

XENIA TOWNSHIP BOARD OF ZONING APPEALS
PUBLIC HEARING

November 29, 2023

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.

Darren Jones, Vice Chairman, called the meeting to order at 6:55 p.m. and welcomed the people in attendance. He asked for roll call for attendance of the members.

Board of Zoning Appeals members present: Darren Jones, Vice Chair, Janis James, Brian Secor, and Aidan Kolbe. Also, present was Alan Stock, Xenia Township Zoning Inspector, and Ashley Caldwell Greene County Prosecutor's Office, legal counsel for the Township. Absent: Nathan Anthony, Chair.

Mr. Jones went over the rules of the meeting; all cell phones must be turned off, everyone must sign in and fill out an intent to speak form, if you choose to speak. 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 and state they are under oath. Only facts are to be given, not opinions or emotions. Minutes are being taken 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. Jones administered the oath to the audience.

Mr. Jones asked Mr. Stock if the application was lawful to be heard by the Board. Mr. Stock indicated yes, they had, and 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. Jones 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. Jones asked Mr. Stock to present the proposal. Mr. Stock reviewed all the documents and Exhibits A-I.

Exhibit A: Application for Board of Zoning Appeals

Exhibit B: Proof of Public notices (Letter to Neighbors, Newspaper Notice, Sign in Yard, Website, Procedure Check List)
Exhibit C: Life Safety Reports
Exhibit D: Staff Report
Exhibit E: ORC
Exhibit F: Haunted Houses; Department of Commerce, State Fire Marshal, Building Regulations, Fire Code
Exhibit G: Fire Safety at Agritourism Facilities
Exhibit H: Agenda
Exhibit I: Public Comment

Mr. Secor, BZA, Moved to go into Executive Session to discuss clarifying questions. Mr. Jones called for a second, Ms. Kolbe seconded the motion. Mr. Jones called for a roll call, all voted AYE. All BZA Board members, Alan Stock, Zoning Inspector, and Ashley Caldwell, Greene County Prosecutor's Office, legal counsel for the Township were in the Executive Session. Executive Session 7:25 PM to 7:45 PM.

Bryan & Claudia Williams, owner 2187 State Route 235, Parcel ID # M36000100060001900 – Conditional Use in the (A) Agricultural District for Agritourism

Claudia William, owner 2187 State Route 235, Under Oath, stated that they partnered with Mike Wherry to open a haunted house. She went on to state that this would promote the farm, farm activities and the farmers market to generate income to support these activities. She further stated that the pumpkins, you pick corn, and haunted house will help with sustaining the farm.

Bryan William, owner 2187 State Route 235, Under Oath, stated that the vendors at their farmers market were interested in opening during the haunted house hours, and they were considering to get food truck also.

Mr. Jones, BZA, Vice Chair, asked for Board questions.

Ms. Kolbe, BZA, asked what the business arrangement is between them and Mr. Wherry.

Claudia William, owner 2187 State Route 235, Under Oath, stated that Mr. Wherry is the creative talent.

Ms. Kolbe, BZA, asked if there was a rental agreement, or a joint venture agreement.

Claudia William, owner 2187 State Route 235, Under Oath, stated that it is not a business venture, it was only to promote the farm.

Ms. Kolbe, BZA, asked if Mr. Wherry was doing the haunted house for free.

Claudia William, owner 2187 State Route 235, Under Oath, stated that Mr. Wherry would be reimbursed for his expenses for the prompts and actors.

Mr. Secor, BZA, asked if this was not a partnership, no business arrangement, and no contract, what would happen if there was a profit.

Claudia William, owner 2187 State Route 235, Under Oath, stated that if there was a profit, they would share them, but that Mr. Wherry would be reimbursed for his time and expenses.

Mr. Secor, BZA, asked who holds the liability coverage.

Claudia William, owner 2187 State Route 235, Under Oath, stated that they did.

Ms. Kolbe, BZA, asked if they had a contract with Mr. Wherry.

Claudia William, owner 2187 State Route 235, Under Oath, stated that they did not.

Ms. Kolbe, BZA, asked if when paid, Mr. Wherry would only receive an undetermined amount of money.

Claudia William, owner 2187 State Route 235, Under Oath, stated that was correct.

Ms. Kolbe, BZA, asked who physically lives in the house.

Claudia William, owner 2187 State Route 235, Under Oath, stated that the house is empty because they took everything out to open the Haunted House.

Ms. Kolbe, BZA, asked who was living in the house prior to this. She went on to ask who was physically sleeping in the house.

Claudia William, owner 2187 State Route 235, Under Oath, stated that she and her husband did.

Ms. Kolbe, BZA, asked where they were living now.

Claudia William, owner 2187 State Route 235, Under Oath, stated that she and her husband are staying in the other house on the back of the property.

Ms. Kolbe, BZA, asked if they were moving back into the house.

Claudia William, owner 2187 State Route 235, Under Oath, stated that they were doing repairs first.

Mr. Secor, BZA, asked when they moved out of the house.

Bryan William, owner 2187 State Route 235, Under Oath, stated that they never moved out, that this is still their primary residence and has never stopped being their primary residence.

Ms. Kolbe, BZA, asked when they stopped sleeping in the house on a regular basis, the definition of primary residence.

Claudia William, owner 2187 State Route 235, Under Oath, stated that they stopped in the summer when they started doing bathroom renovations.

Ms. Kolbe, BZA, stated that for her understanding, that had the Williams received a Conditional Use for Rural Entertainment, they would no longer be under Agritourism for CAUV. Ms. Kolbe went on to state that keeping the CAUV exemption was mentioned multiple times in the initial application. Ms. Kolbe asked for clarification as to why they want Agritourism over Rural Entertainment.

Claudia William, owner 2187 State Route 235, Under Oath, stated that they did not feel they qualify for Rural Entertainment because they wouldn't be able to require payment for entrance into the Haunted House.

Ms. Kolbe, BZA, asked had they been approved for Rural Entertainment, would it effect the eligibility for CAUV exemption.

Claudia William, owner 2187 State Route 235, Under Oath, stated that she did not believe it would affect it. She went on to say that they do not want Rural Entertainment, they want Agritourism for hay rides and corn mazes.

Ms. James, BZA, asked if Rural Entertainment could be for the Haunted House and the Agritourism for the farmers market and you pick produce.

Claudia William, owner 2187 State Route 235, Under Oath, stated that Haunted House is included in Agritourism, just like weddings. She went on to state that they want to incorporate a Haunted House into their Agritourism scheme.

Ms. James, BZA, asked if when they started to advertise for the Haunted House, if they had received inspections from Fire and Building Regulations.

Claudia William, owner 2187 State Route 235, Under Oath, stated that they did not get inspections, that they jumped the gun. She went on to state that they are working with an electrician now to get the process going.

Ms. James, BZA, asked if they are working on getting the correct permits.

Claudia William, owner 2187 State Route 235, Under Oath, stated that they are not, that they are waiting to be approved so they are not wasting time or money if not approved.

Bryan William, owner 2187 State Route 235, Under Oath, stated that, from their interpretation, Rural Entertainment is a lot more restrictive, and they are a better fit with Agritourism.

Ms. Kolbe, BZA, asked what they felt they would be restricted on.

Claudia William, owner 2187 State Route 235, Under Oath, stated that they couldn't charge, had to be a private event, and there is limitation on operating times.

Ms. James, BZA, stated that you can invite the public to a private event.

Mr. Secor, BZA, asked Ashley Caldwell to define private event.

Ashley Caldwell, Greene County Prosecutor's Office, legal counsel for the Township, stated that private means that you control access to the property, whether charging or not, that it is open to the general public, and that the owner can decide who comes and goes, and that public means that anyone can come and go as they please. Ms. Caldwell further stated that this is general definition and not legal advice.

Mr. Secor, BZA, explained that private means that the person who owns the property, controls access to the event.

Ms. Kolbe, BZA, explained that public access is like watching fireworks, anyone is allowed to be there. Ms. Kolbe further stated that this could have been clarified by a conversation with the Zoning Inspector.

Mr. Secor, BZA, asked if the Williams understood that they can charge with Rural Entertainment.

Ms. James, BZA, added inviting the public also.

Claudia William, owner 2187 State Route 235, Under Oath, stated that she did understand.

Ms. James, BZA, asked if they would consider reapplying for Rural Entertainment.

Claudia William, owner 2187 State Route 235, Under Oath, stated no, that they do not feel it is in their scheme for Agritourism.

Ms. Kolbe, BZA, asked what the financial relationship was with the people involved in the farmers market.

Claudia William, owner 2187 State Route 235, Under Oath, stated they pay a fee, but if they did not make money, they do not charge a fee. She went on to say that they are trying to promote the community, and that everyone is happy that they are doing something with the property.

Ms. Kolbe, BZA, asked if the Williams made more money selling their own produce than the participants at the market selling their products.

Claudia William, owner 2187 State Route 235, Under Oath, stated that they probably did not and that they barely made it and that is why they want to incorporate the haunted house to attract more people to the property.

Mr. Secor, BZA, asked what CAUV stood for.

Bryan William, owner 2187 State Route 235, Under Oath, answered Current Agricultural Value.

Mr. Secor, BZA, asked what the \$2,500 minimum was about.

Claudia William, owner 2187 State Route 235, Under Oath, answered that they have to sell at least \$2,500 a year of farm products.

Mr. Secor, BZA, asked if that was stuff grown on the property.

Claudia William, owner 2187 State Route 235, Under Oath, answered yes, along with the tenant farmer.

Mr. Secor, BZA, asked if they rented that farm land.

Claudia William, owner 2187 State Route 235, Under Oath, answered yes.

Mr. Stock, Zoning Inspector, stated that for CAUV qualifications, owners must show, for three (3) years, a profit or loss of \$2,500, and have a minimum of 10 acres. He went on to state that the Williams are compliant according to the Greene County Auditor.

Ms. Kolbe, BZA, asked if they had asked the Auditor if they would still qualify for CAUV if they had a Conditional Use for Rural Entertainment.

Claudia William, owner 2187 State Route 235, Under Oath, answered no.

Ms. Kolbe, BZA, asked how many acres they rent out.

Claudia William, owner 2187 State Route 235, Under Oath, answered around 20 or so.

Ms. Kolbe, BZA, asked if they had farm animals.

Claudia William, owner 2187 State Route 235, Under Oath, answered only chickens.

Ms. Kolbe, BZA, asked if they sold eggs.

Claudia William, owner 2187 State Route 235, Under Oath, answered no, that they only sell corn and pumpkins now because their eggs are tiny.

Mr. Secor, BZA, stated that to classify as Agritourism, there has to be Agricultural activities. He then asked if the Williams sold corn and pumpkins.

Claudia William, owner 2187 State Route 235, Under Oath, answered that the people entering the Haunted House will need to buy a pumpkin and purchase a picture. She went on to stat that she told this to Mr. Stock and re replied that we are charging people, and I sated only for a pumpkin.

Mr. Stock, Zoning Inspector, stated that this was the first time he had heard that they would be selling pumpkins, that he was only told that a picture would have to be purchased for entrance.

Ms. Kolbe, BZA, stated a case in Miamisburg that someone had erected a barn, without permitting, and was holding wedding. The owners received a cease and desist. The owners then put up a vineyard and said to have a wedding, the patrons would need to purchase a bottle of wine. She went on to say that the establishment is no longer open. Ms. Kolbe went on to ask what the Williams are currently doing with the trees.

Claudia William, owner 2187 State Route 235, Under Oath, stated that they had received a grant to remove the honeysuckle trees to put in more crops.

Ms. Kolbe, BZA, asked if the work was being contracted out.

Claudia William, owner 2187 State Route 235, Under Oath, stated that the tenant farmer is doing the work. She further stated that they received a grant to erect a greenhouse for winter crops.

Ms. Kolbe, BZA, asked what percentage of their income is from the venue rental on the other property and if she had zoning for that venue.

Claudia William, owner 2187 State Route 235, Under Oath, stated that it is zoned for a business.

Ms. Kolbe, BZA, asked if the parcel is not Agricultural and not under CAUV.

Claudia William, owner 2187 State Route 235, Under Oath, stated that is correct.

Ms. Kolbe, BZA, stated that she saw where the Williams would be offering weddings in connection with the Haunted House.

Claudia William, owner 2187 State Route 235, Under Oath, stated that she is an Officiant and that she felt that would be another way to bring in some income.

Ms. Kolbe, BZA, asked what percentage of their income is from farming.

Claudia William, owner 2187 State Route 235, Under Oath, stated that they are just staring and are in the negative.

Mr. Jones, BZA, Vice Chair, asked if asking income questions was appropriate.

Mr. Stock, Zoning Inspector, stated that the Auditor has granted them CAUV, so they have gained or lost \$2,500 for three (3) years. He further stated that what they spend their money on is private.

Ms. Kolbe, BZA, asked Ms. Caldwell asked if farm products sold greater than 50% would be included in income if also renting a table.

Ashley Caldwell, Greene County Prosecutor's Office, legal counsel for the Township, stated that ORC stipulates on an Agritourism Farm Market over 50% of own crop.

Ms. Kolbe, BZA, asked the history of the property.

Claudia William, owner 2187 State Route 235, Under Oath, stated that the Lane family has owned the property since the 1800's.

Bryan William, owner 2187 State Route 235, Under Oath, stated that they plan to bring back the orchard and to revitalize the farm.

Mr. Secor, BZA, asked how a Haunted House fit into Agritourism.

Claudia William, owner 2187 State Route 235, Under Oath, stated that OSU and the Farm Bureau said that it is part of Agritourism.

Mr. Secor, BZA, asked how long they have been on the property.

Claudia William, owner 2187 State Route 235, Under Oath, stated that they purchased the property June 2020.

Mr. Secor, BZA, asked if they had spoken with Fire or Building Regulations.

Claudia William, owner 2187 State Route 235, Under Oath, stated that they have talked with Fire but not Building Regulations. She went on to state that she knows what needs to be done but does not want to spend the money if not approved for the Conditional Use.

Bryan William, owner 2187 State Route 235, Under Oath, stated that Fire and Building Regulations would do inspections before opening.

Mr. Secor, BZA, stated that a residence is not an Agricultural activity, and that in Zoning a residence is occupied by people and not occupied by people and used as a business venture. Mr. Secor asked Mr. Stock if there can be a split use on properties.

Mr. Stock, Zoning Inspector, stated that you can have a home occupation, but that you can only use 25% of your home for the business. He went on to state that only in the Agricultural District, you can use other building on the property as a business.

Mr. Secor, BZA, asked Mr. Stock how moving in and out of a residence effects Zoning.

Mr. Stock, Zoning Inspector, stated that Zoning did not have a provision for that.

Ms. Kolbe, BZA, asked Mr. Stock if the Williams received Rural Entertainment, if their house would cease to be the primary residence.

Mr. Stock, Zoning Inspector, stated that Rural Entertainment wants people to do things on the property without having the strict terms of Agritourism. He went on to state that he has not seen anything from Ohio State stating that a Haunted House is an Agritourism activity, but they would not need to prove that if they had Rural Entertainment because it has less rules than Agritourism.

Mr. Jones, BZA, Vice Chair, asked the Williams why they felt Agritourism fit their needs better than Rural Entertainment.

Claudia William, owner 2187 State Route 235, Under Oath, stated that there are not any limitations on times or days that they can be open and that the event can be private.

Mr. Stock, Zoning Inspector, read the Zoning Definition for Rural Entertainment and stated that he advised the Williams that a Haunted House would be a perfect fit for Rural Entertainment.

Claudia William, owner 2187 State Route 235, Under Oath, stated that would be limitations though.

Mr. Jones, BZA, Vice Chair, stated that there would not be as many hoops to jump through. He further stated that they would be held to the same inspections, but it would be easier to prove with Rural Entertainment.

Ms. James, BZA, stated that with Rural Entertainment they would not have to prove a Haunted House was an Agricultural activity.

Claudia William, owner 2187 State Route 235, Under Oath, stated that a Haunted House is an Agricultural activity.

Mr. Secor, BZA, stated that the Board has to follow very strict parameters based on Zoning, ORC, and laws to qualify for Agritourism. He went on to state that Rural Entertainment would be easier to qualify for. He further stated that selling a pumpkin to gain entrance into the Haunted House does not make it an Agricultural activity.

Ms. James, BZA, stated that they would not lose their Agritourism for they farmers market if they received Rural Entertainment.

Mr. Jones, BZA, Vice Chair, opened Public Comments at 8:50 PM.

Mr. Jones, BZA, Vice Chair, asked for comments against.

There were none.

Mr. Jones, BZA, Vice Chair, asked for comments in favor.

Albert Stroop, 131 Robert LN, Xenia, Ohio, Under Oath, stated that he did not care about the legality of the matter. He stated that he has property that borders the Williams property and that he has worked on the farm and was married on the property. He went on to state that the former owners let the property go and the Williams have cleaned up the property and are trying to restore it. He then stated that a Haunted House would give them the resources needed to continue to improve the property. He further stated that he wants to see the Williams succeed.

Mike Wherry, 1109 Spegele CT, Xenia, Ohio, Under Oath, stated that he is an artist and history buff so when the Williams pitched their idea, I said let's do it. He then stated that he got excited about the Haunted House and made a post on Facebook prematurely. Mr. Wherry then stated that he does a small scale at his residence. He then stated that he was thankful to Mr. Stock for pointing them in the direction of Rural Entertainment because he wants the Williams to succeed and the income would help to bring back the property to its original beauty.

Bill Coessl, 427 Ludlow RD, Xenia, Ohio, Under Oath, stated that he is a neighbor and has been involved with the farm all season. He went on to state that he is an electrician and will help with the electric needs of the house. He went on to state that the Williams are good neighbors and are taking care of the property to get it back to the original beauty.

Ms. James, BZA, stated that she saw dreams and visions of the Williams to bring people to the community. She went on to say that there are issues that she would love to find a way to make the Haunted House a go, but doesn't know how to.

Mr. Jones, BZA, Vice Chair, asked how the Williams would go about changing their request to Rural Entertainment.

Mr. Stock, Zoning Inspector, stated that the Board could only vote on Agritourism tonight. He went on to say that the board could vote yes, with or without conditions, or no. he went on to state that if the Board votes no, they can not come back for one (1) year to ask for Agritourism, but they could withdraw their request and reapply for Rural Entertainment at any time. Mr. Stock further stated that no matter what they request, life safety standards will need to be met.

Ms. Kolbe, BZA, asked if the life safety work would need to be completed before reapplying.

Mr. Stock, Zoning Inspector, stated that the work does not need to be completed, but they will need to have a business plan and a plan for the life safety issues. He further stated that they will require a yearly inspection from Zoning, Fire and Building Regulations before opening.

Mr. Secor, BZA, reiterated that the William could not reapply for one (1) year if they vote no for Agritourism, but could come back at any time for Rural Entertainment.

Mr. Jones, BZA, Vice Chair, asked what the benefit would be if they were to withdraw.

Mr. Stock, Zoning Inspector, stated that he was only giving options.

Claudia William, owner 2187 State Route 235, Under Oath, stated that it would be the same inspections for both Agritourism and Rural Entertainment, but Rural Entertainment has more restrictions. She further asked why the Board would not just approve Agritourism.

Ms. James, BZA, stated that there is not an Agricultural connection with a Haunted House. She went on to say that the event would be in a residence and not a building used only for Agricultural purposes. Ms. James further stated that Agritourism has a higher bar than Rural Entertainment even though the life safety is the same for both.

Claudia William, owner 2187 State Route 235, Under Oath, stated that the limitations with the Rural Entertainment was the biggest issue, and that since it was explained, she and her husband would like to withdraw the request for a Conditional Use for Agritourism.

Mr. Jones, BZA, Vice Chair, closed public comment at 9:10 PM.

Mr. Jones, BZA, Vice Chair, accepted the withdraw of the application for Agritourism.

Request for Conditional Use for Agritourism in the Agricultural District has been WITHDRAWN.

There being no further business, the Board adjourned.

Meeting Adjourned 9:10 P.M.

ATTEST:

Alan D. Stock, Zoning Inspector