

Jackson Township Board of Zoning Appeals

December 9, 2019

Members Present: Charles Rohr
Patrick Snyder
Edward McDonnell
Leon Vitale
Jared Singer-Alternate
Deborah Busby-Alternate
Zoning Inspector: Joni Poindexter

Mr. Vitale nominated Mr. Snyder as Chairman for the year 2020 and Mr. Rohr seconded the nomination.

There were no further nominations.

The vote was: Mr. Rohr- Yes, Mr. Snyder-yes, Mr. McDonnell-yes, Mr. Vitale-yes, and Mr. Singer-yes.

Mr. McDonnell nominated Mr. Rohr as Vice Chairman for the year 2020 and Mr. Vitale seconded the nomination.

There were no further nominations.

The vote was: Mr. Rohr-yes, Mr. Snyder-yes, Mr. McDonnell-yes, Mr. Vitale-yes, and Mr. Singer-yes.

5:00 PM Appeal #2386 – William Ertle, property owner, 3373 Stahl NW, Massillon, Ohio 44646 requests a variance for a 1 ft. north and 5 ft. west setback for an above ground swimming pool where a 25 ft. north and a 10 ft. west setback is required per Art. IV Sect. 401.11 of the zoning resolution. Property located at 3373 Stahl NW, Sect. 32NE Jackson Twp. Zoned R-1.

Mr. Snyder read the file application and contents of the file into the record.

Mr. Snyder swore in those is favor of the appeal.

Mr. William Ertle, 3373 Stahl NW stated he would like to apologize to the board about the pool. He talked the neighbor prior to putting the pool in and they had no problems with it. Since the hearing was scheduled the neighbor behind him came over and stated he had no problem with the pool. The variance will be 16 ft. from the edge of the street. The property is a small lot and there isn't a lot of options for a swimming pool. The pool is installed and is 5 ft. from the back property line and 1 ft. from the side property line but 16 ft. from the edge of pavement. He continues to make improvements to the property and requests that the board give approval to keep the pool at the current location. Even if it was smaller it would not fit per the setbacks.

Mr. Ertle stated Lighthouse pools installed the pool. He didn't realize the township had specific offsets. He knows it is his responsibility.

Mr. Vitale asked Ms. Poindexter for a clarification regarding the setbacks.

Ms. Poindexter explained the setback is 1 ft. from the road right of way, which is the same as the property line. The edge of pavement is 15 ft. from the road right of way line therefore the pool is only 1 ft. from the road right of way but is 16 ft. from the edge of pavement.

Mr. Ertle stated the pool is 18 x 33 ft.

Mr. Rohr asked when the pool was installed.

Mr. Ertle stated it was installed in late summer or early fall.

Mr. Vitale asked if he had any discussion with Lighthouse pools as to why they didn't check with zoning.

Mr. Ertle stated he didn't read the entire contract but he knows it is his responsibility.

Mr. Vitale stated he noticed there was no fence but the stairs were removed.

Mr. Ertle stated the stairs do lock and are removable and he will do some landscaping.

Mr. Snyder asked if there was any way the pool would fit somewhere else.

Mr. Ertle stated no it could not fit anywhere else and meet the requirements.

Mr. Vitale asked how far from the pool is to the house.

Mr. Ertle stated he is not sure but it maybe 10 ft. from the house.

Mr. McDonnell asked if the pool is circular.

Mr. Ertle stated it is oval. 18 wide by 33 long. They originally purchased a smaller one but it never came in so they gave them a larger one for the same price.

Mr. McDonnell asked if it sits on the ground or if there is a foundation.

Mr. Ertle stated it has metal straps sitting on cinderblock and is over 4 ft. in height from the ground so it does not need a fence.

Mr. McDonnell asked Ms. Poindexter how far the pool was from the right of way line and from the edge of pavement.

Ms. Poindexter stated it is 1 ft. from the road right of way and 16 ft. from the edge of pavement.

Mr. Ertle stated if he has to move the pool he will.

Mr. Snyder asked if there are any other properties in the neighborhood with the same issue.

Ms. Poindexter stated not that she is aware of.

Mr. Vitale stated they can vote on it as advertised or with moving it some type of footage to get it away from the property line.

Mr. Ertle stated he is at the board's mercy so if the board would deny where it is at now it would have to be removed.

No one else spoke in favor of or in opposition to the appeal.

Mr. Snyder closed the appeal to public input.

Mr. Singer stated he sees Mr. Vitale's concerns but when he does some math he doesn't see how he could fit it anywhere else on the property. If the pool is to remain a variance will be required so the question is can it stay or move it to minimize the variance.

Mr. Vitale stated he agreed with Mr. Singer. This is a tough one. There is 16 ft. from the edge of pavement to the property line. He struggles with asking him to move it.

Mr. Rohr stated he feels the same as the other board members. He doesn't think he could support a one foot setback. It is such a huge difference from 25 ft. He could support a 5 or 6 ft. setback but not a one foot setback.

Mr. Snyder stated one foot is significant but there isn't any other place to put the pool on the property.

Mr. Snyder asked Mr. Ertle if he would like to amend his application based on the comments from the board members.

Mr. Singer asked Ms. Poindexter if there were other variances that she is aware of.

Ms. Poindexter stated that the board has approved a pool variance on Amherst and Harris.

Mr. Rohr stated the pool on Amherst had a fence around it.

The board separated the variance into two votes.

Mr. Vitale made a motion to approve the request for a 1 ft. north setback where 25 ft. is required and Mr. McDonnell seconded the motion.

The vote was: Mr. Rohr-no, Mr. Snyder-no, Mr. McDonnell-no, Mr. Vitale-no, and Mr. Singer-no.

Mr. Vitale made a motion to approve a 5 ft. west setback where 10 ft. is required and Mr. McDonnell seconded the motion.

The vote was: Mr. Rohr-yes, Mr. Snyder-yes, Mr. McDonnell-yes, Mr. Vitale-yes, and Mr. Singer-yes.

5:15 PM Appeal #2387 – Faith McNutt, 7637 Peyton NW, Massillon, Ohio 44646 agent for property owner, Michael & Stacey Beard, 6661 Hythe NW, Canton, Ohio 44708 requests a variance to allow a commercial food truck used for a mobile business to be parked or stored on the property in a residential district where commercial vehicles are not permitted to be parked or stored in residential districts unless it is 9,000 lbs. GVW or less, does not exceed 7 ft. in height and is currently used by the occupant of the dwelling as transportation to and from work per Art. IV Sect. 401.14 (D) of the zoning resolution. Property located at 7637 Peyton, Sect. 33NW Jackson Twp. Zoned R-1.

Mr. Snyder read the file application and contents of the file into the record.

Mr. Snyder swore in those in favor of the appeal.

Faith McNutt, 7637 Peyton stated when she was aware of the regulations she applied for a variance. This is located a few houses from the dead end street and is approx. 30 ft. off of the street in the driveway and does not block any view. She has not received any complaints regarding the parking of the truck. The truck needs to be attended as it has food stored in it that needs refrigeration and plugged in.

Mr. Snyder asked if there is any other property to store the truck at.

Ms. McNutt stated no. They have rented the duplex since July, 2018.

Mr. Vitale asked how high the truck is.

Ms. McNutt stated that it is 9 ft. in height and 26 ft. long.

Mr. Vitale asked where the deliveries go.

Ms. McNutt stated the business is all contained in the truck so she drives the truck to pick up her supplies.

Mr. Vitale asked what the refrigeration is for.

Ms. McNutt stated things like butter, cream cheese, etc. needs to stay refrigerated.

Mr. Vitale asked if there are any places that has electric to store the truck.

Ms. McNutt stated there are places inside that have electric but the garage doors are not large enough for the truck. The outside areas do not have electric.

Mr. Singer asked how often the truck is used.

Ms. McNutt stated it is used every day. With the refrigeration she is required to have a record of the food temperatures every four hours.

Mr. McDonnell asked if it is every four hours out of 24 hours.

Mr. McNutt stated yes, the same as restaurants.

Mr. McDonnell asked if she goes to bed at 10:00 then she has to get up at 2:00 and monitor the temperature.

Ms. McNutt explained how the procedure works and stated the laws require her to check the temperature every 4 hours.

Mr. McDonnell stated a restaurant is not open 24 hours a day.

Ms. McNutt stated restaurants have a recording they can look at to see what the temperature has been. She does not have this.

Mr. McDonnell asked if the truck has been there since she moved there and if she received a citation.

Mr. McNutt stated when the investigator was inspecting another property he seen the truck and she received a letter.

Mr. Snyder asked Ms. Poindexter if they were to approve the appeal if it would stay with the property and not transfer with her and because it is a duplex would it affect the whole property.

Ms. Poindexter stated they it would stay with this properties address and if someone on the other side wanted to have one they would have to obtain their own variance.

Mr. Vitale asked if it were approved, could they put a condition on it.

Ms. Poindexter stated they could put a condition that it is only for that truck.

Mr. McDonnell asked how much the truck weighed.

Ms. McNutt stated it is at 9,000 GWV but when they put the food it is gets a little heavier. It may be 10,000 GVW with everything in it.

Mr. Snyder stated it is over the height by 2 ft. and not far off from the gross weight.

Mr. McDonnell asked if the people next door have a different address.

Ms. McNutt stated yes.

Mr. Snyder swore in Michael Beard, 6661 Hythe stated he is the property owner and Ms. McNutt has been a great tenant and there is no issues with the truck. The truck is always backed up to the house and he has never received a complaint regarding the truck.

No one else spoke in favor of or in opposition to the appeal.

Mr. Snyder closed the appeal to public input.

Mr. Vitale stated with Joni stating they could put a condition on it, it helps him lean more in favor of the variance and with having to check the temperature he is not opposed with limiting it to this specific vehicle.

Mr. Singer stated he agreed with Mr. Vitale but after discussing the restriction with it being only for this truck and her being the owner he has no problem with the variance.

Mr. Vitale clarified that Ms. McNutt owned the truck.

Mr. McDonnell stated the township allows trailers to be parked in the front yard if they are 24 ft. This is not much different than an RV and it has refrigeration like a camper. It is only 2 ft. longer and 2 ft. taller than what is allowed. The applicant indicated there is a problem because it needs power. This is a unique situation and the variance is actually for a vehicle being 2 ft. longer and 2 ft. more in height. It is on a dead end street. He has no problem putting a time limit on the variance such as while the applicant lives at the property for a specific time then they have to come back and reapply.

Mr. Snyder stated it is not a significant request.

Mr. McDonnell made a motion to approve appeal #2387 with the condition that the variance is for the specific vehicle as shown in the photo's being in effect while the applicant resides at the residence for no more than 2 years with the variance ending when the applicant moves from the property or 2 years ending January 9, 2022, whichever comes first and Mr. Snyder seconded the motion.

The vote was: Mr. Singer-yes, Mr. Vitale-yes, Mr. McDonnell-yes, Mr. Snyder-yes, and Mr. Rohr-no.

5:30 PM Appeal #2388 – Jim McFarland, PO Box 171, Commercial Point, OH 43116 agent for Get Go Partners South, property owner, 101 Kappa Drive, Pittsburg, PA 15238 requests a variance to allow 16 changeable copy snap lock frame signs totally 70 sq. ft. to be located under the canopy and to allow 8 changeable copy pump fixture signs totaling 13.06 sq. ft. to advertise commercial products on a continued basis. Property located at 6215 Whipple NW, Sect. 13NE Jackson Twp. Zoned I-1.

Mr. Snyder read the file application and contents of the file into the record.

Mr. Snyder swore in those in favor of the appeal.

Mr. Jim McFarland, PO Box 171 Commercial Point, Ohio stated he used to be a zoning inspector and it is a thankless position. The toughest part of a zoning code is the signage. The code is very clear and the signs are really wall signs but they are affixed to a structure. Get Go wants to allow to advertise the services that they have. He provided a few photos of signage in the file as examples. Get Go would like to have consisted branding for their stores. They are requesting the variance to allow the snap lock frames for the signage and there is no illumination for the signage. They want to be consistent with other gas stations that have advertising. It is not a distraction for drivers but is for those that pull into the gas station to see what is being offered.

Mr. Snyder asked if this for Dressler and Whipple and why they need so many.

Mr. McFarland stated there are 8 posts and 8 pumps. The signs are light weight and the pump signs balance out the pump.

Mr. Snyder asked if the snap sign was a decal if they would need a variance.

Ms. Poindexter stated yes because it is considered signage.

Mr. Rohr asked if there are other stations that have this signage.

Ms. Poindexter stated speedway had the same signage and they were sent a violation letter and had to remove them. The Circle K at Frank and Fulton does not have them.

Mr. McFarland stated they would like to advertise items that are inside the store.

Mr. McDonnell asked what the total wall signage is for the building because in an I-1 they are permitted 1,100 sq. ft. of wall signage.

Mr. McFarland stated he did not know.

Mr. McDonnell asked what is unique for this station as opposed to other stations.

Mr. McFarland stated it is the type of graphic's that it is. Snap lock signs are rarely defined. Any other gas station in Jackson Township would want this but how is it allowed. Possibly the code should be amended to address these types of signs.

Mr. Vitale stated that the statement was made that this wouldn't set a precedence but it does. There would be more signage and everyone wants more signage. Everyone will want the same thing. Maybe they need to look at having the changeable digital signage on the pumps.

Mr. McFarland that Speedway had signage at Everhard Rd. That is why he stated there are other facilities that has these type of signs. He don't know if they are in violation but they are trying to get a variance to make sure what they have will be permitted by Jackson Township.

Mr. Vitale stated if they get approved then everyone will want them and he sees a snowball rolling down the hill.

Mr. McDonnell asked if Mr. Farland is here at the request of Get Go.

Mr. McFarland stated he is representing the applicant.

Ms. Poindexter explained why they are applying for a variance and that they are re-developing the site so they applied for the new signage for the new building.

Mr. McFarland stated that the neighbor is pleased the site is being redeveloped and has no objection the signage.

No one else spoke in favor of or in opposition to the appeal.

Mr. Snyder closed the appeal to public input.

Mr. McDonnell stated when he first saw the request he wasn't sure it belonged under 502.5. He wasn't sure they had the authority to look at it but then he looked at 501.2C that talks about the general sign regulations where states signs not expressly permitted by these regulations. He then looked at the practical difficulty requirements. He can't think of anything that makes the property unique. Looking at item 9 in section 803.5 (9) he thinks the variance will grant something that is giving a special privilege so other gas stations that would ask for the same thing, he would not feel right not giving it to others. If he says it is okay he would feel bound to say it is okay for other locations. The board would be creating a whole new type of signage that is under the authority of the Zoning Commission and Trustees. He has a problem with the variance.

Mr. Snyder stated there is a limitation and they should abide by it. He doesn't see a reason to divert from it.

Mr. Rohr stated it seems like every gas station, no matter where it is, wants these types of sign but he believes if they approve this they are opening the door for all gas stations to have the signage. He doesn't think that is a precedence that they want to set.

Mr. Vitale agreed with the other board members and stated just because they see it doesn't mean it's right. He cannot support the variance.

Mr. Singer made a motion to approve appeal #2388 as requested and Mr. McDonnell seconded the motion.

The vote was: Mr. Singer-no, Mr. Vitale-no, Mr. McDonnell-no, Mr. Snyder-no, and Mr. Rohr-no.

Mr. Rohr made a motion to approve the meeting minutes from the December 5, 2019 meeting and Mr. Snyder seconded the motion.

The vote was: Mr. Vitale-yes, Mr. McDonnell-yes, and Mr. Rohr-yes.

Being no further business Mr. Snyder adjourned the meeting.

Respectfully submitted,

Joni Poindexter
Jackson Township Zoning Inspector

**JACKSON TOWNSHIP BOARD OF ZONING APPEALS
CONCLUSIONS OF FACT
APPEAL #2386**

Upon the hearing the Board determined that the variance would allow for a 1 ft. north and 5 ft. west setback for an above ground swimming pool where a 25 ft. north and a 10 ft. west setback is required per Art. IV Sect. 401.11 of the zoning resolution. Property located at 3373 Stahl NW, Sect. 32NE Jackson Twp. Zoned R-1.

Whereas, upon the Board determined:

The variance is substantial being only 1 ft. from the right of way line.

The variance for 5 ft. is not substantial and due to layout of existing home pool cannot go further from rear lot line.

Whereas, the Board further:

Denied X

Denied the variance for the 1 ft. north side yard setback where 25 ft. is required when abutting a secondary road right of way.

Mr. Vitale made a motion to approve the variance as requested.

Mr. McDonnell seconded the motion.

The vote was: Mr. Rohr- No

Mr. McDonnell- No

Mr. Vitale- No

Mr. Snyder- No

Mr. Singer- No

Approved X

Approved the variance for the 5 ft. west rear yard setback where 10 ft. is required.

Mr. Vitale made a motion to approve the variance as requested.

Mr. McDonnell seconded the motion.

The vote was: Mr. Rohr- Yes

Mr. McDonnell- Yes

Mr. Vitale- Yes

Mr. Snyder- Yes

Mr. Singer- Yes

Chairman

Zoning Inspector, Joni Poindexter

**JACKSON TOWNSHIP BOARD OF ZONING APPEALS
CONCLUSIONS OF FACT
APPEAL #2387**

Upon the hearing the Board determined the variance would allow a commercial food truck used for a mobile business to be parked or stored on the property in a residential district where commercial vehicles are not permitted to be parked or stored in residential districts unless it is 9,000 lbs. GVW or less, does not exceed 7 ft. in height and is currently used by the occupant of the dwelling as transportation to and from work per Art. IV Sect. 401.14 (D) of the zoning resolution. Property located at 7637 Peyton, Sect. 33NW Jackson Twp. Zoned R-1.

Whereas, upon the Board determined:

This is a unique situation with the truck only being over compliance by 2 ft. in height and length.

Truck requires electric for refrigeration and the request is no significant.

Whereas, the Board further:

Denied _____

Approved X with conditions

The variance to allow a commercial food truck used for a mobile business to be parked or stored on the property in a residential district where commercial vehicles are not permitted to be parked or stored in a residential districts unless it is 9,000 lbs. GVW or less, does not exceed 7 ft. in height and is currently used by the occupant of the dwelling as transportation to and from work with the condition that the variance is for the specific vehicle as shown in the photo's being in effect while the applicant resides at the residence for no more than 2 years with the variance ending when the applicant moves from the property or 2 years ending January 9, 2022, whichever comes first.

Mr. McDonnell made a motion to approve the variance as requested.

Mr. Snyder seconded the motion.

The vote was: Mr. Vitale- Yes

Mr. Snyder- Yes

Mr. McDonnell- Yes

Mr. Rohr No

Mr. Singer Yes

Chairman

Zoning Inspector, Joni Poindexter

**JACKSON TOWNSHIP BOARD OF ZONING APPEALS
CONCLUSIONS OF FACT
APPEAL #2388**

Upon the hearing the Board determined the variance would allow for 16 changeable copy snap lock frame signs totally 70 sq. ft. to be located under the canopy and to allow 8 changeable copy pump fixture signs totaling 13.06 sq. ft. to advertise commercial products on a continued basis. Property located at 6215 Whipple NW, Sect. 13NE Jackson Twp. Zoned I-1.

Whereas, upon the Board determined:

_____ There are no special conditions or circumstances to allow for the variance. _____

_____ Would set a precedence for signage _____

Whereas, the Board further:

Denied X

Approved

The variance to allow 16 changeable copy snap lock frame signs totally 70 sq. ft. to be located under the canopy and to allow 8 changeable copy pump fixture signs totaling 13.06 sq. ft. to advertise commercial products on a continued basis.

Mr. Singer made a motion to approve the variance as requested.

Mr. McDonnell seconded the motion.

The vote was: Mr. Vitale- No

Mr. Snyder- No

Mr. McDonnell- No

Mr. Rohr- No

Mr. Singer- No

Chairman

Zoning Inspector, Joni Poindexter