

BZA Craggy Gardens January 22, 2013

The Newbury Township Board of Zoning Appeals public hearing was called to order by Mr. Ray Fidel, Chairman, at 7:30 p.m. on January 22, 2013 with Board members, Bill Skomrock Sr., Chris Yaecker, Ken Blair and Lou Tomsic present. Mr. Fidel announced this was a continuance of the Jan 8, 2013 hearing when all testimony had been heard and any new testimony was closed for this hearing.

All in attendance who wished to speak for this hearing were duly sworn and asked when testifying to state their name and confirm being sworn in.

Mr. Fidel said he had been thinking about this request and personally felt that passing a Use Variance would be the best solution for Newbury Township. For 4 years Varners have been unsuccessful in selling this property and “we don’t need another vacant building along the 87 Corridor”. He said he felt the applicants were solid citizens with a 25 year proven record in their successful landscaping business.

He then asked Realtor Vic Cizek whether there were any open industrial sites in the M-1 district for a landscape business to locate in Newbury. He said there were none other than Manfredi’s property that is not zoned M-1. Mr. Fidel said the Nawrochis will improve this property, the board could add conditions but none are needed other than those already in place for landscapers in the M-1 district. The building use would be for office, supplies, equipment and exterior parking. Currently Newbury has seen a different used car dealership there every six months (10 in total) with the present tenant parking cars all over the lot in violation of his conditional use permit. This landscaping business would be a much better choice, eliminating the used car dealers who don’t follow the rules.

Mr. Fidel asked the board for comments. Mr. Skomrock Sr. said he sees nothing wrong with the applicants’ proposal. He would suggest changing the parking setback to line up with the front of the building at 65 ft. from the R-0-W. He had seconded the motion to approve the Use Variance. He said he drives by this property frequently noting that cars are parked everywhere possible if not on top of the building – in total non-compliance with zoning.

Mr. Varner confirmed that the present used car dealer lease expires in March but could be renewed if a sale is not concluded.

Mr. Yaecker said he had spoken to the trustees: Glen Quigley was committed, Jan Blair thinks the Nawrochis would represent a nice improvement – a positive conversation also discussed the Judgment Entry option. It is legal for the BZA to grant a Use Variance but adding conditions seems to vary with each judge’s opinion. It is OK to add conditions to a Conditional Use Permit.

Mr. Yaecker said he likes the Nawrochi’s plan but thinks the trustees should handle it with a Judgment Entry. Discussion continued regarding considering or ignoring enforceable conditions, other scenarios or “the buck stops here”.

Mr. Fidel said he had no intentions of having this case go to court, “get it done now”. He read the email response from the prosecutor confirming the grant-or-deny BZA options on this Use Variance plus clarifying the independent status of the BZA, the trustees and the zoning inspector. Also noted were her comments on conditions on variances vs. conditions on Conditional Use Permits.

Mr. Yaecker said granting this Use Variance could result in having businesses with no regulation vs. expediency rulings. The BZA must represent Newbury in balance with the applicant’s request.

Mr. Skomrock Sr. said trustee Bill Skomrock was never notified; he believes that neither Chris Yaecker, Mike Joyce or Susan Weiland should run the BZA hearing, nor does the NZResolution say the ZI should tell the BZA how to run their meeting. The 5 member BZA appointed board has the right to grant a Use Variance – if any mistakes are made, the trustees could sue them. He said he and others had attended zoning classes where differing judge’s opinions were cited regarding Use variances and conditions on variances. He opined that Ray Fidel had done a good job of accepting testimony,

Mike Joyce responded: the BZA acts as a judge in a quasi-legal court hearing, the ZI acts as the prosecutor. Mr. Fidel quoted the Lawyers in Columbus said the ZI should NOT attend BZA hearings.

Lou Tomsic said he sees both sides of the coin, thinks the Nawrochis have a great plan and welcome to the community. He questioned whether this would be considered spot zoning. He agreed that a Judgment Entry adds more complications, uncertainty and costs, about \$10,000 in his case. There are merits and drawbacks on both sides.

Mr. Fidel said “this Use Variance is self-sufficient and called for Ms. Hrabak to read the previously entered motion:

Ken Blair moved to grant the use variance as requested; Bill Skomrock, Sr. seconded the motion.

The roll call vote was as follows:

Ken Blair	yes
Bill Skomrock, Sr.	yes
Lou Tomsic	no
Chris Yaecker	no
Ray Fidel	yes

The request for the Use Variance has been passed.

It was noted that the justification questions had been addressed and answered in the previous hearing.

Mr. Fidel then asked the board to take up the Area Variance for the parking setback. Ms. Hrabak pointed out that the applicants had not submitted a request for an Area Variance. Discussion continued regarding the parking setback at 65 ft in line with the grand fathered building: noted by the BZA board and asked for in the given testimony and plans.

Mr. Fidel stipulated the Use Variance was passed “as requested”. Some board members were unsure whether the parking issue was included.

Mr. Fidel read to the Appellant and audience, “Within 30 days after service of the minutes granting your request, if someone wishes to challenge this decision through the court, he or she may. The challenge could reverse or negate our decision. Mr. Fidel informed the Appellant and the audience that the 30-day period commences with the Appellants’ signing receipt of the signed minutes. They will be mailed registered return receipt to the Appellant. All persons receiving notice of the hearing will receive copies of the minutes. At the time you receive your permit you must also comply with all other requirements of Newbury Township zoning”.

Mr. Fidel adjourned the BZA hearing at 8:10 p.m. As the applicants left, Board members wished them good luck.

Ray Fidel, Chairman

Chris Yaecker

Ken Blair

Lou Tomsic

Bill Skomrock, Sr.

Marge Hrabak, Sec’y BZA

Date: _____