

MONTVILLE TOWNSHIP BOARD OF ZONING APPEALS  
JUNE 6, 2011

**PRESENT**

**CHAIRPERSON, ALLEN BIEHL**  
**BOARD MEMBERS: SALLY ALBRECHT**  
**BILL TUCHEK**  
**RON TANSKI**  
**TERRY HUGHES**

**ALSO PRESENT**

**TY BRETZ**  
**NANCY POLING**  
**SHARON JUST**  
  
**Z.I., JUDITH EMRICK**  
**Z.S., ROBIN HALLEEN**

**AGENDA**

**MINUTES:**

1. MAY 2, 2011

**APPLICATIONS:**

1. **TEMPORARY USE PERMIT: APPLICATION #05-11-024 ~ A REQUEST BY MS. CHERYL KERR, COMMUNITY RELATIONS, BUEHLER'S GOOD MARKETS, INC., 3626 MEDINA ROAD, MEDINA, OHIO 44256 FOR A TEMPORARY USE PERMIT ALLOWING A HOT DOG SALES PROGRAM (SECTION 330.C.3).**
2. **CONDITIONAL COMPLIANCE REVIEW FOR RENEWAL: APPLICATION #01-11-001 ~ CONDITIONAL ZONING CERTIFICATE COMPLIANCE REVIEW FOR RENEWAL #4, WINDSOR PARK SUBDIVISION, MEDINA, OHIO (THIS ITEM WAS TABLED FROM THE MAY 2, 2011 BOARD OF ZONING APPEALS MEETING.)**
3. **VARIANCE: APPLICATION #05-11-023 ~ A REQUEST BY MS. NANCY POLING, 5751 ARLYNE LANE, MEDINA, OHIO 44256 FOR VARIANCE OF SIX (6) FEET TO ALLOW EXISTING PATIO TO ENCROACH INTO THE REQUIRED SIDE YARD SETBACK (SECTION 410.8.C.3)**

**PUBLIC HEARING**

Chairperson, Biehl called the June 6, 2011 Board of Zoning Appeals meeting to order at 7:00 p.m.

**ROLL CALL:**

**Board Member, Albrecht: "Present"**

**Board Member, Tucheck: "Present"**

**Board Member, Tanski: "Present"**

**Board Member, Hughes: "Present"**

**Chairperson, Biehl: "Present"**

Zoning Inspector, Emrick confirmed that all proper notices were sent and all contiguous property owners were notified.

Chairperson, Biehl: "If there is anyone here who wishes to speak on the subject(s) in question tonight, please sign the witness sheet, if you have not already done so. Anyone who wishes to speak will be sworn in before their testimony is heard. The official minutes of the meeting are taped and therefore, it is important that the participating public state their name clearly, prior to testimony. The Board of Zoning

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Appeals is a quasi-judicial body who bases their decisions on facts and not opinion and therefore, we ask that your testimony be based on fact and not personal opinion. The written/typed transcripts (minutes) are the official documentation of the proceedings.”

**MINUTES:**

**1. MAY 2, 2011**

**MOTION: Board Member, Albrecht moved to approve without correction.**

**SECOND: Board Member, Tuchek**

**ROLL CALL:**

**Board Member, Tuchek: “Approve”**

**Board Member, Tanski: “Approve”**

**Board Member, Hughes: “Abstain – Not Present at Meeting”**

**Board Member, Albrecht: “Approve”**

**Chairperson, Biehl: “Approve”**

**Motion to approve May 2, 2011 Minutes was passed by a vote of 4-1**

- 1. TEMPORARY USE PERMIT: APPLICATION #05-11-024 ~ A REQUEST BY MS. CHERYL KERR, COMMUNITY RELATIONS, BUEHLER’S GOOD MARKETS, INC., 3626 MEDINA ROAD, MEDINA, OHIO 44256 FOR A TEMPORARY USE PERMIT ALLOWING A HOT DOG SALES PROGRAM (SECTION 330.C.3).**

Chairperson, Biehl: It is my understanding that this application has been withdrawn. Zoning Inspector, Emrick would you explain?

Zoning Inspector, Emrick was sworn in.

Zoning Inspector, Emrick: Ms. Kerr called this afternoon and asked that this application be withdrawn. They apparently could not find people to work the stand. This year they wanted to do something a little different. They wanted to bring in a concession stand trailer and have it on site on Saturdays and Sundays. They wanted the boy scouts to maintain it one day and then they would be given them proceeds. They tried to get some other local organizations involved. They weren’t able to get enough interested organizations so they are withdrawing their application.

Chairperson, Biehl opened the hearing to the public for comments and/or questions.

No Response.

Chairperson, Biehl closed the meeting to public participation.

Chairperson, Biehl asked for a motion.

**MOTION: Board Member, Albrecht moved to accept the withdrawal of Application #05-11-024.**

**SECOND: Board Member, Tanski**

**ROLL CALL:**

**A collective oral vote was taken. All Board Members stated “Aye”. No “Nay” votes.**

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**Motion to accept withdrawal of Application #05-11-024 was passed by a vote of 5-0**

**2. CONDITIONAL COMPLIANCE REVIEW FOR RENEWAL: APPLICATION #01-11-001 ~ CONDITIONAL ZONING CERTIFICATE COMPLIANCE REVIEW FOR RENEWAL #4, WINDSOR PARK SUBDIVISION, MEDINA, OHIO (THIS ITEM WAS TABLED FROM THE MAY 2, 2011 BOARD OF ZONING APPEALS MEETING.)**

Chairperson, Biehl introduced the second item and explained that it had been tabled several times in order for the Windsor Park HOA to complete the process of taking over green space and to discuss resolving landscaping issues.

Chairperson, Biehl asked if there was anyone in the audience representing the HOA.

Ty Bretz was sworn in.

Mr. Bretz stated he was the treasure of the new HOA for Windsor Park.

Chairperson, Biehl asked Mr. Bretz if he had any additional information to add to the application.

Ty Bretz: All three (3) properties are now in the HOA name. Now we are classified as an official Homeowner's Association. There is only one (1) lot left to be sold in the subdivision. Our work has just started. We are starting the process of invoicing the residents. Our first meeting should take place in the next two (2) to three (3) weeks.

Board Member, Albrecht: It is my understanding that there are 28 trees that need to be planted as required by the Conditional Zoning Certificate. Were you able to discuss this issue and how it could be resolved?

Ty Bretz: We have had some inquiries about that topic. Who is accountable for planting the trees?

Zoning Inspector, Emrick: It was the developer's responsibility. The developer went bankrupt. The bank took over. The bank did not want to spend the money to plant the trees. I suggested that we might be able to work out something with the HOA and they might possibly plant the trees.

Ty Bretz: We started with no money. Our work has just begun to start analyzing our financial situation.

Board Member, Tucheck: Did you have legal counsel?

Ty Bretz: Yes we did.

Board Member, Tucheck: Do you know what your other liabilities will be?

Ty Bretz: Yes

Board Member, Albrecht: What is your HOA maintenance fee?

Ty Bretz: \$250.00.

Board Member, Albrecht: Have you started collecting the fees yet?

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Ty Bretz: We will start collecting the fees at our first meeting.

Board Member, Tuchek: Zoning Inspector, Emrick were there any other requirements that weren't fulfilled by the developer?

Zoning Inspector, Emrick: No... On another subject, Mr. Bretz, the mounding in the front of the subdivision, along State Route 162, needs to be mowed. Is the HOA going to take care of that?

Ty Bretz: Yes it should be done within the next seven (7) to ten (10) days.

Board Member, Albrecht: Did we approve a plan for the landscaping?

Board Member, Hughes: Yes we approved a plan and decided on some specific trees that should be planted.

Board Member, Albrecht: When do you think your HOA might be in a position to plant the trees?

Zoning Inspector, Emrick: We can't force the HOA to plant the trees. I was just asking them if they might possibly be able to plant them in the future.

Ty Bretz: There are a lot of people uncomfortable at the moment because of the way this all happened. There will be several discussions at the first meeting and I don't know if it would be the right time to bring up the discussion of completing the landscaping.

Zoning Inspector, Emrick: It is sad that we have to rely on the HOA to complete the landscaping. The Township should take Mr. Bierne to court.

Board Member, Hughes: Doesn't the Township collect performance bonds?

Zoning Inspector, Emrick: No we don't require them for subdivisions... but we will now. We only collect for commercial property. Even if you had a bond on this particular subdivision it would have been there too long to collect the bond.

Board Member, Tuchek: Can we issue the certificate to the HOA and give them some suggestions on what we would like them to do?

Chairperson, Biehl: We could give the HOA the opportunity to decide what they would like to do by writing the certificate for a one (1) year term.

Board Member, Tanski: Who owns the last lot?

Ty Bretz: I believe it is owned by a builder.

Chairperson, Biehl: In regards to other specific requirements, did we ever validate that those requirements were completed?

Zoning Inspector, Emrick: Those requirements have been completed.

Ty Bretz explained some drainage issues within the subdivision.

Zoning Inspector, Emrick advised Mr. Bretz to contact the Medina County Engineer's office.

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Ty Bretz explained some issues with drain spouts on a new home built by Premier Homes.

Zoning Inspector, Emrick again advised Mr. Bretz to contact the Medina County Engineer's office.

Ty Bretz asked if he could have "No Outlet" signs put on the temporary cul-de-sac on Knots Landing.

Zoning Inspector, Emrick stated she thought that had been taken care of but would contact the Township Roads Department about putting up signs.

Chairperson, Biehl asked the Board if they had any other questions or comments for Mr. Bretz.

No Response.

Chairperson, Biehl opened the hearing to the public for comments and/or questions.

No Response.

Chairperson, Biehl closed the hearing to the public and asked the Board for a motion.

**MOTION: Board Member, Albrecht: I move that Conditional Certificate #4 be granted to Windsor Park HOA. The applicable section of the Zoning Code is 805.126, Controlled Density Residential Development. Said Conditional Certificate shall maintain all conditions: Section 804 (General Standards A-H); Section 805.126; Section 806 (Additional Conditions 1-11); Specific Requirements made by Board of Zoning Appeals November 5, 2007 (Items 1-4); Specific Requirements made by Board of Zoning Appeals February 2, 2009 (Items 1-4). Renewal Term: one (1) year.**

**SECOND: Board Member, Tanski**

**ROLL CALL:**

**Board Member, Tanski: "I approve as written"**

**Board Member, Hughes: "Vote to renew"**

**Board Member, Albrecht: "I vote to approve"**

**Board Member, Tucheck: "I vote to approve the Conditional"**

**Chairperson, Biehl: "Approve"**

**Motion to approve Conditional Compliance Review for Renewal #4, Windsor Park Subdivision, passed by a vote of 5-0**

- 3. VARIANCE: APPLICATION #05-11-023 ~ A REQUEST BY MS. NANCY POLING, 5751 ARLYNE LANE, MEDINA, OHIO 44256 FOR VARIANCE OF SIX (6) FEET TO ALLOW EXISTING PATIO TO ENCROACH INTO THE REQUIRED SIDE YARD SETBACK (SECTION 410.8.C.3)**

Chairperson, Biehl introduced the third item by reading the information from Application #05-11-023.

Chairperson, Biehl read the following memos attached to the application:

Memo "1"

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May 5, 2011

To Whom It May Concern:

*It has come to my attention that my concrete patio, which was present when I purchased my home in 1999, is in zoning violation. This information was alarming to me as I have been at my residence for twelve (12) years, had a survey completed at the time I purchased my home and then again when I refinance in 2008 and nothing was said to me concerning this matter.*

*I would like to get this matter resolved, so I am asking for a variance to keep my patio. I am hopeful that you will allow me to keep my patio as it provides me and my family with an enjoyable area to spend time as well as providing beauty to the neighborhood with my lovely flower gardens surrounding the patio.*

*Thank you for your attention.*

*Nancy Poling*

Memo "2"

To Whom It May Concern:

*My name is Michelle Earich, I reside at 3073 Marla Court and did so in 1999 when Nancy Poling purchased the 5751 Arlyne Lane residence. The patio was present at the time of her purchase.*

*Thank you for your attention,*

*Michelle Earich*

*(Signed and Dated May 20, 2011)*

Chairperson, Biehl read the following memo addressed to the Board of Zoning Appeals from Zoning Inspector, Emrick:

May 25, 2011

*Re: A variance of six (6) feet to encroach into the side yard – 5751 Arlyne Lane (410.8.C.3)*

*The homeowner purchased this home with the patio already constructed. It encroaches into the side yard by six (6) feet. This encroachment was caught when the homeowner decided to sell the house. Someone looking at the house wanted to know if they could build a deck. The real estate agent checked with our office only to learn that no permit was ever issued for the patio.*

*Should you have any questions, please let me know.*

Chairperson, Biehl asked if the applicant was in the audience.

Applicant, Nancy Poling was sworn in.

Chairperson, Biehl asked Ms. Poling if she had anything to add to her application.

Nancy Poling: No.

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Board Member, Tuchek: If we were to issue the requested variance for this patio and if in the future it was changed to a deck, would the variance cover the deck also?

Zoning Inspector, Emrick. Yes because the variance goes with the land.

Board Member, Tuchek: However, if they wanted to extend the deck beyond the patio, then they would have to come back before the board for a variance, correct?

Zoning Inspector, Emrick: Yes that is correct.

Chairperson, Biehl asked the Board if they had any other comments/or questions for the applicant.

No response.

Chairperson, Biehl opened the hearing to the public for comments and/or questions.

Resident, Shannon Just was sworn in.

Shannon Just: We live across from Nancy and we have no problems with the patio. Her flower garden is beautifully maintained.

Chairperson, Biehl closed the hearing to public participation.

The Board reviewed the Duncan Factors.

**Duncan Factors:**

1. **Will the property yield a reasonable return or is there a beneficial use of the property without the variance? “Yes”**
2. **Is the variance substantial? “No”**
3. **Would the essential character of the neighborhood be substantially altered or adjoining properties suffer a “substantial detriment” as a result of the variance? “No”**
4. **Will the variance adversely affect the delivery of governmental services? “No”**
5. **Did the property owner purchase the property with the knowledge of the Zoning Resolution? “No”**
6. **Can the property owner’s predicament be solved by some other means rather than granting the variance? “Yes”**
7. **Will the variance preserve the “spirit and intent” of the zoning requirement and will substantial justice be done by granting the variance? “Yes”**

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Chairperson, Biehl asked for a motion.

**MOTION:** Board Member, Tuchek ~ “I move that a variance be granted to Nancy H. Poling of 5751 Arlyne Lane, Medina, Ohio for six (6) feet to cover an encroaching patio into a side yard. Said variance being applicable to zoning code 410.8.C.3.”

**SECOND:** Board Member, Hughes

**ROLL CALL:**

**Board Member, Hughes:** “Vote to grant the variance”

**Board Member, Albrecht:** “I vote to approve, after review of the Duncan Factors”

**Board Member, Tuchek:** “Approve as written”

**Board Member, Tanski:** “I approve”

**Chairperson, Biehl:** “Approve”

**Motion to grant six (6) foot variance to Nancy Poling, 5751 Arlyne Lane passed by a vote of 5-0**

Zoning Inspector, Emrick reminded Ms. Poling that even though the variance was granted she would still need to come back to the Zoning Office to obtain a permit since one had not been issued.

**Update – Zoning Inspector, Emrick:**

Zoning Inspector, Emrick: A couple weeks ago we had an applicant that wasn't present at the meeting and the Board approved the renewal because the property owner was here. The more I thought about it I really don't think it is fair for one (1) applicant the take the time to come to the meeting while another applicant decides not to show up, yet their application is approved. I would suggest that perhaps the Board put something in writing either in your Meeting Procedure documentation or the BZA Bylaws that if an applicant or their designee is not present at the meeting then the application should be tabled until the next meeting.

I would like the Board to think about the suggestion and then either the Procedures or Bylaws could be amended at the next meeting. Perhaps you could require something in writing that a designee will be representing the applicant.

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Board Member, Tanski inquired about some high grass issues in Turnberry Subdivision.

Zoning Inspector, Emrick stated the property owners had been contacted.

Chairperson, Biehl inquired about the Drug Mart property.

Zoning Inspector, Emrick stated the house was torn down but new plans for Drug Mart had not been presented to date.

Chairperson, Biehl asked for a motion for adjournment:

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**MOTION:** Board Member, Tuchek

**SECOND:** Board Member, Hughes

**ROLL CALL:** A collective oral vote was taken. All Board Members stated "Aye". (No "Nay" votes.)

Meeting adjourned at 8:05 p.m.

Respectfully Submitted

Robin Halleen  
Zoning Secretary

Approved:

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Chairperson, Allen Biehl

\_\_\_\_\_  
Date