

MINUTES OF THE
FAIRFIELD BOARD OF ZONING APPEALS

April 6, 2016

Ron Siciliano called the Board of Zoning Appeals hearing to order at 6:00 p.m. at the Fairfield Municipal Building, 5350 Pleasant Ave.

Roll Call

Maria Mullen, Secretary, called the roll of the Board of Zoning Appeals. Present members were Jack Wesseler, Joseph Koczeniak, Mike Stokes, Ron Siciliano and Mike Snyder. Rick Helsinger, Building Official and John Clemmons, Law Director were also present. Greg Porter and Scott Lepsky were not present. Motion to excuse Greg Porter and Scott Lepsky carried 5-0. Greg Porter later arrived at 6:04

Pledge of Allegiance

Minutes of the Previous Meeting

The minutes from the Board of Zoning Appeals meeting held on 1-6-2016 were approved.

New Business

Case No. BZA-16-0002 – Bulletin Board Sign in C4 Zone – 5160 Winton Rd:

The owner, Julie Trader, requested a variance to install a 20 square foot bulletin board sign on the property located in the C-4 Zoning District.

Staff Technical Review had no comment on this case.

Property Owner's Comments

Kelly Schwartz, employee of J.J.'s Salon, spoke on behalf of the applicant, Julie Trader, owner of J.J.'s Salon. Ms. Schwartz stated this business has been in Fairfield for the last 30 years and is a member of the Chamber of Commerce. The sign will be on the building, facing Nilles Road where there is an existing chalk board, not a ground sign in the front yard. Ms. Schwartz conveyed Ms. Trader believes the sign will draw in more clients. The sign is simple and in good taste. This type of sign is very successful for some businesses, but especially for hair salons. Rick Helsinger informed the Board of the code regarding signage in the C-4 district based on Section 1187.07(e). Bulletin board signs (manual changeable letters) as listed in the code definitions specifically states it can be used for "library, auditorium, stadium, athletic field or area of similar use." Mr. Clemmons said a wall sign is allowed, just not the manual changeable letter board sign. Currently there is a chalk board where Ms. Trader would like to place the bulletin board sign, but even the chalk board is not allowed. Ms. Schwartz noted there are bulletin board signs at Concepts Salon, Servatii's, Bee's Chinese, and Gilda's Hair Salon. Ron Siciliano asked what types of signs are allowed in C-4 zone. Rick told him static signs, fixed signage, not a sign that allows changeable letters. Ms. Schwartz explained the sign is not internally illuminated, but there is lighting along the walkway where it will be located. Ms. Trader will be repainting the outside of the building. Ms. Schwartz added the sign can be used to advertise sales on products, new stylists, and specials. Mr. Koczeniak wanted to know the logic behind this rule. John Clemmons explained the area was all residential at one time, and as some of this area became commercial, the homeowners did not want a lot of signs. The sign code was written to limit signs in that specific area of C-4. Ms. Schwartz stated there no residential properties within the area of their business, and it is a "hot" corner. Ms. Schwartz said Ms. Trader loves Fairfield, and she wants to keep her business at that location, but opportunities for new clients are passing by. Mr. Koczeniak stated this area has outgrown this sign code. Mr. Siciliano observed the area has evolved into more of a commercial zone; and questioned how long ago this ordinance was approved. It was discussed that it might have been 30 years ago. Mr. Snyder commented he would agree that this area of Nilles Road would be okay for this type of sign, but not necessarily for other C-4 areas. Jack Wesseler asked if the sign would remain if the owner sold the property. Mr. Clemmons

explained we don't normally tie the approval to the owner, it would be to the land. Ms. Schwartz said the sign will not distract drivers. It should only be noticeable to drivers stopped at the stop light.

Public Comment

Lori Campbell, 840 Sando Drive, stated she would not mind a sign if it is not loud colors and lighted as it would be distracting to drivers. She said if she were a business owner, she would not want to be denied signage.

Board Action

Mike Snyder made a motion to approve the (1) one 20 square foot bulletin board sign as requested; motion was seconded by Jack Wessler. Motion carried 6-0. Ron Siciliano made a motion to waive the 5-day waiting- period. The motion was seconded by Mike Snyder. Motion carried 6-0.

Case No. BZA-16-0004 – Sale of Firearms as Home Business - 873 Doris Jane Ave :

The owner, John Turco Jr, requested a use variance to have a home-based business which involves the purchase and sale of firearms. The property is located in the R-1 Zoning District.

Staff Technical Review had no comments. Lieutenant Maynard, from the Fairfield Police Department was present to answer any questions.

John Turco, Jr. spoke on behalf of his use variance request. Mr. Turco stated he was born and raised in his home at 873 Doris Jane Ave, and has lived in Fairfield for 45 years. He currently works in security at the Fairfield Senior High School. He does not make enough at his job to afford his own storefront to sell the guns. Mr. Turco said that most FFL dealers (Federal Firearm Licensed) in Ohio are home-based. He started the process of obtaining his FFL back in January, and Mr. Turco explained the process including a \$200 fee he had to pay. He obtained his Ohio business license and EIN. He already had his interview with ATF and can have his license pending approval of the Board of Zoning Appeals. Mr. Siciliano wanted to clarify the request is for a use variance. Mr. Clemmons stated it was our understanding that there will be product at the house at some point, either waiting for someone to pick up or inventory. In the administration's opinion, this excludes it from being a home occupation. It makes it a retail business in a residential zone. Mr. Koczeniak made an example as, he is a music teacher, he could give lessons from his home but he could not sell the instruments. Mr. Ron Siciliano read FCO 1133.01(39) into the record, and is attached to these minutes as Exhibit A. The code stated "does not involve the keeping of stock-in-trade." The Board discussed what warranted keeping stock on the property. One example was Mary Kay cosmetics, which are typically home-based businesses. Mary Kay representatives order for the client and have the product shipped directly to the client. Mr. Turco said he will be doing all the paperwork, photos, and fingerprints for the background check on each person who wants to buy a gun. He would be happy with one customer a week. Lt. Maynard spoke on behalf of the Fairfield Police Department. It was their understanding that Mr. Turco would maintain some stock of firearms or inventory at his house. The police department is concerned about how the guns will be secured for the safety of the neighborhood. They recommend a commercially available safe and alarm system. Lt. Maynard said once word gets out that Mr. Turco is selling guns from his home, there will be a threat of someone breaking in to steal the firearms. Greg Porter asked if Mr. Turco could do the exchange of the firearm from anywhere. Mr. Clemmons explained the firearm has to be delivered to a license dealer, which would be Mr. Turco, and the customer would have to pick it up from him at the house, a fixed, established location. Mr. Turco has to have an established location on his FFL, and it would be 873 Doris Jane if the Board approved his use variance. Mr. Turco added he could have the firearm shipped to another licensed dealer, which he would have to do if he had an out-of-state buyer. John Clemmons and Lt. Maynard both stated the government wants to see who is buying the guns, so the transfer must be face to face with the customer and the FFL dealer. Mr. Turco said the buyer has to come to his address listed on the FFL. Buyers would not be coming and going; it would be by appointment only. Several hypothetical scenarios were discussed, and ultimately Mr. Turco is responsible for receiving the firearm and selling it directly to the customer. Rick Helsing asked if Mr. Turco would be selling ammunition, and he said he would not. He has a fireproof safe which was approved by ATF. Even his dog is an asset to the security. Lt. Maynard also recommended a security/alarm system. Mr. Turco said his approval from ATF would be conditional for a

year and reviewed at that time, but he was not aware of any conditions that required him to have a storefront for his business in a year.

Public Comment

Freeman James, 858 Sando Drive, wondered if the Board's approval could be temporary or if it was permanent. He feels the street does not allow for traffic for a business. Mr. James is also worried that once the word is out that there are guns at Mr. Turco's home, there will be a safety issue for himself and other neighbors.

Lori Campbell, 840 Sando Drive, first thanked our office for sending out notifications to the neighbors. She said she has lived at her home since 1967. She home schools her daughter and gives piano lessons. She is very concerned about the sale of guns right behind her house, and is disappointed that more neighbors are not at the meeting to voice their concerns. She is opposed to having guns available in their neighborhood. She commended Mr. Turco for his efforts to obtain the license and the permission. There are other gun places in the area which are commercial zones. This area is for homes, and she does not support this type of business.

Board Comments

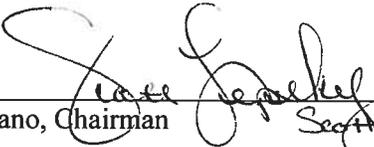
Greg Porter reminded the other Board members that the seven conditions must be met for a use variance. John Clemmons added a use variance is required when an activity which is not permitted is requested to be permitted. An area/size variance is a legal use but does not meet code. The use variance has higher standards to be met. Mr. Turco did submit responses to the seven conditions (attached as Exhibit B). Mr. Siciliano feels the first, second, and seventh conditions are not met for this use variance request. Mike Snyder might be okay for the sale of other products, but not comfortable about the sale of guns. Mr. Koczeniak complimented Mr. Turco doing all the work he has done to get the license. Mr. Turco told the Board that 70% of the FFL holders in Ohio are home-based. Mr. Porter said those might be in rural areas and townships that don't have zoning codes. Mr. Porter said it didn't matter what Mr. Turco was selling only that it doesn't meet the standards of those seven conditions required for a use variance. City Council set these standards a long time ago, and they set them very high.

Board Action

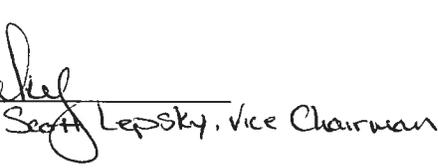
Jack Wessler made a motion to deny the use variance. Mike Snyder seconded the motion. The Motion carried 6-0.

Adjournment:

Jack Wessler, seconded by Mike Snyder, made a motion to adjourn. Motion carried 6-0.



Ron Siciliano, Chairman



Seth Lepsky, vice Chairman



Maria K. Mullen, Secretary

- (37.2) "Family care facility" means a residential facility licensed by and/or approved or supported by the State of Ohio or any state or county agency that provides room and board, personal care, habilitation services and twenty-four hour supervision in a family setting for not more than six persons who are physically handicapped, mentally impaired and developmentally disabled, and not more than two staff or supervisory personnel. This category includes foster homes for children. (Ord. 156-92. Passed 12-14-92.)
- (37.3) "Flea market" means a facility where individual vendors rent, lease or acquire space from the owner or operator of the facility to display and/or sell merchandise, goods or services to the general public. (Ord. 9-98. Passed 2-9-98.)
- (38) "Garage, private" means a garage used for storage purposes only and having a capacity of not more than four automobiles or not more than three automobiles per family housed in a multiple family building to which such garage is accessory, whichever is greater. (Ord. 94-84. Passed 7-9-84.)
- (38.1) "Graffiti" means any unauthorized inscription, word, figure, character or design which is marked, etched, scratched, drawn, applied or painted on any building, structure or premises. Unauthorized means that the inscription, word, figure, character or design is not a sign as defined in Section 1187.02(a) and is not otherwise specifically excluded from the definition of sign in Section 1187.02(a). (Ord. 154-96. Passed 10-15-96.)
- (38.2) "Group care facility" means a residential facility licensed by and/or approved or supported by the State of Ohio or any state or county agency that provides room and board, personal care, habilitation services and twenty-four hour supervision in a family setting for not more than twelve unrelated residents (not including staff) who, by reason of mental or physical disability, chemical or alcohol dependency or family or school adjustment problems, require a minimal level of supervision but do not require medical or nursing care. (Ord. 156-92. Passed 12-14-92.)
- (39) "Home occupation" means an accessory use of a service character customarily within a dwelling by only the residents thereof, which is clearly secondary to the use of the dwelling for living purposes, does not change the character thereof, and of which there is no exterior evidence other than a small name plate which shall not exceed one square foot in size, and which does not involve the keeping of a stock-in-trade in connection therewith. The practice of a single insurance or real estate salesman or other professional person, including an instructor in violin, piano or other individual musical instrument limited to a single pupil at a time, who offers skilled services to clients, and is not professionally engaged in the purchase or sale of goods, shall be deemed to be home occupations; and the occupations of dressmaker, milliner or seamstress shall be deemed to be home occupations. Physician, surgeon, dentist, attorney or lawyer, dancing instruction, band instrument instruction in groups, tea rooms, tourist homes, beauty parlors, barber shops, convalescent homes, mortuary establishments and stores, trades or business of any kind not herein excepted shall not be deemed to be home occupations. (Ord. 136-85. Passed 11-25-85.)
- (40) "Hospital" shall, unless otherwise specified, be deemed to include sanitarium, sanatorium, preventorium, rest home, nursing home, convalescent home and any other place for the diagnosis or treatment of human ailments or the care of humans, except a clinic.
- (41) "Hotel" means any building or portion thereof used as a temporary abiding place for remuneration, with or without meals, containing twelve or more guest rooms or suites where no provisions for cooking is made in any individual room or suite, except hospitals and jails.

Exhibit "B"

"USE" VARIANCE ATTACHMENT SHEET

TO BE COMPLETED BY APPLICANT

Please answer each fact/condition below completely.

If necessary, you may attach your answers on additional paper.

The Board of Zoning Appeals shall authorize a Use Variance only if the Board finds, beyond reasonable doubt, that all of the following facts and conditions exist:

- (1) The requested variance stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;

I Am trying to start a business, I can't afford to Rent a commercial spot right from the start, doing this out of my house first I can build up my clientele and then open up a spot once I am established.

- (2) The hardship condition described in Section 1133.01(86)** is not created as a result of actions by the applicant;

it is a hardship for me if I can't sell out of my house at first, if I can't do this first I won't be able to get started in business at a commercial spot here in Fairfield.

- (3) The granting of such variance will not adversely affect the rights of adjacent property owners;

The Neighbors will not be affected at all, I have a large driveway and it will be by Appointment only, so there will not be more than one customer at a time, and can park in my driveway, The neighbors wouldn't even know I'm doing it if I didn't tell them.

- (4) The granting of such variance will not adversely affect the public health, safety or general welfare;

This will definitely not affect the safety of my neighbors, or neighborhood, Anybody that can purchase a gun from me has to be approved from the FBI, these are Law abiding citizens, and have to have pretty much a spot free clean record.

- (5) Such variance will be consistent with the general spirit and intent of the Zoning Code;
this business is against the code of Fairfield the way
it is written, but it's not any different than everybody
selling Scentsy, Advocate, Thirty-one etc. out of their
house where they are carrying a lot of stock also. (which I
won't have any stock, pretty much pre orders only)
- (6) The variance sought is the minimum which will afford relief to the applicant;
This will definitely help me to start up my business
and just be a temporary thing until I can open up
a commercial spot here in Fairfield.
- (7) There is no other economically viable use which is permitted in the zoning district;
I am trying to be a gun dealer and it is not listed
on the number "39- Home Occupation", it is not economically
viable for me because I don't have the skills to be a
dressmaker, or teach dance etc.

**** (86) "Variance" means a variation of the requirements of the Zoning Ordinance, granted by the Board of Zoning Appeals in specific cases when warranted, in order to alleviate unnecessary and undue hardship which may otherwise ensue owing to exceptional narrowness, shallowness or shape of a lot, to difficult topography or other peculiar physical conditions of a lot, or to the nature of existing uses or structures on adjoining lots, and so that the general spirit and intent of the Zoning Ordinance shall be observed and substantial justice done. A Variance may be a "use variance" or an "area/size variance". The Board of Zoning Appeals shall grant or deny such variances pursuant to Section 1137.08 herein or in accordance with Sections 1199.36 and 1199.37 for flood damage reduction regulation variances only.
(Ord. 98-10. Passed 11-8-10.)**