

**CAUCUS PRIOR TO STRONGSVILLE BOARD OF ZONING &  
BUILDING CODE APPEALS**

**Meeting of  
February 10, 2021  
7:30 p.m.**

Board of Appeals Members Present: Kenneth Evans, David Houlé, Richard Baldin, Dustin Hayden  
Administration: Assistant Law Director Daniel J. Kolick  
Assistant Building Commissioner: Brian Roenigk  
Recording Secretary: Kathy Zamrzla

The Board members discussed the following:

- 1) **JOSEPH AND REBECCA EMERY, OWNERS/American Construction Group, Representative**
  - a) Requesting an 8' variance from Zoning Code Section 1252.16 (e), which requires a Concrete Patio maintain the same Side Yard Setback as the main dwelling and where the applicant is proposing a 492 SF Concrete Patio encroaching 8' beyond the main dwelling into the Side Yard Setback;
  - b) Requesting a 7.5' Rear Yard Setback variance from Zoning Code Section 1252.29 (b) (1), which requires a 15' Rear Yard Setback and where a 7.5' Rear Yard Setback is proposed in order to install a 288 SF In-Ground Swimming Pool; property located at 16960 Woodshire Drive, PPN 393-34-008, zoned R1-75.

**Mr. Evans stated that several letters from neighbors were delivered to the Board this evening. Mr. Baldin stated that it's a small yard. Mr. Hayden stated he doesn't have concerns regarding this variance. Mr. Evans stated he would have liked to see the deck moved but that the snow on the ground can alter ones view of the situation.**

2) **SECURE INDOOR STORAGE/KEVIN MCNULTY, OWNER**

An appeal to the Board of Zoning and Building Code Appeals regarding the decision of the Building Commissioner pertaining to Code Enforcement ID#20-01127 dated December 16, 2020, and Notice of Violation and Notice to Vacate dated January 8, 2021; property located at 12878 Pearl Road, PPN 392-30-001.

**Mr. Kolick stated that the Building Commissioner determined that two uses were in the building without applying for a Certificate of Occupancy and building permits. One of the occupants applied for an occupancy and the other, which is a church, occupied the space without a Certificate of Occupancy and is in violation of the Zoning Code because the church is an Assembly Use and the building is zoned Commercial Service. Mr. Kolick stated that the Religious Land Use and Institutionalized Persons Act aka RLUIPA will be discussed, and the Board would be making determinations on this and the other points mentioned regarding**

**the Zoning District. Mr. Evans stated that the Board received photographs of the property in question and they will be reviewing this appeal based on safety issues.**

**The Board reviewed the minutes for the meeting of December 23, 2020 and January 13, 2021 and found no changes to be made.**

**Mr. Rusnov will be excused for the meeting tonight.**

**STRONGSVILLE BOARD OF ZONING & BUILDING CODE APPEALS  
MINUTES OF MEETING  
February 10, 2021**

The meeting was called to order at 8:00 PM by the Chairman, Mr. Evans.

Present: Mr. Evans  
Mr. Houlé  
Mr. Baldin  
Mr. Hayden

Also Present: Mr. Kolick, Assistant Law Director  
Mr. Roenigk, Assistant Building Commissioner  
Ms. Zamrzla, Recording Secretary

Mr. Evans – Good evening ladies and gentlemen. I would like to call this February 10, 2021 meeting of the Strongsville Board of Zoning and Building Code Appeals to order. May we have a roll call please?

ROLL CALL:	MR. EVANS	PRESENT
	MR. HOULÉ	PRESENT
	MR. HAYDEN	PRESENT
	MR. BALDIN	PRESENT
	MR. RUSNOV	ABSENT

Mr. Houlé – Mr. Chairman, I make a motion to excuse Mr. Rusnov for just cause.

Mr. Baldin – Second.

Mr. Evans – Thank you, Mr. Houlé, for the motion and Mr. Baldin for the second. May we have a roll call please?

ROLL CALL:	ALL AYES:	MOTION GRANTED
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Mr. Evans - I hereby certify that this meeting has been posted in accordance with Chapter 208 of the Codified Ordinances of the City of Strongsville. We have minutes before us for the December 23, 2020 and January 13, 2021 meeting. We discussed those in caucus. Unless there are changes or comments we will take those minutes as they were given to us and approve them for the record. At this time, we would like to swear in one of our Board members to continue a new term. Mr. Hayden, if you'll come to the podium and we will swear you in for your next term of office.

Mr. Kolick stated the oath to Mr. Hayden.

Mr. Evans – For all of you in the audience you may be wondering why we do this; all of the Board members are citizen residents of the City. We are not employees of the City or anything so we serve on this Board as residents of the City. The Oath of Office is very important so we discharge our duties in an appropriate manner. We all get to go through this as our terms run various lengths. If you are here this evening and wish to speak as a presenter or wish to comment during one of the Public Hearings, we now ask you to stand and the Assistant Law Director will swear you in as well as our representative from the Building Department and our Secretary.

Mr. Kolick stated the oath to those standing.

1) **JOSEPH AND REBECCA EMERY, OWNERS/American Construction Group, Representative**

- a) Requesting an 8’ variance from Zoning Code Section 1252.16 (e), which requires a Concrete Patio maintain the same Side Yard Setback as the main dwelling and where the applicant is proposing a 492 SF Concrete Patio encroaching 8’ beyond the main dwelling into the Side Yard Setback;
- b) Requesting a 7.5’ Rear Yard Setback variance from Zoning Code Section 1252.29 (b) (1), which requires a 15’ Rear Yard Setback and where a 7.5’ Rear Yard Setback is proposed in order to install a 288 SF In-Ground Swimming Pool; property located at 16960 Woodshire Drive, PPN 393-34-008, zoned R1-75.

Mr. Evans – Item number one (1) is a Public Hearing for Emery on Woodshire Drive. If the representative will come forward please. We will need your name and address for the record.

Mr. Foster – William Foster, American Construction Group, 6337 Chittenden Drive, Hudson, Ohio.

Mr. Evans – Thank you, Mr. Foster. You are requesting two variances on behalf of the property owner and these are related to a pool. As I indicated earlier we have been out to visit the site so we are familiar with the project although it looks different during the winter than it does during the summer. Why don’t you take us through the project and the reason for the variance?

Mr. Foster – Basically, the pool was positioned; we are trying to tuck the pool in on the north just behind the deck but the elevations and the setback was tight there. We thought that for the reason on elevation and grading purposes and we’re about 2.64 inches away from the deck area and we have approximately 7.92 feet off the easement. The easement is between the two properties.

Mr. Evans – All right. As I indicated in caucus one of the things that we’ll oftentimes ask is can you change it dimensionally? Could the pool be made smaller? That’s probably a rhetorical question but we ask anyhow depending on how this is set up and we don’t know what the depth of

1) **JOSEPH AND REBECCA EMERY, OWNERS/American Construction Group,  
Representative, Cont'd**

**Mr. Evans continues** - the pool is but I'm guessing pool sizes do accommodate certain depths and it's probably the reason that we wouldn't see the pool getting any smaller.

Mr. Foster – For a pool it's already a small pool at 12' by 24' and the depth of the water is 3.6' to 5' 6" so there is a certain taper and usable space within that. We had looked at the ability to pull it forward but because it's a corner lot it was coming towards the street and they want to put some significant landscaping in to buffer it from neighboring properties and the street view. So that is the intention.

Mr. Evans – Okay. The same question would be about the deck area on each side. I'm guessing we don't have the exact deck dimensions but I'm guessing that's about 3' on one side and 5' or 6' on the other.

Mr. Foster – Correct. It was as minimal as we could get to make it walkable.

Mr. Evans – All right. That's the question that we needed answered. Gentleman, any comments or questions?

Mr. Baldin – I really didn't have any problems when I went out there but I didn't really notice that it was staked out. Did I miss some stakes?

Mr. Foster – I believe it was painted out, sir. We can certainly have it staked out before it's built.

Mr. Baldin – They already have a little fire pit, deck and patio out there. Are you just going to extend that?

Mr. Foster – We will extend that to meet the existing grade. It's going to be one step onto the small area of concrete on the south side. Is that what you're asking?

Mr. Baldin – Yes. I noticed the ground slopes back there. I see how you need to squeeze it in and it's not that large. I think it will be fine.

Mr. Evans – Any other questions, gentlemen?

Mr. Houlé – No.

Mr. Hayden – No.

Mr. Evans – I did mention in caucus that we have a letter of approval from 17028 Woodshire and 16994 Woodshire and 17293 Woodshire. That will be part of the record.



2) **SECURE INDOOR STORAGE/KEVIN MCNULTY, OWNER, Cont'd**

Mr. Evans – Item number (2) on the agenda is Secure Indoor Storage on Pearl Road and Mr. Kolick, I believe that it's appropriate that we have Mr. Miller start the presentation.

Mr. Kolick – Yes, whoever is here representing the church, if you would come forward and have a seat in the front row and our Building Commissioner will give the reasons for his order and then you or another representative can address the Board.

Mr. Evans – Mr. Miller, you are speaking on behalf of the City of Strongsville Building Department, so if you would introduce yourself and give your address please.

Mr. Miller – Mike Miller, Building Commissioner, City of Strongsville, 16099 Foltz Parkway.

Mr. Evans – And you may take us through the reason the orders were issued by the Building Commissioner.

Mr. Miller - A brief history on this, in December of 2020 I was notified by the Fire Protection office that two entities had taken up space in Secure Indoor Storage on Pearl Road. We did not have valid Certificates of Occupancy and for either one so we initiated a Code Enforcement case against the property owner and there are Codified Ordinances that do require Certificates of Occupancy and Use. That was issued December 16, 2020 to Mr. Kevin McNulty, who is the owner of Secure Indoor Storage. The two entities that were identified by the Fire Protection office were Costanzo Builders, a local contracting firm, and the Resurrection Presbyterian Church. In the weeks that followed we started doing our research concerning the zoning because this property is zoned Commercial Service. There are certain permitted uses for this property as outlined in our Zoning Code and at that time it was determined that Costanzo Builders use did comply as one of the permitted uses for that building and I reached out to Mr. Anthony Costanzo, the proprietor of that business and advised him to apply for a Certificate of Occupancy. Around that same time the pastor of the church, Pastor Piteo, reached out to me wanting to apply for the Certificate of Occupancy. I continued to research over the holiday time and determined after a discussion with our Law Director that it was not a permitted use, Assembly Use, in the Commercial Service Zoning District. On January 8, 2021 we issued an order to vacate to Mr. McNulty and Pastor Piteo for the property there. Our concerns first off is that the property is not zoned for Assembly Use. Secondly, there was construction done on that property for which there was no building permit issued. We have not conducted a total inspection there but our concern is for the safety. It is a storage building so the City of Strongsville is not always aware of every item that is stored in the rear part of that building that could create a safety hazard for the occupants of that building. Additionally, we have concerns about construction that was performed. We have concerns with egress in accordance with the Ohio Building Code, and concerns with Items of Accessibility in accordance with the Ohio Building Code, hence our order to vacate.

Mr. Kolick – Mr. Chairman, a couple of questions for the Building Commissioner. So, the building was occupied by the church without even applying for a Certificate of Occupancy, is that correct?

2) **SECURE INDOOR STORAGE/KEVIN MCNULTY, OWNER, Cont'd**

Mr. Miller – That is correct.

Mr. Kolick – And then this area is zoned Commercial Service?

Mr. Miller – That is correct.

Mr. Kolick – And that does not permit not only a church use but it doesn't permit any Assembly Use?

Mr. Miller – Under the ordinances, it does not permit any type of Assembly Use. There are a limited number of uses permitted. I believe that Board was given a copy of the letter mailed on January 8, 2021 that clearly list the main Permitted Uses in 1262.03. There were about eight Permitted Uses and then some similar uses but under those guidelines Assembly Use is not permitted.

Mr. Kolick – Does the City permit church uses in any particular zoning districts?

Mr. Miller – The City does permit assembly church uses in Public Facility Districts and in General Business and Local Business Districts with a Conditional Use Approval from Planning Commission. There are various spaces up and down Pearl Road and along Royalton Road and along Prospect Road where numerous churches meet and there are available spots for that type of activity and Assembly Uses for a church that would qualify under our current Codified Ordinances.

Mr. Kolick – The items that you talked about, the ingress and egress and ADA accessibility and the materials and so forth that are there are those issues of public safety that we have concerns for the public as well as the congregation itself?

Mr. Miller – They are the issues that I addressed that fall under the 2017 Ohio Building Code that was adopted by Strongsville City Council. The Building Codes are the minimum safety standards as established by the State of Ohio and adopted by our City to protect the public in general and the occupants in particular. They are major safety issues and concerns.

Mr. Kolick – Is this use on the first or the second floor or both floors?

Mr. Miller – The current use by the church is two floors, the first and second floor?

Mr. Kolick – And what are those uses?

Mr. Miller – The first appears to be the sanctuary where the services are held and the second floor on an inspection for Costanzo Builders it appeared to be that it was a children's play area or an area where babies can be taken during the service.



2) **SECURE INDOOR STORAGE/KEVIN MCNULTY, OWNER, Cont'd**

Mr. Kolick – Is there a danger with the second floor to those individuals with ingress and egress?

Mr. Miller – The issue that the Building Department would have with the second-floor use is that when the original Certificate of Occupancy was issued for that storage building there were two egresses from the second stairwells at the north and south side of that building. The installation of a wall to create an office space for Costanzo Builders is now blocking the north egress stairwell so there's only one egress stairwell on the facility. The Code requires two at a minimum for safety issues.

Mr. Kolick – Okay, thank you. Are there any questions from the Board?

Mr. Evans – Mr. Miller, the first exit is still a way away, correct?

Mr. Miller – I did not measure that but a required egress travel cannot be more than 75' at the longest distance from the point of travel to the egress door. Going down from one corner which would be the northeast corner of that room down to the front door might exceed that.

Mr. Evans – Even if it's close to it that is a long distance particularly when there's only one stairwell.

Mr. Miller – And if there was an issue at the bottom of that stairwell with the offices next door, no direct egress so that would be a concern for the Building Department.

Mr. Evans – Is it typical for uses for a church that the church would come in for the occupancy permit or would it usually be the owner of the building that would come in?

Mr. Miller – Under our Codified Ordinances it's the tenant of the space who is ultimately responsible for that. Usually we advise building owner's that they lease space out that their tenants apply because the Fire Department wants to know what specific tenants are within a building and if there are multiple tenants what is required for safety purposes.

Mr. Kolick – Mr. Miller, so that the Board can understand, the problem isn't that it's a church, it's that it's an Assembly Use?

Mr. Miller – Correct, it's a use that isn't permitted in this district. It is not necessarily that it's a church. It's an Assembly Use by definition of the Ohio Building Code.

Mr. Kolick – So, these same safety issues would be in place whether it's a church or any other Kiwanis Club or another Assembly Use.

**2) SECURE INDOOR STORAGE/KEVIN MCNULTY, OWNER, Cont'd**

Mr. Miller – Yes, also coffee shops are Assembly Use, a deli is an Assembly Use. All of those would not be in conformance with 1262, our Zoning Code for Commercial Service Zoning Districts.

Mr. Kolick – Is the other problem the fact that you're mixing uses there? Mixing a Commercial Service Use with and Assembly Use? Is that part of the problem from a zoning perspective?

Mr. Miller – From a zoning perspective it would be because again, City Council has determined what are a permitted use within a Commercial Service district. For the knowledge of the Board, the owner of this building, Mr. McNulty petitioned to City Council for this building to be changed from a General Business Zoning District to a Commercial Service Zoning District and City Council approved that for the purpose of creating Secure Indoor Storage and, as I said in the letter there are other uses that are permitted such as veterinary uses and contractor's office, which Costanzo Builders is.

Mr. Kolick – Did Mr. McNulty receive a Certificate of Occupancy for the storage unit?

Mr. Miller – He did. He did an alteration there when the zoning was changed and he took ownership of the building. There was a pretty extensive alteration done there and at the end of the project he was issued a Certificate of Occupancy and Use in accordance with the Ohio Building Code and our Zoning Codes.

Mr. Kolick – So, he at least understood that he needed a Certificate of Occupancy for any use to use that building, correct?

Mr. Miller – To my knowledge, that is correct.

Mr. Kolick – Do you know if he informed his tenants that they needed a Certificate of Occupancy and Use?

Mr. Miller – In discussion with Mr. McNulty after he received his letters he was not aware of this.

Mr. Kolick – Okay, thank you.

Mr. Baldin – Mr. Miller, you talked about Costanzo Builders going in there, did you know that they were going to block off that other stairway?

Mr. Miller – No, the wall that is there now according to the plans in our research from what was originally approved for them. That wall was constructed at some point after we issued a Certificate of Occupancy for Secure Indoor Storage.

2) **SECURE INDOOR STORAGE/KEVIN MCNULTY, OWNER, Cont'd**

Mr. Baldin – It should not be there.

Mr. Miller – Correct.

Mr. Baldin – You said earlier that Costanzo Builders was basically okay.

Mr. Miller – It's okay because that wall is existing. The Ohio Building Code and the Building Department has very little latitude with an existing structure unless we can prove a serious hazard and under Costanzo Builders location that is their main egress and ingress and due to their occupant load, they are only required to have one egress. Their occupant load is restricted as such.

Mr. Baldin – It sounds like a touchy situation but whatever.

Mr. Miller – I don't write the Codes but I am required to enforce the safety provisions of the Codes.

Mr. Evans – Other questions, gentlemen? Mr. Miller, in our Commercial Service Zoning District are there limitations as to what types of chemicals or what type of materials can be stored that might be hazardous for an Assembly Use?

Mr. Miller – There are no restrictions under the guidelines of the ordinance. It would be under the Fire Marshal's guidance. They would look at it at their annual inspections for fire suppression and fire alarm and then any large quantities of hazardous materials it's the owner's responsibility to notify the Fire Marshal to make a determination of that.

Mr. Kolick – I could add though that all the Fire Marshal's do is look at the storage use. They aren't judging those materials in relation to an Assembly Use because an Assembly Use isn't permitted under the Zoning Code.

Mr. Miller – Additionally, Secure Indoor Storage has multiple storage units that are leased out to their tenants and the Fire Marshal does not go into each individual storage unit to see what is being stored in there.

Mr. Evans – My point is that that's one of the reasons the Assembly Use is not permitted in this situation because there is no protection for people there.

Mr. Miller – That is also my thought as to how this was enacted by City Council when this Ordinance was enacted.

Mr. Evans – And the time that you became aware of both Costanzo and the church was in December as the Fire Department did an inspection?

2) **SECURE INDOOR STORAGE/KEVIN MCNULTY, OWNER, Cont'd**

Mr. Miller – Yes. It was probably around mid-December.

Mr. Evans – Do you have any idea how long either one of those two had been on the premises without a Certificate of Occupancy and Use?

Mr. Miller – That I do not know. I'm sure that either one of those, they both have been sworn in tonight and can attest to the fact of when they took occupancy of the building.

Mr. Evans – All right, anything else gentlemen.

Mr. Kolick – Whoever would like to speak on behalf of the church please come forward and give us your name and address.

Pastor Piteo – My name is Jason Piteo and I reside in Strongsville at 18399 West Bend Drive and I'm the Pastor of Resurrection Presbyterian Church and I brought some notes. Typically, I don't need this many for speaking in public but I don't normally speak this way.

Mr. Evans – Think of it as a sermon.

Pastor Piteo – I lived here as a resident many years ago as a newlywed in the Polo Club apartments and since then I moved away to Charlotte to go to the seminary, and moved back to Strongsville and Ohio to become a pastor and a church planner at Resurrection Presbyterian Church. I'm married and have five kids and two of our kids go to the high school and two of our kids go to Chapman Elementary. We love it here and several of our congregants live in Strongsville so we are very invested in Strongsville. We originally met as a church at the Little Theatre at the high school and subsequently moved in the middle of 2020 to the front building at 12878 Pearl Road. We signed a three years lease and Kevin McNulty, the owner at Secure Storage, welcomed us with our hope of eventually outgrowing the space and needing to go someplace more suitable for a church and hopefully to expand. So, we always saw this as a temporary situation and we did begin meeting there immediately. The pandemic slowed us down. We intended to go there as early as April but that didn't happen because of the pandemic so we didn't get to meet until summer. We have been in that space since the summer and we have spent a good deal of time and money making that space feel welcoming and appropriate for a worship service. This is an arrangement that works well for us and the landlord and the other tenants and we hope for the City as well. On December 21 I wrote an email to the Building Commissioner Mike Miller asking him whatever it would take to essentially file for our occupancy. I tried to find an application online to complete and couldn't find anything. I emailed him expecting that he would point me in the direction or send me an application that I could fill out and, in that note, I told him that I would be happy to do whatever is required to get things in order for our new worship location. I asked him to please let me know what to do. I sent multiple follow-up messages to Mike and eventually seventeen days later I got a response promising a letter the next day. That letter the next day came with the notice of violation

2) **SECURE INDOOR STORAGE/KEVIN MCNULTY, OWNER, Cont'd**

**Pastor Piteo continues** - and notice to vacate. This all came as quite a shock as you can imagine. I was expecting to do paperwork or come to a meeting and not be told definitively that this is it, without a single verbal conversation. I think many assumptions have been made about our situation but none of those had ever been posed directly to me. I was never able to speak to it. The problem as it was explained to me is that the zoning issue and such a zone as Commercial Service doesn't allow assembly. I'm also aware that the building was formally zoned for General Business, which would have allowed for a church to meet there given our City's zoning standards and I feel that what has been lacking in this situation is a human element. Why are we being told that it is not possible for a church to meet there and why hasn't the City suggested that we file for a variance, which we intend to do and why hasn't the City attempted to work with us to find a way to move forward rather than to tell us that it won't happen under any circumstances. Our request tonight is that you would work with us and allow us to continue to meet in our building for worship while we complete the process of applying for a variance. This would alleviate an unnecessary hardship on us while we follow all the proper procedures for compliance with the City. Regarding the variance we believe that we meet all the requirements that we need for a variance according to the guidelines set forth in the application that I discovered. We would like to point out that a church is different from most situations with the constitution and federal laws such as RLUIPA, which you mentioned earlier, granting protections to churches, which are not afforded to other zoning uses. A church is not just a place of assembly. Those federal laws exist in part to prevent a city's zoning ordinance from overly interfering with a church's worship. While we can appreciate the reasons and benefits from having zoning ordinances we believe this variance for a church is not only appropriate from our specific situation but also addressed a potential concern for a troublesome precedent having to be established, something that I was able to discuss with a councilman. Also, if there are any issues with Code we would be happy to be informed what those issues are and we heard about some of those tonight. We would be willing to promptly resolve them if possible. We believe that a potential Code issue should be treated differently than a zoning issue by asking us to address them rather than asking us to vacate. Again, let me iterate our request that you allow us to continue meeting in our building for worship while we complete the process of applying for a variance. Thank you for hearing our appeal.

Mr. Kolick – Mr. Chairman, maybe I can explain some of those matters or questions. I can hopefully answer some of the questions that you've addressed. Number one, you didn't hear back anything else from the Building Department because they can't give you any relief that you're requesting. They can't give you an application for a Certificate of Occupancy for a building that the Zoning Code does not permit you to be in. That is the reason why you got the notice that you did. From this Board's standpoint, the Board does not have the authority to grant a variance to permit an Assembly Use, whether it's a church use or another Assembly Use in a Commercial Service Zoning District where there is already a Commercial Use business on the premises. You can't get a variance. The only way that you can have anything is the property would have to be rezoned, and if it got rezoned to General Business or Public Facility, which would permit your church, then it wouldn't permit storage. So, you have to pick and choose. You're correct, it was

2) **SECURE INDOOR STORAGE/KEVIN MCNULTY, OWNER, Cont'd**

**Mr. Kolick continues** - zoned at one time for General Business but General Business does not permit storage. So, they asked us to rezone it to permit their storage use. Once they did that they precluded a church use or any other Assembly Use from that area and what the City does is we are very welcoming to churches. We have many, many churches and we try to encourage churches in the area. We have no problem with that but it's got to be safe and this is not safe. You have real issues like Mr. Miller said. We don't know who is storing what in those storage units. There are maybe 100 storage units in there?

Mr. Miller – I don't know.

Mr. Kolick – There are a lot of individual storage units in there. We don't know what they're storing in there and that's why you don't mix storage units with Assembly Use businesses. We want churches within the City but we don't want to see people at safety risks. You've got a second floor where evidently you have a children's area, play area or whether kids are watched there while parents are in worship or whatever. That's unsafe if there would ever be a fire in that hallway. I'm sure you don't want to see your parishioner's children get hurt and we don't either. That's why we can't work with you because there is no way to work these particular issues out. That's why when City Council determines what uses are permitted in a zoning district these are one of the things that they look at; what's related to the health, safety and welfare, what uses are compatible with one another. Your use is compatible with General Business uses and there are areas up and down throughout the City that are zoned General Business that you could go into. There are areas zoned Public Facility that you could go into but you can't mix these uses. You don't have the ability to file for a variance because what you're calling a variance is not a variance. It's a new legislative permitted use. It would take a rezoning of the property. That's the only way that you could permit a use that is not permitted in that district. Like I said, the problem with that is we could rezone it to General Business to permit your church but then the storage has to go. They can't be together because they're different Zoning Districts. Like I said, we don't like notifying people to have to vacate either. We did not know you were in there in April or May. That may be the fault of your landlord. Your landlord certainly knew that a Certificate of Occupancy was needed. He obtained one within the past year. I'm not casting blame but any use he was aware needed a Certificate of Occupancy just like the contractor's business needed a Certificate of Occupancy. Your church business needs a Certificate of Occupancy. We have a compelling governmental interest to our citizens to protect the public and protect your congregation. We take that duty very seriously and the last thing that we want to see is a fire or a calamity in there because we turned our heads on a use in there that shouldn't be in there. We don't try to create more burden on churches or any other use particularly because there is a federal statute that says we can't discriminate if we allow an Assembly Use and it's a non-church use we also have to allow a church use in there. We do that. Wherever we permit Assembly Uses we permit church uses. We have to allow areas within the City for churches. We do that. We don't exclude churches from the City. General Business, there are a lot, a lot of places up and down Pearl Road zoned General Business. We'd like to help you. Our Economic Development Director can give you ideas about General Business vacancies that

2) **SECURE INDOOR STORAGE/KEVIN MCNULTY, OWNER, Cont'd**

**Mr. Kolick continues** - your congregation can go into. We want to do that. If you need a temporary spot I know our Rec Center and Senior Center oftentimes rents out to churches for uses. I'm sure you could work something out with them. We don't want to create a hardship but we want it to be safe. There's no way to make this building for a church use or any Assembly Use safe. It's not a good mix between storage and assembly whether it's religious or otherwise. That's where we're at and there's no relief we can give you for utilize that building on that property without a rezoning, which would mean that the storage use would no longer be permitted there. I hope that answers your questions as to why certain things happen in the order that they did and why you weren't given anything else to do because this Board cannot legislate. This Board cannot change that Zoning District. They can't grant a variance to permit a use that is not permitted in a Zoning District.

Pastor Piteo – Isn't that what a variance is for?

Mr. Kolick – No, a variance is for something like what you heard with the applicant before you for setbacks, or height of buildings or sizes of signs.

Pastor Piteo – I'm speaking of a use variance.

Mr. Evans – It's not something that this Board can grant.

Mr. Kolick – That would be a rezoning.

Mr. Kolick – Again, we want to work with you Pastor. We do, but it has to be an area that's zoned that we know is safe for the church to be.

Pastor Piteo – With all do respect, if that building is not safe for assembly, it is also unsafe for any other occupant.

Mr. Evans – That may well be the case but in a Commercial Service Zoning District the storage and use for a contractor using it as an office, those things are permitted. When Kevin McNulty asked to change the zoning from General Business to Commercial Service he was very aware of what was and what was not permitted and unfortunately by him allowing you to set up in there and not sending you to get an Occupancy Certificate they have impacted you, not the City, because the City has the Code to protect assembling groups and certainly at this point for you to be in that building when you have no idea what is stored in those storage units would be a travesty to your parishioner's. The question I have is on the second floor where photos that we have show kids are, is this a daytime nursery that goes all week?

Pastor Piteo – No, that is part of the false assumptions that could have easily been resolved had a verbal conversation ever happened.

2) **SECURE INDOOR STORAGE/KEVIN MCNULTY, OWNER, Cont'd**

Mr. Evans – That may be true but that is not germane to the idea that there's Assembly Use taking place in a Commercial Service Zoning District. Again, the problem is that those two uses don't mix. That is why City Council made the change at McNulty's request to Commercial Service. He wanted to operate a storage unit. There's no circumstance where an Assembly Use is going to be permitted in a Commercial Service Zoning District. Not just storage but other things that are Commercial Service don't have the safety requirements that would permit Assembly Use permitted in the same Zoning District. It's unfortunately very simple. The fact that you've been there since summertime and signed a three-year lease that is again going to have to be on the property owner. It's not a fault of the City. The zoning was changed at their request. We didn't change it from General Business to Commercial Service because we wanted it to change, the owner came to City Council to request that. Unfortunately, that landlord should have known what his permitted uses were because he asked for the change from General Business to Commercial Service. I understand you're mad at the City but the City is simply saying that in order for your people to be safe in that building it can't be a Commercial Service Zoning District. As Mr. Kolick said your landlord isn't going to change that because he is using it for storage and storage is only permitted as a use under Commercial Service. He is not going to change back to General Business to accommodate you. That means that you have an issue with the landlord that you're going to have to take up whether it's through counsel or whatever else that they've allowed you to set up and make improvements to the interior when it's not a permitted use. They had to know that because they requested that it be changed from General Business to Commercial Service. Variances are within the Code, setbacks and things like that. We can't legislate. We are a body that City Council has authority over so when we grant a variance for a pool to be a couple of feet one way or another that is permitted. We don't have legislative ability. We can't write the Code and we certainly can't legislate zoning use. That is not the purview of this Board.

Pastor Piteo – And who did you say can?

Mr. Kolick – City Council wrote the Code and they are the only ones who can change the Code. The said Assembly Uses aren't permitted in Commercial Service Zoning Districts and that is the law and it makes sense for safety purposes.

Pastor Piteo – There is no body that can issue a variance other than City Council.

Mr. Evans – There is no variance. It would be a change in the Zoning Code, not a variance. We don't have that authority.

Pastor Piteo – Okay.

Mr. Kolick – Again, I didn't want to cut you off. We'll listen to you and try to work with you. Our Economic Director can hopefully find you another spot in General Business that would accommodate your congregation safely.



2) **SECURE INDOOR STORAGE/KEVIN MCNULTY, OWNER, Cont'd**

Pastor Piteo – I've already reached out to the Economic Director to ask him about alternatives. This news about not being able to issue a use variance though is a surprise to me. Obviously as a pastor it's outside of my area of expertise. It definitely is a surprise.

Mr. Evans – If you look at the Codified Ordinances and Chapter 1248, in there we are given four reasons that we can grant variances and those have nothing to do with the use of areas. We do not have that authority. It's only City Council that can legislate zoning uses and the Zoning Code. Variances are within the Code in those uses. That's our limitation.

Pastor Piteo – Okay, then that's all we can do tonight.

Mr. Evans – I would think so and again, as Mr. Kolick said, we're not here to penalize you. That's not what we're trying to do. I don't think it's what the Building Department is trying to do. We had a shooting a couple of days ago down on Pearl Road. We like to think of Strongsville as being a nice, safe place. I don't like creating headlines about shootings on Pearl Road or explosions involving churches because they happen to be in a building with storage uses and someone has chemicals that got too hot or different chemicals that you shouldn't mix and it caused an explosion. That is not something that we want to see.

Pastor Piteo – I understand your safety concerns but I can think of a much more likely scenario where an explosion would happen next to a church and that would be a business when a kitchen explodes and I'm sure that occupancy is granted in those situations.

Mr. Evans – They are and there are safety measures in place to mitigate safety concerns. If there's a kitchen there are certain things that are required in a kitchen so that if it does explode there are things that will put that fire out very quickly. That's what codes do, prevent unsafe things from happening.

Pastor Piteo – I think I don't have anything further to say.

Mr. Evans – Again, I hope that the Economic Director can work with you to make alternatives but I would suggest that some of your avenues of direction will be back with the landlord who signed the lease for three years and has allowed you to make improvements that shouldn't have been made without a building permit and Certificate of Occupancy.

Mr. Kolick – Please if you do find another spot, go up to the City and check with them so you'll know.

Pastor Piteo – I've learned my lessons.

2) **SECURE INDOOR STORAGE/KEVIN MCNULTY, OWNER, Cont'd**

Mr. Kolick – And what kind of improvements to the space may need to be done before you sign the lease.

Pastor Piteo – Just to clear the record by the way the wall that divides the upstairs, that was in place before the Costanzo's or the church ever occupied the space.

Mr. Kolick – That's right and that's because an Assembly Use was not permitted on the premises, we don't care that that wall was there if there is no Assembly Use on the second floor.

Pastor Piteo – It was stated that the wall was put there in order for the Costanzo's to use the property and that was incorrect.

Mr. Evans – Again, nobody looked at it for Assembly Use to determine whether or not that wall would have been a problem.

Pastor Piteo – I just wanted to clear that up.

Mr. Evans – Okay.

Mr. Kolick – This is a Public Hearing. Is there anybody else?

Mr. Evans – Okay.

Mr. Kolick – It's not a Public Hearing. Is there anyone else who may want to say anything? We will welcome you to the microphone. Go right ahead.

Mr. Evans – We will need your name and address for the record please.

Mr. Wilson - My name is Josh Wilson. I'm a Strongsville resident. 9690 Brookstone Way. My wife and I and our son who is here just moved to Strongsville about a year and a half ago and we started meeting with the church and I don't have all of the facts on the prior zoning and stuff or the prior history on the church and but since what I do for a living, I'm an attorney with Baker Hostetler and I've dealt with other zoning stuff and I thought I would on the record say what it appeared to me from looking at the Code in terms of the variance process it appeared to me that of course the Board has the authority to change the order issued by the Building Commissioner in the same way that he could have in the first instance in determining what the appropriate way of dealing with the zoning ordinance would be as if there was no order and it does appear from the Code that there is the ability to grant use variances and that is just from the reference Strongsville Code 1248.01 where it sets up the purpose of having a Board of Zoning Appeals. One of the purposes is to provide a method for alleviating unnecessary hardship by allowing a reasonable use for individual parcels of property which would otherwise be denied a reasonable use by literal

2) **SECURE INDOOR STORAGE/KEVIN MCNULTY, OWNER, Cont'd**

**Mr. Wilson continues** - application of the code. Under subsection (d) is to provide the granting of variances could sustain constitutionality of the Code which I suspect is in there because there's a Supreme Court decision Village of Euclid, Ohio vs. Ambler Realty back in 1926 that basically said the constitution theoretically could apply to zoning ordinances especially due process clause and that was in the context of use for whatever use was allowed in a particular place. So, it looks like part of the intent of having a Board of Zoning Appeals would include being able to grant use variances and then when it was the reasons for granting variances under 1248.08 it doesn't give any type of exclusion for uses. It just says that the Board of Zoning Appeals has the power to vary the application and provisions of the Zoning Code in order that public health, safety, morals, general welfare and substantial justice be done. Of course, you have your own attorneys to advise you as to what your actual authority is but I just wanted to say for the record it looks to me that there is authority to grant a use variance. The City would have to approve but that's the case with all of the decisions anywhere where they'll be given to the City for approval and if this Board were to recommend a use variance then the City would have the ability to say so it wouldn't be just the sole say of this Board. That all said obviously they aren't here tonight just looking for a variance because they haven't even filed the paperwork for that. My understanding from talking with Jason our pastor was that having been given the notice of violation right away without first having the ability to talk through anything that obviously as you know starts the clock ticking for you to have fifteen days for an appeal. The Board meets twice a month, and at the point that that had been issued it was impossible to get a variance before this appeal so this appeal is obviously has to be done before we could apply for a variance and hence the request is just to allow enough time to actually file for the variance to do that process the right way. If you decide there is no such process, there is no way to get a variance then that of course one thing but if it is possible to have a use variance of some type then we would like the opportunity to file the paperwork and actually lay out the case that it does meet all four of the elements under 1248.08, which all have to do with being able to see that substantial justice would be done and this to my understanding is the first time that we've heard about any Code violations and if obviously there could be reason not to be in the building if it's unsafe due to Code violations that that's at least as I see it, a different issue from whether an Assembly Use could be allowed in the building. If a church could be allowed to use the building then we should have the opportunity to consult with architects and the Building Commissioner to figure out a way to resolve all Code violations to be able to use it again as a church.

Mr. Kolick – I believe that in answering Mr. Wilson's questions that I can tell you that in terms of use variations those are uses within the Zoning Code. The Board can't legislate the Zoning Code changes. That isn't something that the Board has the authority to do. Where you're reading in the Code that it says varying items that would be within the Zoning Code that something can be higher, something can be wider or things like that but it's not when it comes to uses for Commercial Service or General Business Zoning Districts. The Board does not have that authority. It is only City Council that has that and if you spend a little bit more time reading the rest of the Strongsville

2) **SECURE INDOOR STORAGE/KEVIN MCNULTY, OWNER, Cont'd**

**Mr. Kolick continues** - Codified Ordinances I think you'll find that City Council has the authority to vary the uses of the Zoning Code. This is a variance situation.

Mr. Wilson – Why does the Code say uses?

Mr. Kolick – Let me add to that. There are some extraordinary instances where the Board could grant a use variance for instance if an owner were going to expand a nonconforming use. Actually, there is another storage facility on Lunn Road that already had storage buildings and the Code was changed, they weren't permitted to have storage anymore. That is the type of use variance that we can grant but as the Chairman said we can't legislate. City Council has a compelling governmental interest to determine what uses are compatible with one another and they determined that storage use and Assembly Use are not compatible with one another. We can't change their decision because they are the ones who determined that they aren't compatible. I understand in this instance, we don't always agree with City Council but I do agree with them here as noted. That's a dangerous situation. We're worried about the public safety and welfare. We're worried about the congregants in the church itself being in that building with storage that, as you heard, our Fire Department may look from the outside they don't even go into the individual storage units. Even so the next day someone could bring in a can or gas or a lawn mower and store it. I'm not saying anyone would do this to create a danger. It just happens and City Council looks at it to determine that they have a compelling governmental interest to protect the health, safety and welfare of individuals and they determined that you can't mix storage use with a church which is under our ordinances an Assembly Use and do it safely. This Board doesn't have the authority to vary that. They can't. I hope that helps.

Mr. Wilson – Again, obviously, minds can come to different conclusions of reading text and if that is your understanding then that is your understanding.

Mr. Evans – Thank you, Mr. Wilson. Is there anyone else who wishes to address the Board?

Mr. Costanzo – Anthony Costanzo and I reside at 8353 Wesley Drive, Strongsville, Ohio. My wife and I are Costanzo Builders. First of all, for the record, that wall was there all along. I understand what Mr. Miller is saying about the egress. It could be a simple fix. We did not construct that wall. It was up when the Catan's were there. The building is only 85' wide. So, the 75' rule is well under it but again that could be easily fixed by just moving the door that connects those two upper spaces so there's a pass-through hallway where they can now have access to that second stairway. That would solve that issue in my eyes. Again, I'm not the City. We have to and want to abide by the rules. Secondly, my concern is about the safety of my wife. She is up there all the time. So, if the building in the back has other people back there that are doing things wrong, why is it that if there's more than eight people, which is what my occupancy allows? Eight people are okay, but over eight is not okay? Secondly the second story of that building if I'm not mistaken should be a fire wall that is not connected to that storage area, which is divided by a fire wall as well which I believe

2) **SECURE INDOOR STORAGE/KEVIN MCNULTY, OWNER, Cont'd**

**Mr. Costanzo continues** - was done when Mr. McNulty made all those Code changes. So, I think there are other issues here that I think maybe we can work through. We are more than happy to work through it. We just want to find a nice resolve.

Mr. Kolick – Mr. Chairman, I may be able to answer some of those concerns. Understand I think one of the things they worry about with an Assembly Use is the number of people who are there so when the Building Code is drafted and consider these things and they do set numbers of people who can be there they probably figuring that you can get eight people out of the building a lot quicker than you can get seventy-five people out of the building. Now, should you have concerns with your eight people who are there, maybe so. Maybe you need to check with the landlord as to what he permits to be stored there but again, that's not something that we can control. The Building Code sets out what types of offices can go there and what's permitted and office uses are permitted in Commercial Service but Assembly Use is not. Again, it may be getting people in and out or the number of people who come in and out and ingress and egress, yes that's an important issue but there's a lot of other important issues like fire walls, and sprinkler systems. There's a lot of other issues that are associated with it but again, going beyond the province of this Board as to what they can do. The legislature and the City have determined what uses are compatible and they have a compelling governmental interest to protect the welfare and safety. That is what they have determined. On the space it looks like to me to be a reasonable determination as to why they don't permit that. It's not that anything might happen as the Pastor said. You could have a kitchen fire in a General Business Zoning District. I think they look at number one, probabilities and two, possibilities of harm of a number of people and so forth and that's really what they focus on. For the kitchen we require hoods and sprinkler systems and fire walls that have to be there when it's mixed with other uses.

Mr. Costanzo – I was more interested in the safety issues that you keep referring to. The Fire Department came in and cited a few things on the fire side of it and we corrected it. It was batteries in the fire lights and the fire extinguishing system has never been altered so all of those safety concerns that you're talking about are still intact. I'm not sure if Mr. McNulty has called the Fire Department because we did fix everything in our space. Again, I understand the Board and I just want to see a happy resolve. I don't want to see the church go. We want to work together.

Mr. Kolick – We don't like to see churches go either as I said but they have to be in the correct Zoning District so they're safe. We're glad you came in and took care of those fire safety issues that are there but those are the fire safety issues between the storage area and an eight-person office. There is a difference between that and an assembly of people who are up there together. This Board can't change those fixed Codes. We can't change safety requirements. We can't change mixing of uses.

Mr. Evans – We do appreciate your attendance and speaking on their behalf. Again, it's not something we can change.

2) **SECURE INDOOR STORAGE/KEVIN MCNULTY, OWNER, Cont'd**

Mr. Costanzo – Again, we're in the building all the time. Obviously, it is secure storage. You can't walk around the corner without being seen. There are cameras everywhere in the building. I do believe Mr. McNulty has done far superior job at making sure all of those types of concerns are addressed right away. We hear somebody was walking around and they saw it on camera and handled it immediately. The safety is there and I understand the Board's side. I appreciate the time.

Mr. Evans – Is there anybody else who wishes to address the Board? Again, our apologies to Reverend Piteo and the group. It's not that we're trying to do something other than protect the safety of the congregants and the safety of the church. Is there anything else gentlemen to come before the Board this evening? If not then we will declare the meeting adjourned.

Mr. Kolick – We have to vote on it.

Mr. Evans – I'm sorry, yes, we do. I'm getting ahead of myself because this is on the agenda so we need to vote on it.

Mr. Kolick – The motion should be made in the affirmative to grant the appeal. If you vote yes you are granting the appeal. If you vote no then you are affirming the orders of the Building Commissioner.

Mr. Evans – You do want a motion on this.

Mr. Kolick – Yes.

Mr. Houlé – Mr. Chairman, I make a motion to grant the appeal to the Board of Zoning and Building Code Appeals regarding the decision of the Building Commissioner pertaining to Code Enforcement ID#20-01127 dated December 16, 2020, and Notice of Violation and Notice to Vacate dated January 8, 2021; property located at 12878 Pearl Road, PPN 392-30-001.

Mr. Baldin – Second.

Mr. Evans – Thank you, Mr. Houlé, for the motion and Mr. Baldin for the second. May we have a roll call please?

ROLL CALL:

ALL NAYS

APPEAL DENIED

Mr. Evans – The appeal to the order of the Building Commissioner is denied and that reflects on the record as being the course of action that the Board has taken.

Mr. Kolick – For the applicant, please contact our Building Department. They will try to work with you the best that they can to find another spot. The Building Department is not going to be in

2) **SECURE INDOOR STORAGE/KEVIN MCNULTY, OWNER, Cont'd**

**Mr. Kolick continues** - there tomorrow. They'll work with you the best that they can but we have to make sure it's safe too. Thank you. Mr. Chairman, I believe you will need to provide Findings of Fact and Conclusions of Law for the items on tonight's agenda that were denied.

Mr. Evans – That is correct. We need Findings of Fact and Conclusions of Law for item number (2) on the agenda. My apologies. Anything else that I forgot? If not, we will stand adjourned.

<u>Signature on File</u>	<u>Signature on File</u>	<u>March 10, 2021</u>
Mr. Evans, Chairman	Kathy Zamrzla, Sec'y	Approval date