

BERLIN TOWNSHIP BOARD OF ZONING APPEALS (BZA)

OF DELAWARE COUNTY, OHIO

HEARING

JULY 20, 2022: 7:00 PM

CALL TO ORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57

The meeting was held at the Berlin Township Hall, 3271 Cheshire Road, Delaware, Ohio 43015.

The meeting was called to order by Chairperson Don Sutton at 7:00 PM.

Pledge of Allegiance.

BZA members present: Chairperson Don Sutton, Vice-Chairperson Jason Acevedo, Brad Cook, Michelle Cook, 2nd alternate member Jessica Kuenzli (seated).

Also present: Zoning Clerk Lisa Knapp; Assistant Zoning Inspector Sherry Graham, Assistant Delaware County Prosecuting Attorney Mark Fowler.

Not present: BZA member Larry Harmon, BZA 1st alternate member Quinn Machan.

AGENDA ITEM: APPROVAL OF MINUTES

Mr. Cook made a motion to approve the minutes from the 1/4/22 BZA hearing. Mr. Acevedo seconded the motion.

Vote: Mr. Cook, yes; Acevedo, yes; Kuenzli, yes; Mrs. Cook, yes; Sutton, yes.

Mr. Acevedo made a motion to approve the minutes from the 7/8/22 BZA hearing. Mrs. Cook seconded the motion.

Vote: Acevedo, yes; Mrs. Cook, yes; Mr. Cook, yes; Kuenzli, yes; Sutton, yes.

Those wishing to speak were sworn in by Court Reporter Jennifer Koontz from Runfola Reporters.

AGENDA ITEM: BZA 22-002 DAVE & ALEX GUISTINO

Dave and Alex Guistino, 605 Cliff View Drive, appeal of the decision of the zoning inspector to approve a rear setback of 10' build for an inground swimming pool at 605 Cliff View Drive (continued from 7/8/22).

Jim Moore, with Moore Brothers Landscaping, Pools and Patios, 8718 Hayden Run Road, Plain City, Ohio 43064, and Dave and Alex Guistino, 605 Cliff View Drive, were present to provide information and answer questions.

Mr. Sutton said a new exhibit has been presented that would be marked as Exhibit 19. The exhibit comprises 15 emails to and from the zoning inspector to Alexandra Guistino and Moore Brothers.

Mr. Sutton thanked the applicants for coming back tonight and said the Board has had a chance to take a look at the emails. He asked whether there were any questions.

Mr. Acevedo said Mr. Moore corresponded with Mr. Loveless directly and he asked if when Mr. Loveless went to his property, was she there with him? MS. GUISTION said she was. Mr. Moore said that meeting was prior to the meeting between MS. GUISTION and Edwin, and after that there was a consultation and an estimate was provided by the pool installer.

Mr. Moore said he was told about the potential variance from the beginning and that Mr. Loveless had been out, so he told the Guistino that Mr. Loveless needs to get involved from the beginning so approval of a plot plan from Mr. Loveless could be obtained prior to anything.

Mr. Moore said he owns his business 50/50 with his twin brother Jessie. He apologized for not being at the last hearing because he had a long-planned trip and was out of town. He does a lot of work in Berlin Township and in Delaware. They

BERLIN TOWNSHIP BOARD OF ZONING APPEALS (BZA)

OF DELAWARE COUNTY, OHIO

HEARING

JULY 20, 2022: 7:00 PM

58 started the company when he was 18 and he is now 44. They have over 80
59 employees. They install 35-40 inground pools per year and 300-400 patio per year.

60

61 Mr. Moore said he is transparent and would like to explain everything. To stay on
62 track, he needs to dig one to two pools a week beginning on March 1 until mid-
63 October, and he usually has 7-8 pools going on at a time. In order to do that many, he
64 needs to be very proactive in ordering supplies, getting permits, etc. Typically, he
65 will pull his first 18-20 permits in the winter, and he then orders their pool packages.

66

67 Mr. Moore said this pool package was ordered in December 2021 to January 2022.
68 He will not order this pool package if he had not received approval from Berlin
69 Township and Mr. Loveless. This pool was customized specifically for the Guistinos
70 off the plot plan, including the depth, the size, the color, the liner, the steps, pumps
71 etc. All of his pools are customized. If Mr. Loveless had informed him it could not
72 be done due to a variance being requires, he never would have ordered the pool
73 supplies.

74

75 Mr. Moore said he is proactive, he tries to do the right thing in order to avoid these
76 situations, and he did everything that anyone would have told him to do. He followed
77 it to the T, and this is where they are at now.

78

79 Mr. Sutton said there was an email conversation where Mr. Loveless said they do not
80 like giving out variances unless here is a hardship, that he was sure they could make
81 this thing work without a variance, that they could talk in the morning. Mr. Sutton
82 asked what Mr. Loveless worked out at that point.

83

84 Ms. Guistino said the next email said they would speak and then Mr. Loveless came
85 out sometime in June or July. Mr. Loveless came out to meet with her after June 30,
86 and she sent a follow-up email on July 21 thanking him for coming out and looking at
87 the property. Ms. Guistino said she then had Moore Brothers come out because she
88 had been told there was no problem with the 10' setback. Mrs. Cook asked where in
89 the emails it stated that Mr. Loveless approved the location.

90

91 Mrs. Guistino said on July 27, 2021 there was a discussion and also it was stated by
92 Mr. Moore that the pool would not be done until summer 2022. There was an
93 attachment that indicated the 10' setback. In the July 28, 2021 email, Mr. Loveless
94 stated that they were fine for a zoning permit.

95

96 Mrs. Cook said that would work fine for the zoning permit, and she asked Mr. Moore
97 whether he thought that meant the permit was approved. Mr. Moore said yes,
98 because Mr. Loveless worked for the zoning department. Mrs. Cook asked whether
99 the email meant it would work for the documentation needed to consider/complete the
100 zoning permit. She asked whether it was correct that the permit was the final step
101 when it was signed off.

102

103 Mr. Moore said it was for the plot plan. He said it includes the easements, the
104 drawing, the setbacks, the water's edge to each property line, the types of walls and
105 pumps use, and it includes a stamp with a certified survey stamp. He said without all
106 of that information, no permit could be issued.

107

108 Mrs. Cook said her interpretation was that it meant that this was good documentation
109 to have for Mr. Loveless to look at and then make his decision. Mr. Moore said it
110 plainly stated that it would work for Mr. Loveless for the zoning permit.

111

112 Mr. Sutton said there is no signed zoning permit. Mr. Moore said zoning permits are
113 only good for 6 months and it would not be started for months. Mrs. Cook said they
114 could apply for a renewal after 6 months.

115

116 Mrs. Cook said the supplies for the quote were all ordered prior to submitting that
117 permit. Mr. Moore said that the emails from Mr. Loveless indicated that they had the

BERLIN TOWNSHIP BOARD OF ZONING APPEALS (BZA)

OF DELAWARE COUNTY, OHIO

HEARING

JULY 20, 2022: 7:00 PM

118 green light that they would get the permit, and that is when he ordered the supplies.
119 During covid, there were shipping issues, so the supplies needed to be ordered 4-6
120 months in advance.

121
122 Mrs. Cook asked how many of the components that were ordered were unique to this
123 build. Mr. Moore said the items are set up specifically for the particular pool
124 dynamics, including the depth, width and length. Mrs. Cook asked whether it was
125 100%, 80%, 50% etc. Mr. Moore said this one was less than 20% of the pumps they
126 use. It is a high-end pump, but was specifically ordered for that pool of that size.

127
128 Mrs. Cook said the original quote had several items. She asked whether the items on
129 the quote are individual pieces that make up the pump. Mr. Moore said they are
130 picked by the Guistinos, and he gives them different options. There are some
131 vacuums that climb the walls, the steps, etc. There are also lower-end options and
132 manual options.

133
134 Mr. Moore said items such as chemicals and salt are generic. The hose diameter is
135 1.5 or 2", and the Guistinos is 1.5". Very few items are "across the board" for pools
136 and much of it is customized. The filter uses media glass instead of sand. He builds
137 pools from \$70,000 to 500,000 so there is a lot of customization.

138
139 Mrs. Cook asked what percentage of the quote is unique to that build. Mr. Moore
140 said about 92% is for that specific pool.

141
142 Mr. Acevedo said the emails initially mentioned the variance, ending with the email
143 on July 21, 2021, where Mr. Loveless said it would work fine for the zoning permit.
144 He asked what Mr. Moore's impression relative to the zoning variance at that point.
145 Mr. Moore said his understanding was that no variance was needed because he said
146 that would work for a permit. He knew there had been prior discussion between Mr.
147 Loveless and the Guistinos, so he assumed it was fine.

148
149 Mrs. Guistino said in the June 29, 2021, email, Mr. Loveless states, "They don't like
150 handing out variances unless there is a hardship. I'm sure we can make things work
151 without a variance. We can meet and talk at length." Mrs. Guistino said this
152 situation occurred because there was another similar situation in her neighborhood.

153
154 Mr. Sutton asked whether Mr. Loveless ever indicated what he was going to do to get
155 around the variance. Mrs. Guistino said if she is hearing from the zoning inspector
156 that she does not need to go through the variance process and that they can make
157 things work without that, she is taking his word for that.

158
159 Mr. Moore said Mr. Loveless is the resource and if he cannot go the resource that
160 Berlin Township has hire for the right answers, who would he go to?

161
162 Mr. Sutton said Mr. Moore certainly is familiar with setbacks and he knows one
163 doesn't build in a setback. Mr. Moore said he doesn't, unless a zoning inspector says
164 it meets the requirement. He said last year in Westerville a similar situation happened
165 where the developer had a 25' easement and told the homeowner and him that if they
166 go over 1" into it, they would approve it.

167
168 Mr. Sutton asked how much a zoning permit was for a pool. Ms. Graham said it was
169 \$100. Mr. Sutton said if it was him, he would have paid the \$100 if he was ordering a
170 \$60,000 pool. Ms. Graham said that during her time here, she has yet to see
171 somebody update/reapply for a permit. Mr. Moore said the permits are expensive and
172 he is not aware of anybody who applies for a permit twice.

173
174 Mr. Sutton said the BZA is in this situation now where they are being asked to
175 consider a variance because the homeowner has already entered into a contract and
176 ordered equipment, and all of that happened without them getting a \$100 zoning
177 permit. Mr. Moore said the manhours and labor that goes into that is a lot more than

BERLIN TOWNSHIP BOARD OF ZONING APPEALS (BZA)

OF DELAWARE COUNTY, OHIO

HEARING

JULY 20, 2022: 7:00 PM

178 that cost. He doesn't typically include the cost for two permits when he provides
179 estimates.

180

181 Ms. Guistino said she thought she had done the right legwork by having the zoning
182 inspector come out and give his written work. Mr. Sutton said this is a very
183 challenging situation that he wishes nobody was in. The emails show Mr. Loveless
184 gave them information that he should not have been saying. He is the zoning
185 inspector, but does not have the authority to change the setbacks on a project like this.
186 Mr. Loveless should have stated he was applying for something that will exceed the
187 setbacks, and that they would need to request a variance.

188

189 Mrs. Cook said the emails indicate that the applicants had stated that they had spoken
190 to the prior zoning inspector Chet Heid, and they were aware of the variance that
191 would be needed. Ms. Guistino said Mr. Heid had stated they could build all the way
192 up to the edge of the property line, and he was wrong as well. They have been told so
193 many different things by so many different people within Berlin Township. She took
194 the information she had and tried to work with the township.

195

196 Mrs. Cook said it was stated that the applicants were aware a variance was needed
197 and that they actually changed lots because they had plans for a pool in the future.
198 Ms. Guistino said she spoke with the builder, their attorney, and Mr. Heid and they all
199 said they were fine to build a pool here.

200

201 Ms. Guistino said that when Mr. Heid retired and was replaced by DL, he informed
202 them that was not correct, that there was a 25' build line and that is up to
203 interpretation because some people think it's the house and others think it's the
204 structure. She just wants to know, "What is it?"

205

206 There was a brief recess so the BZA could meet with legal counsel Assistant
207 Prosecutor Mark Fowler. The hearing was returned to session.

208

209 Mr. Sutton thanked the applicants for coming back this evening. He said this is a
210 challenging situation. He has been on this board for about 15 years and has never
211 seen a case like this. This is a substantial variance. The Board does not look at what
212 is behind the property, etc. It is the encroachment into the setback of 10'.

213

214 Brian Barnhart, 466 Cliff View Drive, asked what the definition of substantial is. Mr.
215 Sutton said it would be how much of a variance was being requested. Mr. Barnhart
216 said he did not want his opinion, just the definition of the word. Mr. Sutton said he is
217 following the zoning resolution. Mr. Barnhart asked where the zoning resolution
218 indicates the definition of substantial.

219

220 Mr. Sutton said building 10' into the 25' required setback is substantial. Mr. Barnhart
221 said that was his opinion. Mr. Guistino said he was given permission on July 29,
222 2021, by the zoning inspector, who they hired. Mr. Sutton said the BZA did not hire
223 the zoning inspector; the trustees hire the zoning inspector. This is the BZA and they
224 do not work with the zoning inspector; they are just here to hear this case.

225

226 Mr. Sutton said the BZA is not able to set a precedence tonight. This is a unique
227 situation where, in the Board's opinion, the applicant was told things by the zoning
228 inspector that should not have been told to them. The zoning inspector should have
229 told the applicant they needed to apply for a variance. Had they done that, the BZA
230 would have deemed the variance as being substantial.

231

232 Mr. Sutton said also must be considered are the value of the property without
233 approval; the Guistinos would still have their home and can still use it for their
234 residence. The Board does not consider that there is nothing behind the home or that
235 the setback is just a line. The Board considers what the zoning resolution states, and
236 they follow that.

237

BERLIN TOWNSHIP BOARD OF ZONING APPEALS (BZA)

OF DELAWARE COUNTY, OHIO

HEARING

JULY 20, 2022: 7:00 PM

238 Mrs. Cook said the zoning regulations were set up by the township and were based
239 upon feedback from the Berlin Township citizens. Different areas have different
240 setback requirements. It was updated 2-3 years ago and feedback from residents was
241 requested regarding how to make the rules usable today. It is also in the value and
242 what is set up for the township. The township rules are different than city codes,
243 different than those for Orange Township, and they differ from subdivisions to rural
244 areas. The zoning resolution attempts to keep what the residents of Berlin Township
245 would like in the community.

246

247 Ms. Graham said the setbacks for this development were requested when the
248 developer created their plan and it was approved by the zoning commission and the
249 trustees.

250

251 Mr. Sutton said he recommends that in the future in situations like this when
252 equipment is to be ordered, that the permit be obtained in the advance.

253

254 Mr. Sutton said the request is substantial and the BZA is not looking to set a
255 precedence with this decision for future situations like this. Such situations would be
256 difficult to approve under situations that did not involve conversations that the
257 applicants had with the zoning inspector.

258

RESOLUTION 2022.07.20.#A: APPROVE BZA 22-002

259 Mr. Acevedo made a motion to approve BZA 22-002 based on the hardship
260 difficulties presented in the case as a result of communications of the zoning
261 inspector relative to the permit for the pool. The requested variance will be for the
262 pool as shown on the plan submitted with the application. Mr. Kuenzli seconded the
263 motion.

264

265 Vote: Acevedo, yes; Kuenzli, yes; Mr. Cook, yes; Mrs. Cook, yes; Sutton, yes.

266

267 Motion carried, application was approved.

268

269 Mr. Sutton apologized for the issues that were had with the prior zoning inspector and
270 he hopes they will not have to deal with that in the future.

271

272 Mr. Moore thanked the BZA for their time. He said the project will be beautiful.

273

274 There was no further business. Meeting was adjourned.

275

276

277

278

Don Sutton, Chairperson

279

280

281

282

Jason Acevedo, Vice-Chairperson

283

284

285

286

Bradley Cook, member

287

288

289

290

Michelle Cook, member

291

292

293

294

Larry Harmon, member

295

BERLIN TOWNSHIP BOARD OF ZONING APPEALS (BZA)

OF DELAWARE COUNTY, OHIO

HEARING

JULY 20, 2022: 7:00 PM

296

297

298

299

300

301

302

303

304

305

306

Quinn Machan, 1st alternate member

Jessica Kuenzli, 2nd alternate member

Attest: _____
Berlin Township Zoning Clerk Lisa F. Knapp