

**XENIA TOWNSHIP BOARD OF ZONING APPEALS**  
**PUBLIC HEARING**

May 31, 2018

**THESE MINUTES ARE A SUMMARY OF THE EVENTS OF THE PUBLIC HEARING AND ARE NOT A WORD FOR WORD ACCOUNT OF THE DISCUSSIONS WHICH TOOK PLACE.**

Ed Jacobson, Chairman, called the meeting to order at 7:00 p.m. and welcomed everyone in attendance. He asked for roll call for attendance of the members.

Board of Zoning Appeals members present: Ed Jacobson, Chair; Doug Cope, Darren Jones, Janis James and Ken Penewit. Also present was Alan Stock, Xenia Township Zoning Inspector and Alice DeWine, Greene County Prosecutor's Office, legal counsel for the Township.

Mr. Jacobson went over the rules of the meeting; all cell phones must be turned off, everyone must sign in. The application will be read by Alan Stock, Zoning Inspector/Clerk, because the Board of Zoning Appeals decisions are quasi-judicial, all testimony has to be sworn. Everyone must come to the podium, state their name, address and that they are under oath. Only facts are to be given, not opinions or emotions. Minutes are being taken manually and electronically. Questions are to be directed to the Board only. The Board of Zoning Appeals will follow Roberts Rules of Order for procedures. The Chair reserves the right to limit public input. The Board of Zoning Appeals may approve in whole or in part, reject in whole or in part, or reschedule to another date. An applicant may also withdraw their request. The decision will become effective five days after date of decision. A decision by this Board is a final order under R.C. 2506.04, aggrieved individuals may appeal the decision to Common Pleas Court. The audience joined the Board in the Pledge of Allegiance. Mr. Jacobson administered the oath to the audience.

Mr. Jacobson asked Mr. Stock if the application was lawful to be heard by the Board. Mr. Stock advised that the notice had been published in the newspaper and notices had been mailed to all property owners within 500' of the property. Mr. Stock stated that a sign was placed on the applicants' property. Mr. Stock explained all the exhibits for this Public Hearing. Mr. Jacobson asked the Board members if they had read and considered the application—all answered yes; and he asked if they felt they should not be part of the proceeding due to some conflict of interest—all answered no; and if they intend to participate in the entire procedure including voting on the questions asked—all answered yes.

Mr. Jacobson asked Mr. Stock to present the proposal. Mr. Stock stated that the home owner at 1050 Union Road, Mr. Stephen Sanders requested a Variance of Use for a pole barn built on the property in 2014. Mr. Sanders stated that the purpose of the pole barn was a personal workshop. Mr. Stock advised that Mr. Sanders had requested to run a machine-style business out of the accessory structure in an E – Rural Suburban Residential District. Mr. Stock advised the property owner had a copy of what an Unnecessary Hardship requires. Mr. Stock advised that this was not an Area Variance which would be held to the Duncan Standards but the Unnecessary Hardship for a Variance of Use.

Mr. Jacobson clarified that Mr. Sanders was requesting a variance to the Zoning Resolution. He stated that the property owner was requesting the variance to operate a business on property located in an area zoned E – Rural Suburban Residential District, which is essentially a private home. Mr. Stock stated that this was correct.

Mr. Jacobson stated that the guidance of the Board of Zoning Appeals was that any Variance should be used sparingly and in order to grant such a variance the property owner must demonstrate that the situation was unique and that it would create an Unnecessary Hardship for the owner. Mr. Jacobson invited Mr. Sanders to the podium to present his case.

Mr. Sanders, 1050 Union Road, stated that he was requesting a Variance of Use to conduct a business out of his home. Mr. Sanders stated that he would like to conduct a machine shop in a facility that he built. He stated that his situation was unique because he has some physical ailments which led him to want to start a service disabled veteran small business. He stated that this would

allow him to pursue ADA contracts through the government. Mr. Sanders stated that this would allow him to maintain his current lifestyle. He asked for questions.

Mr. Jacobson asked if Mr. Sanders was aware of the zoning and that in his particular area the permitted principle uses were; a single-family dwelling, community center, parks, or a Planned Unit Development. He stated that the burden or the factors of this Board needs to take under consideration to grant a variance of this type of situation would be to show an Unnecessary Hardship. Mr. Jacobson stated that he appreciated the business plan Mr. Sanders handed out to the Board members. He stated that with this and the items that Mr. Sanders indicated in his initial application, although all well intended they do not address the Unnecessary Hardship. Mr. Sanders apologized and stated that with his initial application he had not researched the Unnecessary Hardship and was under the impression that the unnecessary hardship was going to be about the effects on the surrounding community. Mr. Sanders stated that his hardships would be the business plan and the other being the economic hardship due to his physical limitation. He stated that he thought that would be included in the economic hardship. Mr. Jacobson stated that the job of this Board was to protect the zoning plan unless there was something going on that could have been over looked when the plan was written. Mr. Jacobson added that the Board has a stewardship to the entire community that was living in the environment under these residential standards.

Mr. Jacobson asked if any of the other Board members had questions for Mr. Sanders. Mr. Jones asked what Mr. Sanders does currently. Mr. Sanders stated that he was currently employed in Springfield in fabrication as lead machinist. He stated that he had been in this industry for about sixteen years. Mr. Jones asked when he purchased the property. Mr. Sanders stated that he purchased the property in 2013. Mr. Jones asked if when Mr. Sanders purchased the property if this was part of the plan to maybe happen. Mr. Sanders stated that no, when he first purchased the property it was because it was a nice quiet neighborhood and to possibly work on cars. Mr. Sanders stated that in the last few years he had noticed more physical issues and this request was to try to mitigate those issues.

Mr. Cope asked if Mr. Sanders had the intention to start work immediately on his property and leave his current employment or would there be a transition period. Mr. Sanders stated that there would be a transition period. Mr. Sanders stated that he would need to build a customer base first. Mr. Cope stated that while looking over the business plan he saw the projected sales for 2018 would be approximately \$30,000 and the goal for 2019 would be over \$100,000. Mr. Cope stated that his concern was the large difference and stated that where \$30,000 might not negatively impact the neighborhood the increased sales would increase traffic, noise, smells and may cause an expansion of the existing building to accommodate for that. Mr. Sanders stated that there would be no expansion of the building. Mr. Cope asked Mr. Sanders to address his concern that the projected 2019 projected sales would negatively impact the neighborhood. Mr. Sanders stated that if he needed forged items those would come in already cooled. Mr. Jacobson asked how many customers it would take to make \$30,000. Mr. Sanders stated that this would probably be two to three customers. Mr. Sanders stated that this was typical for the industry for a home manufacturer in this area. He stated that he would supply parts for his current employer. He stated that his deliveries would be based out of his pick-up truck. Ms. James asked about how the raw materials would be delivered to the property. He stated that those would most likely be delivered by UPS or individual forgers and he may pick up some himself. Mrs. James asked about the size of a piece from start to finish and how large was the equipment that he would be using. Mr. Sanders stated that the largest machine he would be operating would be twelve foot by six foot and the pieces may be some may be oversized and others would fit in the palm of his hand. Ms. James asked if the work involved grinding or sparks. Mr. Sanders stated that hopefully there were no sparks. Ms. James asked about the noise this could be generated and about any byproduct. Mr. Sanders stated that byproduct was addressed in the business plan and the product coming off the original piece was very fine metal shaving which would be sealed into a drum and taken to a scrap yard. Ms. James stated that there was concern in the Township about water usage and would like to know if this business would require a significant amount of water. Mr. Sanders stated that it would not and explained the type of water usage the business would require. Mr. Jones asked if the used water was pumped into a can and then hauled somewhere. Mr. Sanders stated that he would have to haul it to an approved place.

Mr. Jacobson advised that there were two letters received from residents. He stated that one was in favor of Mr. Sanders character and the other was concerned about businesses in neighborhoods. Mr. Jacobson stated that there were some general questions from the Board members about the potential impact on the community and what would happen when things could not be handled with

the owner's own vehicle. Mr. Jacobson stated that he did not know and Mr. Sanders probably did not know but those were the concerns because if this was granted then the door has been opened.

Mr. Sanders asked about the letter from the neighbor who was concerned about further businesses and asked if another property owner wanted to start a business this person would have to go through this same process and prove a unique situation. Mr. Stock advised that this would be correct because the only way to run a business from within a residential district would be through the Board of Zoning Appeals. Mr. Jacobson stated that the Board would have to evaluate each on a case by case basis.

Mr. Jacobson asked if there were any other questions for Mr. Sanders, hearing none he asked Mr. Sanders to have a seat. Mr. Jacobson stated that he reserved the right to call on Mr. Sanders again and thanked Mr. Sanders for his presentation.

Mr. Jacobson asked for anyone in the audience who would like to speak in favor of the variance. Andrew Cooper, 1051 Union Road, stated that he was under oath. Mr. Cooper stated that the traffic on Union Road can be what a person would expect of a country road. He stated that there are UPS trucks that go by two to three times a day and did not believe this business would have an impact on traffic. He stated that when he has been home, the only noise he hears from Mr. Sanders property was when he started his lawn mower. Ms. James asked if Mr. Sanders was operating the business currently. Mr. Cooper stated that no he was not but he knew the sounds of this type of business and had been around this type of machinery his whole life. He stated that these machines were not that loud. Mr. Cooper stated that he had spoken with Mr. Sanders numerous times and was 100% in favor of him having this variance granted.

Mr. Jacobson asked if there were any other that would like to speak in favor of the request. Scott Wolfe, 1105 Lee Ann Drive, and stated he was under oath. Mr. Wolfe stated that this was tough but he believes in small business whether this was zoned or not. He stated that he had spoken with Mr. Sanders and he understands the business and it would be a quiet business and did not think it would increase traffic. He stated that his request of Mr. Sanders was to be a good neighbor for their small community. He stated that they would not want to see his property filled with trucks, vehicles, and parts. Mr. Wolfe stated that Mr. Sanders has a plan to keep everything contained within the building. Mr. Wolfe stated that he felt that Mr. Sanders would respect the neighbors as they have respected them.

Mr. Jacobson asked if there were any others who would like to speak in favor of the request, hearing none he asked if there was anyone that would like to speak opposition of the request, hearing none but no one came forward.

Mr. Jacobson asked Mr. Stock that if the Variance was approved, then the Variance then goes with the property not the individual. Mr. Stock stated that was correct. Mr. Jacobson stated that if the property were to be sold then someone could move in and run that business or a business. Mr. Stock stated that Mr. Jacobson was correct. Mr. Jones asked if the Board could do a conditional variance of use. Mr. Stock advised that a conditional use was a term that within a district there were primary principle uses, which does not require asking, but a conditional use does. Mr. Stock stated that a variance does not have a time line, so a variance could not be given for a certain amount of time, but the Board can approve it and give specific conditions; if the conditions were not continually met then the variance would become null and void. Mr. Stock advised that there was a public safety issue involved with those type of conditions those could deal with a nuisance, like lights, smell or sound. Mr. Stock stated that as a Board they can put conditions on the variance and gave examples. Mr. Cope asked if one of the conditions could be that Mr. Sanders was the owner of the business and property and if he stops running the business or sells the property then it would revert back to the original zoning. Mr. Stock stated that no the condition goes with the property because he could have child who wants to take over the property and business. Mr. Jacobson stated if the variance was approved then the variance was on the property and stated that as the company grows, Mr. Sanders may find another property with a larger workshop than he has now and he decided to move, this was something that would have to be considered by this Board. Mr. Jacobson asked Mr. Sanders to come back to the podium.

Mr. Jacobson stated that it was apparent that the Board was struggling with ways to be able to help him and stay within the Zoning Resolution. Mr. Jacobson stated that the basis of this variance was really hardship and although the impact on the community was certainly the foundation of everything. He stated that to grant a variance to run a business in a residential district was rare.

Mr. Jacobson stated that the first step was to prove the hardship and what was the hardship that was created here, then if that meets the standards, then it goes to the impact on the community. Mr. Jacobson asked Mr. Sanders what the hardship that would cause this Board to want to grant this variance. Mr. Sanders stated that he would not be able to sustain what he was doing now for long and not be able to maintain his current employment. Mr. Sanders stated that if able to work from home he would be able to set his own hours and remain a productive citizen of the township.

Mr. Jacobson asked Mr. Stock whether this particularly described hardship, which was individual, met these criteria. Mr. Stock advised that he appreciated the question, the members were appointed to this Board to make this decision. Mr. Jacobson stated that he would withdraw his question and advised Mr. Sanders could take his seat.

Ms. James stated that the language was somewhat contradictory and some seemed to be related to the property, but then it says it was important to consider the practical difficulty of the particular hardship. She stated that it gave an infinite number of variations and one was that the hardship could not be self-created. Ms. James stated that this one does not seem to be but some of the definition was about the person and some of it was about the property. She stated this had caused some confusion. Mr. Jacobson stated that the power of variance was to be sparingly exercised and only in rare instances and under exceptional circumstances with due regard to the main purposes of the Zoning Resolution to preserve the property rights of others. He stated that this was part of what this Board needed to look at tonight.

Mr. Cope stated that if granted Mr. Sanders would run the business completely out of the accessory building and asked if there would be an office in the house. Mr. Sanders stated that everything would be run out of the accessory building. Mr. Cope stated that if this variance were granted then the business would then be subject to Fire Inspections.

Mr. Stock stated that he did not believe that Mr. Sanders had shared that as the petitioner that he was under oath. Mr. Sanders stated that he was aware of that and apologized for not saying that in the beginning.

Mr. Jones asked if everyone had read the last paragraph which stated that a hardship was not just ordinary convenience or difficulty, the owner must be able to show there was an inability to make reasonable use of the land. He stated that this did not fit it was not the land it was the property. Ms. James stated that the legal definition of hardship was inability to make reasonable or basic living expense.

Mr. Wolfe stated that he had a question about conditions that could be placed because he does not want to see a hotel on the property, so if they grant this and they make conditions to just be in the accessory structure the business would have to be within the conditions or the owner would have to come back to this Board.

Mr. Stock advised that the size of the building could be a condition for this variance. Mr. Cope asked if this would also apply to the amount of noise coming from the property. Mr. Stock stated that this could also be placed as a condition of the variance.

Mr. Jacobson asked Mr. Stock if Mr. Sanders had received a copy of the rationale regarding an Unnecessary Hardship. Mr. Stock advised that when the sign was placed on his property, he spoke with the property owner, gave him the paperwork and discussed it briefly. Mr. Jacobson explained that he wanted to ensure Mr. Sanders that the Board was looking at the same paperwork that he had received to help them decide on this variance. Mr. Sanders stated that he did read over the document and had his girlfriend look it over to help decide on the plan that he presented tonight. Mr. Jacobson asked if this document would be part of the record and Mr. Stock advised that it was, as well as the final resolution and minutes would become part of the record as well. Mr. Stock advised to the Chair that it may be time to close the public comments portion of this hearing, then decide whether the Board needs to go into an executive session.

Mr. Jacobson asked if a Board member would like to make a motion or go into executive session. Ms. James stated that she would prefer an executive session. Mr. Stock asked if Mr. Jacobson could close the public portion of the hearing but before that it had been asked that he read into the record all of the exhibits.

Mr. Jacobson asked if there were any other comments regarding this request. Jay Russell, 387 Timothy Lane, he stated that he was under oath. He stated that his main concern was about the noise and he was glad to hear that it would not be loud. He stated that he also had concern for the hours of operation for this business. Mr. Russell stated that he would hate to discourage someone for wanting to be an entrepreneur, he would like to see people start businesses in the area. Mr. Russell stated that he did not think the community would see a large company come in but it should be ok for people to operate a business out of their own home. He stated that as a member of the community as long as things were not noisy and not operating really late at night then he would not have a problem with it.

Ms. James asked if they grant the variance and all these things, like traffic, the next property owner would have the right but may cause more traffic. Mr. Russell stated that he knew this was a possibility.

Mr. Jacobson clarified some of the conditions that could be placed with the variance. Mr. Wolfe stated he wanted to add to his earlier comment that he would not want a major industry there.

Mr. Jacobson asked for last call for public comments, hearing none he closed the Public comment portion of this hearing at 7:58p.m. and asked Mr. Stock to read the exhibits into the record.

Mr. Stock stated that the exhibits were as follows:

1. Agenda,
2. Township Board of Zoning Appeals Checklist,
3. Sign in sheet,
4. Notice to Property Owners of the Public Hearing,
5. Newspaper Legal Notice,
  - a. Proof of sign placement on property,
6. Cover page with background of application,
7. Unnecessary Hardship definitions,
8. Section 401 of the Xenia Township Zoning Resolution,
9. Application,
10. Variance paperwork from applicant,
11. 2014 Zoning Certificate approving the accessory structure,
12. ;Letter in favor of variance,
13. Letter in opposition of variance,
14. Business plan submitted by applicant,
15. Financial Hardship reasoning submitted by applicant.

Mr. Jacobson thanked Mr. Stock and asked for a motion to go into executive session. Mr. Stock asked who would be included in the executive session.

Mr. Jones moved to go into executive session at 8:00 p.m., Ms. James seconded the motion. Mr. Jacobson stated those included in the Executive Session would be all Board members, Mr. Stock and Ms. DeWine. All voted aye.

Mr. Jacobson stated that the Board had exited Executive Session and called the hearing back to order at 8:21 p.m. Mr. Jacobson called for a motion for this application.

Mr. Jones moved to grant the Variance as requested. Mr. Penewit seconded the motion. Mr. Jacobson asked if there were any need for further discussion amongst the Board members, hearing none he advised they would move on to a vote. Roll Call: Mr. Jones – nay, Ms. James – nay, Mr. Penewit -nay, Doug Cope – nay, Mr. Jacobson – nay. **Motion Failed 0-5.**

Ms. James stated that their guidance was that the decision be based on the zoning resolution and not on the individual. She stated that she commended Mr. Sanders on his spirit but this was why she voted no.

Mr. Cope stated that he struggled with this because he understood the physical hardship on the individual was certainly there, but because the variance was on the property and that the physical hardship was of the individual. He stated that he wished that could be taken into consideration but it unfortunately cannot and that was why he voted no.

Mr. Jacobson stated that his reasoning was the same as Mr. Cope and that the variance stays with the property and that was the task of this Board. Mr. Jacobson stated that the vote was unanimous. He asked for any further business for this Board this evening or any comments. Ms. DeWine stated that a Board member should explain how the Unnecessary Hardship was not met. Mr. Stock stated that it would help the record to have the reasons the Hardship had not been met.

Mr. Cope stated that an Unnecessary Hardship was a term commonly used in zoning law to justify the grant of a variance from the zoning regulations. The Applicant must demonstrate that under applicable zoning regulations, the applicant would be deprived of all economic use to benefit from the property in question, which deprivation must be established by competent financial evidence. He stated that he understood this to mean that it had to be all the property and that the owner would not be able to make money off the property or the property value was decreased because the owner would not be able to do this business. Mr. Cope stated that the alleged hardship could not be self-created which was proven; the request would not alter the central character of the neighborhood however this request would alter the character of the neighborhood because there would be a business in a residential neighborhood; the hardship relating to the property was unique and did not apply to a substantial portion of the neighborhood. Mr. Cope stated that the petitioner had physical limitations that would constitute a hard ship to the applicant, but it did not constitute a hardship to the property. Lastly, Mr. Cope stated that the applicant could not realize a reasonable return as shown by competent financial evidence which from the documents submitted there was no evidence that this applied at this time. He stated that he struggled with this decision because he could recognize the physical limitations that would continue to increase for the applicant. Mr. Cope stated that he could recognize that the personal hardship was potentially there but there was not a hardship on the property, so when a variance was granted it stays with the property and not to the individual and that was where the Board had to vote no. Mr. Cope stated that the Board had to vote on what was best for the community and neighborhood.

Mr. Cope made a motion to adjourn and Mr. James seconded. The Public Hearing adjourned at 8:29 p.m.

ATTEST:

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Alan D. Stock, Zoning Inspector