

ZONING BOARD OF APPEALS MEETING

MONDAY, JULY 23, 2018

MEMBERS PRESENT: JEFF MULLIGAN, CINDY KELLEN, BOB WESTFALL,
DIANE ATTEA, SAM PRICE

OTHERS: COE BRIAN GLISE, ATTORNEY JIM CAMPBELL, MRB
ENGINEER LANCE BRABANT

VISITORS: PASTOR CLAYTON ZUBER, KARON & DICK DAVIN,
KEVIN LILLIS, ROBERT & CAROLYN MCKEE, DEBRA
SALMON, BRUCE & JULIE MAXON, JANET MANKO,
DALE TWARDOKUS (OAK OPENINGS LLC), CRAIG
WELCH (OAK OPENINGS LLC ATTORNEY), JUDY
FALZOI, NEIL SULLIVAN, ERIC HUPPERT, BARB
PHILLIPS, STAN PHILLIPS, KAREN CRATER,
BLAINE & MYRNA JACOX, KAREN SCHIEDEL,
WOLFGANG RIETZ, LORRAINE RIETZ, ED & SANDRA
CHAMBERS, JOHN SCIARABBA, PETER BRUCKEL,
KATHY COLE, THOMAS MCGOVERN, JOHN HALLERAN,
JEANNA RUTER, ANNE BRISTOL

CLERK: KIM MCDOWELL

MOTION TO OPEN THE MEETING WAS MADE BY CINDY; SECONDED BY DIANE.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- ABSENT
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 4-0.

MOTION TO APPROVE THE MINUTES FROM THE JUNE 25, 2018 MEETING AS
SUBMITTED WAS MADE BY CINDY; SECONDED BY DIANE.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- ABSENT
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 4-0.

PASTOR CLAYTON ZUBER/THE LUTHERN CHURCH OF THE EPIPHANY/TAX MAP
PARCEL#35.-1-25/6050 EAST AVON-LIMA ROAD/PUBLIC HEARING AREA
VARIANCE AND SUBDIVISION

MOTION TO OPEN THE PUBLIC HEARING WAS MADE BY CINDY; SECONDED BY
DIANE.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- ABSENT
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 4-0.

Attorney Jim Campbell notified the Board that his firm has done work for The Luthern Church of the Epiphany in the past. Pastor Clayton gave a brief overview of why the congregation wanted to subdivide the house from the Church. The Town Board has approved a resolution to change the parcel from General Business zoning to Agricultural to allow the subdivision and the Planning Board has already approved the site plan in a previous meeting. This public hearing will be for both the subdivision and an area variance for the parcel being only 1.056 acres. Visitor Judy Falzoi asked why the Board would want to approve a non-conforming use that could result in an abandon property in that area. Attorney Campbell stated you are not creating a non-conforming use you are creating a non-conforming parcel. However, this property regardless of the acreage is still marketable in the area.

MOTION TO CLOSE THE PUBLIC HEARING WAS MADE BY CINDY; SECONDED BY DIANE.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- ABSENT
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 4-0.

MOTION TO DECLARE A TYPE 2 SEQR ACTION WAS MADE BY DIANE; SECONDED BY SAM.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- ABSENT
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 4-0.

MOTION TO APPROVE THE AREA VARIANCE AND SUBDIVISION WAS MADE BY DIANE; SECONDED BY SAM.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- ABSENT
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 4-0.

DAVIN, RICHARD & KARON / TAX MAP PARCEL #35.-1-1.2/5315 AVON-EAST
AVON RD / AREA VARIANCE FORSETBACK ON ACCESSORY STRUCTURE
IN AG ZONING - PUBLIC HEARING

MOTION TO OPEN THE PUBLIC HEARING WAS MADE BY CINDY; SECONDED BY SAM.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- ABSENT
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 4-0.

Mrs. Davin gave a brief overview for requesting the variances on both sheds for her backyard. There were no comments from any Board member or visitor in attendance.

MOTION TO CLOSE THE PUBLIC HEARING WAS MADE BY CINDY; SECONDED BY DIANE.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- ABSENT
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 4-0.

MOTION TO DECLARE A TYPE 2 SEQR ACTION WAS MADE BY SAM; SECONDED BY DIANE.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- ABSENT
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 4-0.

MOTION TO APPROVE THE REAR SET BACK VARIANCE OF 20 FEET FOR SHED #1 WAS MADE BY SAM; SECONDED BY DIANE.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- ABSENT
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 4-0.

MOTION TO APPROVE THE SIDE SET BACK VARIANCE OF 6 INCHES FOR SHED #2 WAS MADE BY SAM; SECONDED BY DIANE.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- ABSENT
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 4-0.

BRUCKEL, PETER/QUICKLEE'S TRAVEL PLAZA/TAX MAP APRCEL #55.-1-4.114/2697 LAKEVILLE RD/CONSTRUCTION OF 100 FT POLE SIGN WITH 928 SQUARE FT. OF SIGNAGE

John Sciarabba and Peter Bruckel are requesting 100 foot pole sign. There is very little that is happening with this application at the meeting tonight - it will be to just declare lead agency. They feel the 100 foot sign is needed to pull diesel sales from 390 interstate. Lance stated the fall zone may need to change due to where the fall zone is. Tonight's resolution states that the ZBA is declaring intent to be lead agency.

MOTION TO DECLARE ZONING BOARD OF APPEALS AS LEAD AGENCY WAS MADE BY CINDY; SECONDED BY DIANE.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- ABSENT
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 4-0.

MOTION TO HAVE A PUBLIC HEARING FOR THE SIGN APPLICATION FOR AUGUST 27, 2018 WAS MADE BY SAM; SECONDED BY CINDY.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- ABSENT
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 4-0.

TWARDOKUS, DALE, OAK OPENINGS, LLC/TAX MAP PARCEL #26.-1-22.1/
1392 OAK OPENINGS ROAD/SPECIAL USE PERMIT - EXCAVATION
OPERATIONS PUBLIC HEARING

Mr. Twardokus and Mr. Welch gave a brief overview to the Board members and public in attendance. Mr. Welch stated that this operation will be much smaller than Hanson and Dolomite and Mr. Twardokus is willing to do what is best for everyone in the area. At the last Planning meeting the concerns that were voiced about truck traffic have been noted and they are looking into alternate routes as well as taking action on other key points addressed that night.

Jeff asked Tom McGovern and/or Kathy Cole from the Planning Board to speak briefly on the decisions of site plan approval. Tom read the key points that were of a concern to the Planning Board from a letter that he wrote to the ZBA Board members.

MOTION TO OPEN THE PUBLIC HEARING WAS MADE BY CINDY; SECONDED BY SAM.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- ABSENT
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 4-0.

Jeff made a general announcement to please state your name and address and that everyone is limited to 5 minutes. He also stated that this hearing is for public comments only unless the applicant would like to answer any questions.

Jeff stated that the Board will be discussing hours of operation and truck traffic after closing the public hearing.

The speakers voiced many concerns about the noise, dust, truck traffic, well water issues if they happen, house assessments declining, quality of life since we have Hanson down the road and now this, hours of operations. Why were they still operating when they were told to cease operations until the special use permit is granted, speed of the trucks and the route of egress is important.

These residents spoke:

Kevin Lillis, 1623 Oak Openings
Karen Crater, 1177 Oak Openings
Caroline McKee, 1665 Oak Openings
John Halleran, 1141 Oak Openings
Blaine Jacox, 1533 Oak Openings
Bob McKee, 1665 Oak Openings
Judith Falzoi, 1739 Athena Drive
Jeanna Ruter, 445 High Acres
Bruce Maxon, 1589 Oak Openings
Julie Maxon, 1589 Oak Openings
Debra Salmon, 1160 Oak Openings
Eric Huppert, 1160 Oak Openings

Jeff stated that this Board is not ready to make a decision tonight until some of these unanswered questions are researched more.

Visitor John Halleran wants to retain counsel and they would like ample time to do so before this board makes a final decision.

Attorney Jim Campbell stated that the Town of Avon had responded to the request from the NYS DEC back in February, 2016. Jim also stated that he could look into the process the NYS DEC used for this permit; however, the DEC does a very thorough job before issuing any permit.

Jeff stated that what he is hearing from everyone is more of the trucking part of this permit rather than the mining that needs to be looked at.

Lance Brabant, MRB Engineering, give an overview of how the NYS DEC fills out the EAF form during the permit process.

Attorney Jim Campbell stated that the assessment value of each property is not looked at during the permit process.

Attorney Jim Campbell stated that in the Town of Avon Code mining and excavating is a permit able use and it is not up to the ZBA to change the Code.

Attorney Jim Campbell stated that if the residents want to see the NYS DEC permit than they would need to FOIL the DEC. The Town may not have all the DEC paperwork for the permit they issued.

Lance stated conditions listed #1 on the DEC permit would be the start of getting information for the Board to make a determination.

Jeff asked Mr. Twardokus if he has in fact cease operations as instructed at the previous ZBA meeting. Mr. Welch called Jim to discuss if the product that was already excavated could be removed from the parcel and have the top soil brought in? They were given the OK by both Attorney Jim Campbell and Code Enforcement Officer Brian Glise to do that.

Mr. Twardokus again stated that they are open and willing to take action on items that are concerns of the residents on Oak Openings Road. He detailed some ways in which he can regulate some of the trucking issues expressed. Mr. Twardokus stated that even though the permit issued is for 12 trucks per hour that may only be the case for a few hours of a few days a week. This is a seasonal operation as well. Mr. Twardokus can refuse to service some trucks if they are not doing what is expected of them when entering/exiting the gravel pit. The NYS DEC does random inspections and they need to abide by the permit issued at all times.

The residents and Mr. Twardokus discussed how he would monitor/restrict/enforce the truck traffic and conditions that are made through the Special Use Permit.

Mr. Halleran asked if there is any way that they can make a road from the gravel pit straight to Route 5 & 20 to eliminate these issues.

Jeff declared the public meeting will be held open until the next meeting, Monday August 27, 2018. In the meantime, Jim and Lance will look into the items on the permit from NYS DEC.

In closing, Jeff stated that this Board has an obligation to the Town of Avon, the residents of Oak Openings and to the business owner, Mr. Twardokus for the decision on the Special Use Permit. This is a mediation issue and he doesn't see any way around the Special Use Permit not be approved based on the Town of Avon Code book.

MOTION TO CLOSE THE MEETING WAS MADE BY SAM; SECONDED BY DIANE.

JEFF MULLIGAN - AYE
CINDY KELLEN - AYE
BOB WESTFALL- ABSENT
DIANE ATTEA - AYE
SAM PRICE - AYE

CARRIED 4-0.

MEETING CLOSED.