mr. Hartzell continued that the Board sets a time and place for the Hearing along as it is within the thirty (30) days of the mailed notice.

Vice-Chairman summarized the request. The summary is as follows, the Board is allowed to set conditions on the variance if they so choose. It is within the Board's authority to rescind the variance if it is determined that the conditions are not being followed. The applicant is asking for the variance through the end of May 2021, when it would no longer be valid. Vice-Chairman asked Zoning Inspector Rich Constantine if that was a correct summary.

Rich Constantine replied that was correct, though there was no end date for the variance in writing, on the application. Mr. Constantine continued that the council for the applicant did refer to the end of May, which could be assumed May 31, 2021.

Vice-Chairman wanted clarification from the Legal Advisor, that since it was not in writing of the official end date for the variance on the application, would the Board need to continue **Case 20-BZA-29** at another meeting until an amended application with the end date was filed.

Legal Advisor Jason Hartzell replied that it was within the Board's right to add an end date. That an amended application would not need to be filed.

Vice-Chairman asked if the Board had any other questions or comments

Ken Sullivan made the comment that the Board should keep in mind the Duncan Factors when making their decision.

Vice-Chairman made an observation that there were three (3) possible options for this variance.

1. Approve the variance request with conditions.
2. Deny the variance request with an option to give a date when the denial takes effect. So that a tenant has time to find alternative housing. Example: Have the variance go until the end of January, which would give a tenant forty-five (45) days.
3. Deny the request completely.

Vice-Chairman asked if anyone had any other questions or comments.

Laureen Diponto, neighbor to the subject property, asked the Vice-Chairman that if conditions were placed on the variance, could she get a copy of the conditions. Laureen Diponto continued to ask who she should call if the conditions are violated.

Vice-Chairman replied that the conditions are public, that she has that availability to receive a copy. The Vice-Chairman continued that Laureen Diponto can call the Sheriff's department and the Zoning Office will have access to the report of the call.

A discussion was held regarding the Board handling the violations to the conditions.

Laureen Diponto needed clarification that if the police were called on the tenants, how would the Board get the report of a violation.

Zoning Inspector Harley DeLeon made a suggestion to Laureen Diponto on reporting violations of the variance, so that the Board can act accordingly.

Zoning Inspector Rich Constantine gave his thoughts on the current Covid Pandemic being cited

as a hardship for the variance request and preserving the Zoning Resolution.

Diane Citrino, representing the applicant, asked for Scott Fernald, current tenant, to speak for the request.

Scott Fernald apologized to the contiguous neighbors for any inconvenience that was caused, and him and the other tenants will work together to resolve any issues. Scott Fernald continued that due to the Pandemic, teammates must live together under restrictions to play on their sports team. Scott Fernald stated that also due to the Pandemic, the fifth tenant was needed to help pay rent.

Vice-Chairman asked Scott Fernald about the disturbances from the parties.

A discussion was held pertaining to the disturbances contiguous neighbors had brought forward to the Board, and the tenants making sure no more were to happen.

Ken Sullivan asked Scott Fernald how many tenants were currently residing in the home today.

Scott Fernald replied that no one was currently living in the home, as they are all on winter break from College.

Ken Sullivan asked what the time frame was to return to the property from winter break.

Scott Fernald replied that it will be from January 15 to January 19, 2021 as the semester starts January 20, 2021.

Ken Sullivan stated that if the variance was not approved, that would give one of the tenants about five (5) to six (6) weeks to find alternative housing.

Scott Fernald replied that was understood, but because of the Pandemic, the teammates had to live together. That it would be hard to find alternative housing to last six (6) months or less to lease during a Pandemic. Scott Fernald continued that most of the tenants were not from this area.

Ken Sullivan asked if the Coach(s) would or would not assist in finding housing for their players.

Scott Fernald replied the Coach(s) are not involved with housing. Scott Fernald continued housing is not a part of their scholarship or schooling, that it was the student's responsibility.

Zoning Inspector Harley DeLeon let the Vice-Chairman know that she was talking through the Live Stream Chat for the Public Hearing with Vonnie, a contiguous neighbor to the subject property. Vonnie was having issues connecting to the Public Hearing. Harley let Vonnie know comments could be left for Harley to let the Board know of on the Live Stream Chat, or emailed to Harley.

A discussion was held between contiguous neighbor Laureen Diponto and Scott Fernald, current tenant; regarding the noise issues, parking issues, and not wearing masks during parties being held on the subject property.

Vice-Chairman reminded the Board to keep the Duncan Factors in mind when making their decision. That these were difficult and challenging times to hopefully make the right decision while protecting the Zoning Resolution.

Dave Lindrose asked current tenant Scott Fernald that come May 31, 2021 for the end date of the variance, would that mean all five (5) of the tenants would be moving out or some tenants staying.

Scott Fernald replied that three (3) of the tenants would be moving out, and two (2) would be staying in the home. Mr. Fernald being one of the two (2) tenants.

Dave Lindrose asked Scott Fernald if just two (2) were living in the home, would two (2) more be moving in to bring the amount of people living in the home back up to the four (4) allowed under the Zoning Resolution.

Scott Fernald replied that was correct, and he would then comply with only four (4) people being allowed to live in the home.

Randy VanBuren made an observation that as long as there are only four (4) people living in the home, they are compliant with the Zoning Resolution.

Vice-Chairman asked Scott Fernald if May 31, 2021 was the earliest to reduce the number of tenants in the home.

Scott Fernald replied there were a few factors that could determine when people moved out, but that May 31, 2021 was the latest date.

Vice-Chairman asked if there were any more comments or questions.

Kristen Wojtila, Property Manager, commented that the lease for the tenants will end on July 31, 2021.

Vice-Chairman replied that regardless of the lease, the Board had the ability to put an end date on the variance.

Vice-Chairman asked the Board to make a motion.

Dave Lindrose made a motion to approve **Case 20-BZA-29** with the conditions as followed:

1. Parking correctly
2. No outside parties held after 10 P.M.

Dave Lindrose asked the Board to help in deciding the conditions to be put with the variance.

Vice-Chairman reminded Dave Lindrose of the excessive noise, and ending date for the variance.

Dave Lindrose stated that the last two (2) conditions were as followed:

3. No excessive noise
4. The Variance would be until May 31, 2021.

Vice-Chairman asked the Board if there were any more conditions to apply to the variance before asking for a second to the motion.

Randy VanBuren added the condition as follows:

5. Any violation of Township Resolution may result in immediate reversal of the approval of the variance.

Vice-Chairman asked the Board if there were any other conditions. Vice-Chairman asked for a second on the motion.

Randy VanBuren seconded.

Vice-Chairman asked Zoning Secretary Rachel Muro to read back the conditions to give clarification.

Vice-Chairman asked David Lindrose to add no parking on the front lawn or right of way.

Zoning Inspector Rich Constantine reminded the Vice-Chairman that parking in the front lawn was included in the zoning violation, and parking in the right of way is a parking resolution violation and is not part of zoning. Rich Constantine continued that it is enforced by the Sheriff's Department.

Vice-Chairman asked if there were any more questions.

Zoning Inspector Harley DeLeon asked if the "No excessive noise" condition could be clarified more for the tenants and neighbors. When reports should be made.

A discussion was held concerning the excessive noise condition and the Zoning Resolution.

Harley DeLeon made the suggestion of combining conditions under the township's noise ordinance, and parking ordinance. That if those are violated, it would be handled by the Zoning Office as a zoning violation.

Vice-Chairman asked if Dave Lindrose was ok with reiterating the conditions he made when making a motion to approve **Case 20-BZA-29**.

A discussion was held of following the conditions being put forward. A reminder to the witnesses speaking for and against on how the decisions are made and voted on for cases.

Vice-Chairman asked Zoning Secretary Rachel Muro to read the conditions again to clarify before a vote was made. There was some confusion on the secretary's part on what the corrected conditions were.

Legal Counsel Jason Hartzell recommended that the conditions would be met if the conditions were as followed:

1. Adherence at all times to the Parking Resolution.
2. Adherence to the Noise Resolution.
3. Adherence to the Zoning Resolution.
4. The variance would end on May 31, 2021.
5. Any violation of these conditions could result in revocation of the variance.

Legal Counsel Jason Hartzell asked that a Board Member renew the motion with the specific conditions just discussed for clarification.

Dave Lindrose made the motion to approve **Case 20-BZA-29** with the conditions as followed:



1. All of the Zoning Regulations that adheres to the parking, to the noise ordinance.
2. End any parties at 10 P.M.
3. Variance will be in effect until May 31, 2021.

Dave Lindrose asked if those conditions were correct.

Zoning Inspector Rich Constantine helped Zoning Secretary Rachel Muro to clarify and list the motion, and the following conditions.

Dave Lindrose moved to approve a temporary use variance as requested with the following conditions:

1. The variance ends on May 31, 2021.
2. There will be strict adherence to the Parking Resolution.
3. There will be strict adherence to the Noise Resolution.
4. There will be strict adherence to the Zoning Resolution.
5. No outside parties or gatherings will be held after 10 P.M.

Randy VanBuren seconded the motion.

**Roll Call:** VanBuren; Aye, Enzerra; Aye, Sullivan; Nay; Lindrose; Aye.

Motion carried.

Randy VanBuren asked that since there were no tenants currently living in the home, if the decision needed to be journalized.

Zoning Inspector Rich Constantine replied that if it was correct that no tenants would return till mid January, the decision did not need to be journalized during this meeting.

Vice-Chairman explained that this variance approval will go into effect at the next meeting pending approval of the Meeting Minutes at the January 12, 2021 meeting.

**Regular Meeting:**

Vice-Chairman asked if the Board reviewed November 10, 2020 meeting minutes. Vice-Chairman asked the Board to make a motion to approve the November 10, 2020 Meeting Minutes.

Ken Sullivan made the motion to accept November 10, 2020 Meeting Minutes as submitted. Dave Lindrose seconded.

**Roll Call:** Sullivan; Aye, Lindrose; Aye, VanBuren; Aye, Enzerra; Aye.

Motion carried.

**Old Business:** None

**New Business:** None

Chairman adjourned the meeting at 8:10 P.M.

**Next meeting date is January 12, 2021.**

Respectfully submitted,

Dave Enzerra 1/19/21  
Dave Enzerra, Vice-Chairman

Rachel Muro 01-12-2021  
Rachel Muro, Secretary