

BURTON TOWNSHIP

BOARD OF ZONING APPEALS

14821 Rapids Road | Burton, Ohio 44021 | 440.834.1500

MEETING MINUTES

Date: May 18, 2021

Time: 7:00 p.m.

Place: Burton Township Administration Building (*Zoom Meeting ID: 881 6468 2499)

Purpose: Public Hearing to consider application #1524-21 submitted by Melvin D. Miller.

Board Member(s) Present: Chairman Tim Snyder, Alan Skeen, John Nelson, 1st Alternate Frank Vecchio, 2nd Alternate Joe Dallos.

Absent: Leonard Fife.

Attendees: Melvin D. Miller, Joseph Weiss Jr., Esq., Daniel Miller, Lester Miller, Dave Dietrich, Bob Himmelein, Rick Gruber, Margaret Sugarman* (*denotes Zoom attendance) .

PUBLIC HEARING

Chairman Snyder calls the public hearing to order at 7:10 p.m. Roll Call of the Board shows Tim Snyder, Alan Skeen, John Nelson, 1st Alternate - Frank Vecchio, 2nd Alternate - Joe Dallos present. 1st Alternate, Frank Vecchio will fill in for open Board Member Position and 2nd Alternate Joe Dallos will fill in for absent Board Member, Len Fife.

Secretary O'Neill confirms that all adjacent property owners had been notified, as well as the public through newspaper publication. Newspaper notification included the Zoom virtual attendance credentials as well as Covid protocols. All those who had requested in person attendance were present, and no one has contacted Secretary O'Neill asking for other accommodations in order to attend.

Since the notice was published, Governor Dewine had changed the Covid restrictions to comply with the CDC recommendations. Based on this change, Chairman Snyder states for the record those wishing to attend in person may do so, even though Zoom attendance was requested.

Chairman Snyder announces the purpose of the public hearing which is to consider application #1524-21, submitted by Melvin D. Miller for the property located 15727 Tavern Road. Mr. Miller is seeking relief from Sections 402.2 Permitted Principal Building Structures & Uses, 402.3 Permitted...Uses and 402.4(A) Conditional Buildings, Structure and Uses for Home Occupation; from the Burton Township Zoning Resolution.

Legal Counsel for the appellant, Joseph Weiss Jr., Esq., makes introductions of his client, Melvin D. Miller (appellant), Lester Miller (brother), Daniel Miller (father). Attorney Weiss explains Lester is a co-owner in the business and Daniel is the bookkeeper for the business and also lives on the property with Melvin. David Dietrich is present as an expert witness.

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Melvin D. Miller of 15727 Tavern Road is affirmed. Mr. Miller, using the map provided (Exhibit #1), identifies the buildings on the property. Exhibit #2 is entered into record, the listing from Geauga ReaLink provides dimensions of each building and Mr. Miller has further labeled to coincide with Exhibit #1.

Mr. Miller states the following buildings exist on the property: the old barn, the new barn, the house, the shop, the sawmill and the milk house. He further states the sawmill was purchased in 2002 and began operating in 2004.

Chairman Snyder inquires when the property was first purchased. Mr. Miller states his father, Daniel, bought it in 1993 and then he purchased it from his father in 2006.

Attorney Weiss advises Mr. Miller to state who lives on the property. Mr. Miller explains that his family along with Daniel (his father), who does the bookkeeping for the sawmill, lives on the property. Daniel and Lester are also part owners of the sawmill business.

Mr. Miller clarifies that two (2) families reside on the property within a single dwelling.

Mr. Nelson asks how many employees the sawmill has. Mr. Miller states there are three (3) employees: himself, Lester and one (1) of their sons.

Chairman Snyder asks when each building was constructed. Mr. Miller states the following:

- Sawmill - 2003/2004
- Barn - 1991
- Shop - 1970
- Bank Barn/Milk House - 1901
- House - 1986 with addition in 2006

Attorney Weiss states the sawmill began operations in 2004, he asks Mr. Miller if there was any activity prior to 2004. Mr. Miller states he bought the sawmill to cut for personal use, believing the operation to be agricultural due to the cutting of trees. When he obtained the permit for the addition in 2006, Rob Peeler, the Zoning Inspector at the time stated the operation was in violation to due bringing in logs. Mr. Miller states that Mr. Peeler researched the issue and found that sawmills were permitted within Burton Township.

Attorney Weiss asks Mr. Miller to explain the products that come out of the sawmill. Mr. Miller states that lumber, firewood and sawdust for horse/cattle bedding are produced. He further states that his brother in law owns a tree service, and Mr. Miller will occasionally purchase some logging timber from him.

Mr. Miller lists the equipment on hand to be:

- Band sawmill & band resaw
- Crawler loader
- Chain saws

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- Walk behind tow motor
- Overhead crane

Mr. Nelson asks if any hauling trucks are kept on the property. Mr. Miller responds “no.” Only the equipment listed is kept on the property.

Attorney Weiss asks Mr. Miller if he has received any complaints about the operation. Mr. Miller states that in 2006, Mr. Peeler notified him of a noise complaint, he states he attempted to lessen the noise by changing out motors, but states “you can still hear it.”

For the record, it is stated that all three (3) employees of the business are family members: Melvin, Lester and Daniel.

Chairman Snyder moves on to review the Duncan Factors in consideration for the variance.

- Whether there are conditions that are unique to this lot, and not ordinarily found in the same zone or district? **Mr. Miller states “no.”**
- Did the applicant create these conditions? **Mr. Miller states “no.”**
- Whether the variance would adversely affect the rights of adjacent owners? **Mr. Miller states “no.”**
- Whether the variance would adversely affect the public health, safety or general welfare? **Mr. Miller states “no.”**
- Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance? **Mr. Miller states “yes, it is not unnatural or unusual in the area.”**

This statement leads to a series of questions from the Board. Mr. Skeen asks if there are any other sawmills in the area. Mr. Miller attests no other sawmills in Burton Township exist. Questions pertaining to specifics of the business determine that sales have been consistent over the past ten years. In addition to the sawmill building a twelve (12) foot x eighteen (18) foot portion of the shop is used as a sawdust bin.

The Board examines the topic of trucks related to the operations. Mr. Miller states that an average of four (4) to five (5) log trucks deliver and/or pickup per week between the business hours of 7:00 a.m. and 5:00 p.m. Mr. Miller refers to the list of pickup and delivery truck averages (Attachment A). Mr. Nelson asks the average time of a delivery/pickup. Mr. Miller states it takes approximately

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fifteen (15) minutes to unload, semi trucks it takes approximately forty five (45) to sixty (60) minutes to unload. Mr. Miller states that the semi trucks are not running during that time.

David C. Dietrich of 14884 Grant Drive in Middlefield, Ohio is sworn in. He states for the record that he is the owner of Consultant Planning & Zoning Services, LLC, and is a certified land planner with forty one (41) years of experience as the Geauga County Planning Director. Mr. Dietrich references Section 606.0 "Off-Street Loading/Unloading Space Requirements for Non-Residential Buildings" of the Zoning Resolution, stating that no regulations related to number of trucks, delivery times or quantity per month are stipulated within.

Going back to item E of the Duncan Factors, Attorney Weiss states that the spirit and intent looks at variances and granting would enhance the zoning resolution.

With nothing further on this item Chairman Snyder continues with the remaining factors.

- F. Whether the requested variance is the minimum action, which would afford relief to the applicant? **Yes.**
- G. What other economically viable use of the lot could be made within this zoning district? None that applicant knows of, **"Yes," has viable use as a residence.**

Rick Gruber, Zoning Inspector, of 14369 Broadwood Drive in Burton, Ohio is sworn in. He agrees with Mr. Dietrich's statement in reference to Section 606.0 primarily because the resolution prohibits commercial operations within a residential area. Inspector Gruber states that Section 606.0 specifications are for non-residential buildings.

Mr. Dietrich states this is a non-residential building.

Mr. Skeen asks Inspector Gruber if sawmill fits into the definition of agriculture. In Inspector Gruber's opinion it would only fit if it is timbering taken from the owner's property, being that "timber" is grown on the property.

Mr. Nelson asks Inspector Gruber if the zoning has changed since 2004. Inspector Gruber responds that the property has always been zoned as residential. Mr. Nelson references table 402.3 in the Zoning Resolution, stating that Sawmills are a permitted use within the Industrial Districts but not permitted within any Residential Districts. Inspector Gruber affirms.

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Mr. Vecchio addresses Inspector Gruber, he asks if Article VI as a whole is specific to Commercial and Industrial uses. Inspector Gruber states there are some requirements within Article VI for residential.

Mr. Nelson asks about recent complaints. Inspector Gruber states that only Bob Himmelein has filed a formal complaint. He confirms since his initial violation letters, operations at the sawmill have not changed.

Through questioning by Chairman Snyder, Inspector Gruber authenticates the Notices of Zoning Violation. Chairman Snyder accepts Exhibit A, Notice of Zoning Violations into the record without objection by Attorney Weiss. Inspector Gruber states that the first letter was hand delivered on January 5, 2021 and the second letter dated March 1, 2020 was delivered by certified mail.

Chairman Snyder asks Mr. Miller what his response was to the violation notice. Mr. Miller states that he worked with Attorney Weiss and Mr. Dietrich and responded with the application for appeal.

Mr. Dietrich affirms he has visited all the buildings and they are accurately reflected on Exhibit #1. He provides measurements for the setbacks of the sawmill buildings:

- Front setback: required = 120 feet, actual = 260 feet
- Side setbacks: required = 40 feet, actual = 177 feet (North) & 104 feet (South)
- Rear setback: required = 40 feet, actual = 789 feet (East)
- Lot width is 300 feet, lot depth is 955 feet, lot is 6.81 acres, all comply with R-5 zoning.

Mr. Dietrich further states that the property is located on a state route with surrounding residential structures. When asked if there were other businesses operating in the area, he stated he was not aware of any.

Attorney Weiss states that their application should stand alone, his client does not want to call out other businesses. Chairman Snyder assures Attorney Weiss & Mr. Miller that the information is needed to get an idea/feel for the neighborhood.

Mr. Skeen comments to Mr. Dietrich the sawmill building on the map appears to be closer to the south property line than what he previously stated. Mr. Dietrich states he observed the staging area. Mr. Skeen asks for the setback of the building. Mr. Dietrich states he did not measure the building.

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Mr. Dallos asked if the sawmill was operating during Mr. [Dietrich's] visits to gauge the noise issue. Mr. Dietrich attests the sawmill was not operating during his visit and states that according to Section 403.12 of the zoning resolution, noise standards do not apply in a residential zone.

Mr. Skeen states Geauga ReaLink scales the building to be approximately ten (10) feet from the property line. Mr. Dietrich clarifies he did not scale the building, only the prep area of the sawmill. Inspector Gruber agrees with Mr. Skeen that the building appears closer than one hundred and four (104) feet.

In regards to variance request from Section 402.2(B) related to home occupation, Attorney Weiss states that business operations meet all criteria with the exception that it is not operated out of the dwelling unit. The business provides an occupation, craft & service that is incidental to the use of the lot as a residence in accordance with Section 402.4(A)(1) Conditional Uses in regards to Home Occupation, again with the exception it is performed outside of the dwelling. Chairman Snyder accepts Exhibit #3, Section 402.4 of the Burton Township Zoning Resolution as amended August 19, 2019, into record provided by Attorney Weiss.

Exhibits #4, #5 and #6 are entered into record. Each exhibit was provided from an adjacent property owner who was unable to attend. Each letter is in support of keeping the sawmill operating. These letters were unsolicited.

- Exhibit #4 - from Margaret Sugarman (Peg)
- Exhibit #5 - from Crist Byler
- Exhibit #6 - from Steven Gingerich

Inspector Gruber states four (4) phone messages were received in regards to the sawmill operation. Margaret Sugarman left two (2) messages, Owen Miller and Damen Neill also left messages voicing their support.

Attorney Weiss asks Mr. Miller to describe the size of wood cut at the sawmill. Mr. Miller states they cut all different sizes of wood, examples would be logs, railroad ties and pallets.

Zoom attendee, Margaret Ann Sugarman, of 15799 Tavern Road in Burton, Ohio is affirmed. Mrs. Sugarman states Melvin's operation is innocuous, meaning harmless, to other industries. There is no pollution, no sound that affects her. She is a contiguous property owner approximately half (½) an acre from the sawmill. She wonders what has changed in the zoning rules in the last sixteen (16) years to initiate this request.

Chairman Snyder explains the initial issue is that the sawmill operation is in violation in a residential district. He believes zoning laws were established in the 1950's.

Mrs. Sugarman asks if anything could be mitigated for the operations pertaining to sound or saw dust. Attorney Weiss states there has only been one (1) complaint to the use. He asks Mrs. Sugarman if she objects to the operation. Mrs. Sugarman responds "no."

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Robert J. Himmelein of 15705 Tavern Road in Burton, Ohio is sworn in. Mr. Himmelein was a previous Board Member and former Trustee, stating the sawmill can not be proven to be a permitted use. He attests there have been numerous complaints to the Trustees over the years, including in 2006, with the addition of the second house allowing eight (8) to ten (10) people to live on the property, along with a commercial operation. He states the operation has had a definite impact on the neighborhood and the ability to sell his house.

Mr. Himmelein states trucks can not turn around, they must back up, and they come at all hours. The operation is not small, in addition to the noise, there are numerous piles of logs, and he believes more trucks are coming in and out than what was stated to the Board.

Mr. Himmelein asks how much of the 6.1 acres is residential. Attorney Weiss responds that the lot speaks for itself. Mr. Himmelein asks where the septic system is located. Response states the septic is located behind the house in a pasture.

Mr. Himmelein attests there are no other sawmills in the township, no other property like it. He feels the Trustees should have addressed this issue long ago and that the Township should follow its zoning rules.

Mr. Himmelein believes more than three (3) people work at the sawmill. Mr. Himmelein asks if Exhibits #4, #5 and #6 were from relatives of Mr. Miller. Mr. Miller states they are not.

Mr. Himmelein states that his residence sits approximately sixty (60) feet from the property line and he believes operations have gotten worse. He had to file a formal complaint for action, and states there is no justifiable reason this operation has been allowed. The idea that the business is agricultural is a ruse and cannot be verified that the zoning inspector at the time said it was a permitted use. It can not be made into a home occupation, and there are other neighbors in violation as well. Mr. Himmelein states it is not a residential business but an industrial one and affects the neighborhood.

Mr. Himmelein attests that Keim Lumber frequents the business. Mr. Miller denies and provides a listing of businesses he deals with: Arms Trucking, Jim Best, JS Miller and Clemson.

Mr. Himmelein states the trucks pose a safety issue because they can not turn around, they have to back in and out. There is a "no turn around" sign posted. Mr. Miller affirms there is a "no turn around" sign. Mr. Himmelein attests there is a hill and curve creating blind spots. He comments in the winter there are slide offs from drivers, which are not directly related.

Mr. Himmelein asks Mr. Miller if anyone else works at the sawmill. Mr. Miller affirms that himself, Lester and one (1) of their sons are employed, occasionally an additional son will split firewood.

Mr. Himmelein states the operation has nothing to do with a home occupation and is destroying the neighborhood. He comments that Mrs. Sugarman is well beyond half (½) an acre away and she would have a problem selling her property. Mr. Himmelein states he was able to sell his property, however, it was priced below value. He further states years ago there was another sawmill in the area, however it was temporary. This operation has gotten bigger over the years and has become

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an eyesore. Mr. Himmelein reiterates that this is the only sawmill in the township, which should have been shut down years ago. By allowing it to continue, its precedence is spreading to the rest of the neighborhood.

Attorney Weiss asks Mr. Himmelein if he had found a buyer. Mr. Himmelein responds, "yes, but it is not final." Attorney Weiss asks if other homes in the area have recently sold. Mr. Miller states that a home in the area sold in four (4) days. Mr. Dallos was under the impression Mr. Himmelein could not sell his home. Mr. Himmelein states he wanted to sell months ago, however he was setback due to timing and reduced pricing. He states the sales is not determinative of what the operation is doing to the properties.

Mr. Nelson asks Mr. Miller if there is any spillage or run off from the operation. Mr. Miller explains that any spillage remains on a cement pad and any waste goes into a dumpster. Mr. Miller states Major Disposal is the hauler.

Mr. Himmelein believes run off goes the opposite way of the operation and comments that no clean up control is in place. He also states that the culvert pipe has been crushed, he believes this is due to large trucks.

Mr. Nelson asks if any action was taken in response to the violation notices. Mr. Miller states he applied for the variance. Attorney Weiss comments that first notice was received in January, he was hired shortly after and then they applied. Inspector Gruber states all procedures were followed while filing the paperwork. Mr. Himmelein comments they were given extensions. Inspector Gruber states the initial complaint was filed May 8, 2020.

Mr. Vecchio asks how much lumber is stored on the property. Mr. Miller states the stacks are approximately twenty (20) feet high.

Chairman Snyder asks Mr. Miller if the three employees are full time. Mr. Miller responds "yes, they have no other occupation."

Mr. Dietrich asks Inspector Gruber if there are regulations related to outside storage and equipment. Inspector Gruber states only regulations for storage are specific to commercial use.

Mr. Himmelein comments the sawmill is a commercial operation not residential, and out of the six (6) acres, four (4) of them are utilized for sawmill operations. Mr. Miller states there is plenty of pasture on the property. Attorney Weiss invites the Board to visit the property.

In closing, Attorney Weiss states he spoke with Mr. Peeler and at the time Mr. Miller believed the operation to be agricultural. His advice to his client based on the violation was to follow Inspector Gruber's recommendation to apply for a variance asking to continue with operations as is.

He states the application is in response to the violation and in truth the operation is not agricultural, and now they are seeking the variance. Attorney Weiss states that the support of the sawmill is unsolicited. While at the property he did not see any runoff. They are presenting the application and wish the Board to consider the application, they do not want to directly call out others.

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Chairman Snyder asks how many of the structures are residential. Mr. Miller states there are two (2) houses connected to make one (1) residence.

Chairman Snyder asks if any of the sawmill operations occur within the home. Mr. Miller states that bookkeeping for the operation is conducted within the home.

Mr. Dallos asks Inspector Gruber how long he has been the zoning inspector. Inspector Gruber states he has been in the position since 2014. Mr. Dallos asks how many complaints he has received related to the sawmill. Inspector Gruber responds he has received one (1) from Mr. Himmelein. Mr. Dallos asks Inspector Gruber if he attends the Trustee meetings. Inspector Gruber states he does. Mr. Dallos asks if this issue has come up in any Trustee meetings Inspector Gruber has attended. Inspector Gruber states none that he has been present at, however he only attends the first meeting of the month. Mr. Himmelein states most of his discussions with the Trustees were off the record. He feels there is no reason the operation could not be moved to a commercial site.

Mr. Nelson asks Mr. Miller if the operation could be moved. Mr. Miller states it would take money to move it and they have poured quite a bit of concrete over the years.

Mr. Vecchio asks Mr. Miller if he built the sawmill structure. Mr. Miller states he built the sawmill as an agricultural building, but he did not obtain a permit. Mr. Vecchio asks Mr. Miller if he built the shop. Mr. Miller states "no, just built the lean-to".

Mr. Dietrich states the maximum lot coverage in R-5 district is 40%. Inspector Gruber affirms and adds that agricultural structures do not count towards the 40%. Mr. Skeen comments that the lot coverage percentage is not limited by building. Inspector Gruber interprets the lot coverage percentage to make up what zoning controls, he states agricultural structures are controlled by another organization.

With no further testimony Chairman Snyder closes the public portion of the meeting at 9:23 p.m. for private deliberation.

At 9:50 p.m. Chairman Snyder reopens the public hearing and entertains a motion.

Mr. Vecchio makes a motion to grant Melvin D. Miller relief from Article IV, Section 402.2, Section 402.3 and Section 402.4(A) for the purpose of operating a sawmill in a residential district located at 15727 Tavern Road, Burton Township.

Mr. Skeen seconds the motion. Chairman Snyder calls for discussion. Chairman Snyder asks Mr. Vecchio to include "R-5, low density" within the motion.

Mr. Vecchio amends his motion to grant Melvin D. Miller relief from Article IV, Section 402.2, Section 402.3 and Section 402.4(A) for the purpose of operating a sawmill in a R-5, low density, residential district located at 15727 Tavern Road, Burton Township.

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Mr. Skeen seconds the motion as amended. Chairman Snyder calls for discussion. With no discussion on the motion it goes to a vote.

Roll Call Vote: Tim Snyder - no, Alan Skeen - no, John Nelson - no, Frank Vecchio - no, Joe Dallos - no. None in favor. All opposed. Motion is denied.

Chairman Snyder announces that the request for variance has been denied. He states that any opposition has the ability to appeal this decision within the next thirty (30) days. With nothing further to discuss Chairman Snyder concludes this portion of the public hearing at 10:00 p.m.

Chairman Snyder entertains a motion to accept the Findings of Facts as read during private deliberation. Mr. Skeen makes a motion to accept as written.

Mr. Nelson seconds the motion. Chairman Snyder calls for discussion. With no discussion on the motion it goes to a vote.

Roll Call Vote: Tim Snyder - yes, Alan Skeen - yes, John Nelson - yes, Frank Vecchio - yes, Joe Dallos - yes. All in favor. None opposed. Motion carries.

NEXT MEETING

Next scheduled meeting will be held on Tuesday, June 8, 2021 at 7:00 p.m. for a public hearing to consider application #1526-21, submitted by Abner Hershberger Jr.

ADJOURNMENT

With no further business to discuss, Chairman Snyder entertains a motion to adjourn. Mr. Vecchio so moves. Mr. Nelson seconds the motion. Voice vote: All in favor and the meeting concludes at 10:03 p.m.



Chairman, Timothy Snyder Date

 

Secretary, Katie O'Neill Date

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ATTACHMENT A

Melvin D. Miller
15727 Tavern Road
Burton, OH 440921

*Number of trucks delivering and picking up on the property per month

Semi loads four (4) per month (pickup only) (average)

Straight truck for logs 4 to 5 per week (22 per month) (average)

Pickup Truck - trailer Only six (6) per month (average)

*Hours of operation

7:00 a.m. to 4:00 p.m.

5 days a week

* Days of operation during the week

Monday through Friday

*Exact equipment used on the property

Ban Saw

Crawler Loader with Fork

Tow Motor