

MINUTES OF THE
FAIRFIELD BOARD OF ZONING APPEALS

September 4, 2013

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

Lynda McGuire, Secretary, called the roll of the Board of Zoning Appeals. Present members were Ron Siciliano, Jack Wessler, Joseph Koczeniak, Chad Oberson, Scott Lepsky and Debbie Pennington. Rick Helsinger, Building Official and John Clemmons, Law Director were also present. Motion to excuse Don Carpenter carried 6-0.

Pledge of Allegiance

Minutes of the Previous Meeting

The minutes from the Board of Zoning Appeals meeting held on August 7, 2013 were approved. Motion carried 6-0.

Old Business

Case No. BZA-12-0022 – Outdoor Seating – 4737 Dixie Hwy.:

Scott Lepsky, seconded by Debbie Pennington, made a motion to remove this case off the table. Motion carried 6-0

STR recommended the rear door be made an exit only.

Property Owner's Comment

Rick Sizemore spoke regarding the variance. He said he wanted the board to know that his vending company took the liberty of placing 2 speakers in front of the building; he didn't know anything about it. He would like to keep them and monitor the volume. The volume can be controlled from the inside and it is convenient for the smokers having the sports games and music outside. The complaints have been in reference to the rear of the building. Mr. Helsinger clarified that the police department only provided complaints that pertained to the rear of the building. Mr. Sizemore said he thinks the fix is to close the parking lot in the back, because the problems are from people parking in the back of the building. He admits that it is not fair to the residential properties behind him; as the sounds can travel 2-3 blocks. He already talked to Dane McCune, who is a personal friend of his, about temporary barricades for the back of the business to prevent parking there. He would like to do that without infringing on the neighboring businesses delivery trucks and employee parking. Mr. Helsinger talked to the Fire Department and Public Works, and they would not support a permanent closing of the back lot. It is a private lane and there are other businesses and dumpsters that need access. Access by the patrons to the inside of the bar needs to be removed; the handles need to be removed from the outside of the door. There was discussion regarding the drive thru lane in between buildings and barricades for the back. It was decided that was not an issue to be discussed at this meeting; but with the Building Department at a later date. Mr. Sizemore agrees that the patrons shouldn't enter from the back of the building. He talked to the insurance company next door to him and they had no problem with anything, except trash in the parking lot. Mr. Lepsky asked how practical it would be to install panic hardware on the back door. It is already installed, but deactivated. Mr. Sizemore said the rear doors were initially kept open because they were smoking inside the building. The bar is now completely non smoking and in full compliance. There was discussion regarding the piped music. There have been no complaints regarding the front of the business and the music. He wants to keep the background music and sports piped out; there will be no bands. Most of the surrounding businesses close early and there is enough parking in front of the building.

Public Hearing

There was no comment from the audience.

Board Re-Convened

Scott Lepsky, seconded by Debbie Pennington, made a motion to amend the variance as follows: The applicant will be required to return for a one year review of this variance at the September 2014 Board of Zoning Appeals meeting and the following changes will be made to the existing variance: **Outdoor music may be piped out at background volume level and the applicant must work with the Building Division to ensure the back door is made an exit only.** Motion carried 6-0.

Case No. BZA-13-0032 - Kennel use in R-1 zoning district – 5978 Ricky Dr.:

Scott Lepsky, seconded by Debbie Pennington, made a motion to remove this case from the table. Motion carried 6-0.

STR had no further comment on this case.

Mr. Clemmons stated that the case was heard and tabled at the last BZA meeting. At the direction of the board, a written conclusion of fact and decision was prepared, which recommended denial of the variance. If the board wants to comment further, they may, but it's not required.

Property Owner's Comment

Erin Blevins spoke regarding the variance. She said no one called her or came out to visit the property. The property is clean. A couple board members indicated that they visited the property.

Public Hearing

Paul Assum, from Dee Alva Dr. spoke regarding the variance. He suggested the board look in the classifieds at the people giving away dogs; those are the people breeding dogs illegally. It is difficult to find homes for dogs and the board should have some compassion for animals. He doesn't think due diligence was done, because the board members did not visit the property. The board doesn't generally go as a group and inspect properties. Sometimes it's better not to announce their visits, to get a true feel for the property. The board confirmed that random visits were done by all board members present. Mr. Siciliano said he visited the property and talked to the neighbors, some were ok with the multiple dogs and some were not. Ms. Blevins asked who the neighbors were, because she talked to everyone around her and no one had problems. What constitutes a neighbor? Mr. Siciliano said he did not take down the names; as they wanted to remain anonymous. Mr. Koczeniak feels that these issues are not always restricted to neighbors; the decision made on her case will affect the whole community.

Board Re-Convened

Ron Siciliano, seconded by Scott Lepsky, made a motion to approve the written Conclusions of Fact and Decision Denying the Variance. Motion carried 6-0.

Case No. BZA-13-0034 – 8 foot fence, Gravel parking – 2401 Bobmeyer Rd.:

Scott Lepsky, seconded by Debbie Pennington, made a motion to remove the case from the table. Motion carried 6-0.

STR had no additional comment on this case.

Mr. Helsing referenced the Hamilton to New Baltimore Water Consortium report from Tim McClelland that the board was given and said they did some research on drainage. The lots are draining towards a ditch on the side and rear, and there is a pipe in the back that crosses over Ramona Lane, draining into an 18" drainage pipe into the canal, which runs north to the City of Hamilton. The report findings were discussed. Mr. Helsing said there could be damage to the aquifer if the property in question is not managed. There was discussion regarding a water source for Ramona Lane. The only public water is across the street in

Hamilton, and Ramona Lane residents could pay to tap into it. Everyone that developed lots in Fairfield at one time or another paid for their water service.

Property Owner's Comments

Josh Sellers spoke regarding the variance. He said he would take care of the major expense of drilling under the street. Mr. Oberson said he was surprised that no one from Ramona Lane approached Mr. Sellers about the water tap; that's something they should look into. Mr. Koczeniak said you can't force the residents to do that and asked if the risk to the water supply was going to be lessened by paving the lot. Mr. Siciliano asked if the water to the properties was at a bigger risk with this project or when it was being used as a dumping ground. Mr. Helsinger stated that according to the report, it is a sensitive area with shallow ground water and parking cars on gravel or grass is a risk.

Public Hearing

Laura Reece, 1735 Sunset Dr. Hamilton, OH, was sworn in by John Clemmons. She has been a real estate agent in the area for 12-15 years and has owned property at 2521 Ramona Lane for 7 years. She thinks the property will be de-valued with an 8 foot fence with barbed wire. She is a realtor and a registered nurse. The properties on Ramona Lane have no water or waste service. Her well is shallow. The canal runs along the properties, and it floods sometimes up to the front of her property. Basements on the street have flooded as well. Mr. Koczeniak asked what her specific objection was to the variances; what is the problem? If someone on the lane were trying to sell the property, the 8 foot barbed wire fence looks bad. The gravel parking is a problem for the people who drink water from their wells. There was discussion regarding the water tap. Someone questioned why the homeowners did not approach Mr. Sellers about the water tap. The owners indicated that Mr. Sellers hadn't contacted them either. Mr. Siciliano asked her what she thought of the clean up efforts that Mr. Sellers already did to the property. Cleaning up the garbage was good, but the clearing out of the trees was bad. The property continues to be a dumping ground. Other neighbors feel the same way. Greg Fischer showed on the aerial photo where the proposed fence will go. A six foot fence with 1 foot of barbed wire is allowed without a variance. They only removed enough trees for the proposed building; there are still plenty of trees on the property. There was hazardous items removed from the property; people were squatting in the buildings. People are less likely to dump at an open business than a vacant lot. Mr. Koczeniak asked what needed to happen to get water service back to Ramona Lane. Mr. Sellers is only required to put in a 1" tap. The residents need a 4" tap for water service, so the homeowners would need to come up with the difference in the price. Mr. Clemmons said the Board of Zoning Appeals is not going to be able to figure out the water issues for these homeowners. This has been a 20 year or more issue. The board should just assume the wells will stay. Mr. Sellers indicated that he would pay for the 4" tap.

Jack Grove, Attorney, spoke regarding the variance. He has a Fairfield office and is a property owner in Fairfield. He deals with real estate issues, the surface mining industry and gravel quarries often, and has worked with a lot of people, Mr. McClelland included. Clean water is important, and so are the property values. The homeowners have a right to clean well water. The applicants must demonstrate a hardship. He referenced the water map and the letter from the consortium, which states that the area is "sensitive drinking water source for private drinking water wells." The board should require him to pave. The cars can leak battery acid, antifreeze and gasoline; it is a water sensitive area and gravel parking is unsafe and unfair. The city has chosen not to help these residents. The houses are kept up well, and the barbed wire will be unsightly. The property in question is already weedy and has trash located on it.

Mr. Fischer feels that a water tap in that area is priceless. They are spending as much money as they can to clean up the property; they are not going to let it get run down. Mr. Koczeniak asked what the hardship was with paving the property. They are not sure that they can get enough money to finance paving. Mr. Clemmons is not sure that money is the type of hardship that the ordinances are referring to. He said that the decision is not going to be made for the board, but it seems that Mr. McClelland is saying don't grant the gravel variance. Mr. Oberson asked how much it would cost to pave. \$500,000 or more to pave as opposed to gravel at \$150,000-200,000. Mr. Oberson said he has the same aquifer, he drinks from it daily.

Jason King, 2501 Ramona Lane spoke regarding the variance. The board needs to protect the livelihood of the residents. He doesn't want to drive by barbed wire. Things happen, and the cars will leak. It's not about getting a free tap.

Board Re-Convened

Scott Lepsky, seconded by Debbie Pennington, made a motion to deny both variances. Motion carried 6-1, Chad Oberson dissenting.

New Business:

Case No. BZA-13-0036 –Parking closer than 5 feet from right of way, Parking spaces less than 180 square feet – 100 Commercial Dr.:

SSP-PNG, LLC is requesting a variance to install parking closer than 5 feet from the right of way, and to reconfigure spaces to be less than 180 square feet.

STR recommended a vertical curb and shrubbery along Commercial Dr.

Property Owner's Comments

Marie Ellis, from Scott Street Partners spoke regarding the variance. They closed on the building last Friday. The building was originally Powernet Global, but they had to downsize. The currently tenant is located in Blue Ash; they liked the site, building and location. The site currently has 212 spaces and there will be 300-310 employees. They approached the neighboring properties about purchasing land from them for additional parking; Suzuki said no and Furniture Fair is still reviewing their request. They will gain 16 spaces in the front along the right of way, with the reconfiguration. They plan to re pave and reconfigure the rest of the parking lot and will resize the remaining spots at that time. The parking spaces will change from 20 feet to 18 feet wide. Erin Donovan, Planning Manger, asked the board to approve both areas of smaller spaces so the applicants do not have to come back to another meeting. The STR recommendation was given because the city wanted a visual and physical barrier between the curb and the edge of pavement along Commercial Dr. There was discussion regarding the utility box in the area along Commercial Dr. and the board was told that it will remain where it currently sits.

Public Hearing

There was no comment from the audience.

Board Re-Convened

Mr. Oberson asked if there were landscape concerns along the back. No buffer is required between the businesses.

Scott Lepsky, seconded by Debbie Pennington, made a motion to approve the variances with the stipulation that a 6" vertical curb and landscape barrier approved by Development Services are installed along Commercial Dr. Motion carried 6-0. Motion to waive the 5 day waiting period carried 6-0.

Case No. BZA-13-0037 – Variable Message Reader Board sign with less than 200' frontage – 5449 Dixie Hwy.:

CSS Signs, for USA Collision Center, is requesting a variance to install a Variable Message Reader Board sign with less than 200 feet of linear lot frontage.

STR had no comment on this case.

Property Owner's Comments

Bob Carpenter, from CSS Signs, spoke regarding the variance. He consulted with Mike Stehlin, Plan Examiner, before he applied for the permit, and everything seemed ok. He prepared the drawings for the customer and ordered the sign. When he applied for his permit, Mr. Stehlin emailed him and told him the property was smaller than he originally thought, and the sign was not going to comply with the code. Mr. Carpenter said he went on good faith that Mr. Stehlin was correct when he initially talked to him. The sign complies with all requirements but the frontage. Mr. Clemmons noted that this was more a size variance,

which requires the board to find practical difficulties, as opposed to hardship. The pole sign is grandfathered, and as noted on the drawing, the letters will be a single color at a time.

Public Hearing

The owner of the property spoke regarding the variance. He has similar signs in other locations. They also advertise for community events on them.

Board Re-Convened

Joseph Koczeniak, seconded by Chad Oberson, made a motion to approve the variance as submitted. Motion carried 6-1, Ron Siciliano dissenting.

Case No. BZA-13-0038 – Non-conforming pole sign in the D-1A zone – 5106 Pleasant Ave.:

Kam Yee-Lee is requesting a variance to re-face an existing non-conforming pole sign in the D-1A zoning district.

STR had no comment on this case.

Property Owner's Comments

Kam Yee-Lee spoke regarding the variance. His restaurant is at 5106 Pleasant Ave, and he recently bought the property at 5104 Pleasant Ave so he would have access to the existing pole sign at that location. This sign lost its grandfathering because it was not used for over a year, and a variance is required to use it again. Mr. Siciliano noted that he doesn't even look at the pole signs; he looks at the building signs. Ms. Pennington said it would look nicer with a sign in the face than just a pole, like it is now. If the variance is approved by this board, they still need to be approved by Planning Commission and Design Review.

Public Hearing

There was no comment from the audience.

Board Re-Convened

Scott Lepsky, seconded by Debbie Pennington, made a motion to approve the variance, with the stipulation that if a comprehensive signage plan is put in place for the strip center, that plan would supersede this variance and the owner would have to comply with the comprehensive plan. Motion carried 4-2, Ron Siciliano and Joe Koczeniak dissenting.

Adjournment:

Motion to adjourn carried 6-0.

Ron Siciliano, Chairman

Lynda McGuire, Secretary

BEFORE THE BOARD OF ZONING APPEALS
FOR THE CITY OF FAIRFIELD, OHIO

IN RE: VARIANCE REQUEST BY
KAREN GLARDON

CASE NO: BZA-13-0032

CONCLUSIONS OF FACT AND
DECISION DENYING VARIANCE
REQUEST

This matter is before the Board of Zoning Appeals for the City of Fairfield, Butler County, Ohio ("Board") on the request of Karen Glardon for a variance permitting a kennel use in the R-1 zoning district (5978 Ricky Drive). After proper notice, testimony and evidence were received from Ms. Glardon, her daughter, Erin Blevins, one member of the public, and the City of Fairfield Zoning Department on August 7, 2013. After reviewing the record, considering the applicable laws and the Codified Zoning Ordinances of Fairfield, Ohio, and after deliberation, the Board now issues the following Conclusions of Fact and Decision.

CONCLUSIONS OF FACT

1. Two anonymous complaints were filed with the City of Fairfield Zoning Department alleging that Ms. Glardon was keeping multiple dogs in her home located at 5978 Ricky Drive, Fairfield, Ohio 45014, in violation of the City of Fairfield's ordinance which prohibits kennels in the R-1 zoning district. A kennel is defined as the keeping of more than two (2) cats or dogs more than four (4) months of age. FCO §1133.01(43).

2. The dogs range in age from approximately one year old to approximately seven years old and range in size from small to large breed dogs including Miniature Pinschers and Doberman Pinschers.

3. City of Fairfield Zoning Inspector Brian Jump informed Ms. Glardon and Ms. Blevins that they were in violation of the Codified Zoning Ordinance of Fairfield, Ohio by having more than two dogs on their property.
4. Ms. Glardon's property is located in an R-1 zoning district.
5. The R-1 zoning district does not permit a property owner to operate a kennel.
6. On July 1, 2013, Ms. Glardon filed a Variance or Appeal Application with the Board of Zoning Appeals of the City of Fairfield.
7. Ms. Glardon's application requests a variance to the City of Fairfield Zoning Ordinance, §1149.03. The reason given for such variance request was "My dogs are therapy for me and my daughter. They are therapy because of all the illness I have. MS, depression, Parkinson's disease, and seizure disorder."
8. Ms. Glardon's request for a variance was set for public hearing on Wednesday, August 7, 2013 at 6:00pm. Ms. Glardon was notified of the hearing by letter dated July 23, 2013 from Rick Helsinger, Superintendent of Building and Zoning for the City of Fairfield.
9. Ms. Glardon, as well as her daughter, Erin Blevins, attended the public hearing and stated their reasons for requesting a variance.
10. At the public hearing held on Wednesday, August 7, 2013, Ms. Blevins, speaking on behalf of Ms. Glardon, provided information to the Board regarding each dog, including their names and approximate dates they were acquired. That information is as follows:
 - a. "Peanut" – A seven year old Miniature Pinscher acquired in 2006
 - b. "Corky" – Five years old, acquired as a rescue in 2008. No breed given.
 - c. "Romeo" – Three years old, acquired in 2010 from a family friend. No breed given.
 - d. "Little Man" – Three years old, acquired in 2010 from a family friend. No breed given.
 - e. "Zoe" – Two years old, acquired in October 2011. Offspring of "Little Man". No breed given.

- f. "Sarah" – A one year old Doberman Pinscher acquired in August 2012.
- g. "Maggie" – A one year old Doberman Pinscher acquired in August 2012.

11. Ms. Blevins stated that none of the seven (7) dogs were properly licensed and none had received special training in providing therapy or assistance to individuals with disabilities or poor health. Ms. Blevins further stated that none of the seven (7) dogs had been previously licensed.

12. Ms. Blevins further stated that they had received no complaints until they acquired the last two dogs, and that the complaints were because those dogs, two Doberman Pinschers, are "so loud."

13. Ms. Blevins stated that had she been aware of the two animal limit she "would not be standing here right now".

14. At the public hearing, Ms. Glardon and Ms. Blevins provided written communications from their physicians regarding their request to keep the dogs.

15. The document provided by Ms. Glardon states: "Karen Glardon has house dogs that help her both physically and mentally with her diagnosis of MS and depression." This document appears to be written on a prescription pad from Mercy Medical Associates, signed by Dr. Barry Webb, and dated July 1, 2013.

16. The document provided by Ms. Blevins appears to be altered, having one or more words crossed out so as to make them unreadable. This document states "To Whom It May Concern: Due to [REDACTED] health issues please allow Ms. Blevins to keep her dogs." This document appears to be on letterhead from Christ Hospital Physicians, signed by Dr. Don S. Fixler, and dated June 20, 2013.

17. The documents discussed in paragraphs 15 and 16 above are both dated after the complaints regarding the number of dogs were received by the City of Fairfield Zoning Department.

18. At the hearing of this matter, Ms. Blevins and/or Ms. Glardon stated that prior to receiving notice from the City of Fairfield that they were in violation of the two animal limit they did not have any paperwork or notes from their respective physicians indicating a need for their dogs for therapy purposes.

19. Ms. Blevins stated that Ms. Glardon was diagnosed with multiple sclerosis (MS) in 2007 and Parkinson's disease in 2011.

20. Ms. Blevins stated that the reason for getting Romeo and Little Man (dogs #3 and #4) was "love at first sight". She further admitted that Zoe (dog #5) was born into the family, that Maggie (dog #6) was essentially a replacement for another Doberman that had passed away in February 2011, and that Sarah (dog #7) was acquired with Maggie as a "playmate".

21. At the hearing, one member of the public spoke in support of Ms. Glardon. This person did not know Ms. Glardon personally and is not a neighbor.

22. No neighbors spoke at the hearing either in support of or in opposition to Ms. Glardon's request for a variance, including anyone who filed the anonymous complaints.

23. After the hearing, the Board of Zoning Appeals recessed to deliberate the matter in private as a quasi-judicial body as permitted by the Ohio Open Meetings Act.

24. Following deliberations, the Board of Zoning Appeals tabled the variance request until the next meeting.

25. The variance sought by Ms. Glardon is a use variance because she seeks to operate a prohibited use (kennel). Fairfield Codified Ordinance §1137.08(a) states:

(a) Use Variance. No use variance shall be authorized by the Board of Zoning Appeals unless 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;
- (2) The hardship condition described in Section 1133.01(86) is not created as a result of actions by the applicant;
- (3) The granting of such variance will not adversely affect the rights of adjacent property owners;
- (4) The granting of such variance will not adversely affect the public health, safety or general welfare;
- (5) Such variance will be consistent with the general spirit and intent of the Zoning Code;
- (6) The variance sought is the minimum which will afford relief to the applicant; and
- (7) There is no other economically viable use which is permitted in the zoning district.

26. The Fairfield, Ohio Zoning Ordinance, §1149.03 provides that:

Accessory uses, buildings or structures customarily incidental to any aforesaid principal or conditional use in the R-1 zoning district, shall be permitted in conjunction with such use, including the following:

...

(b) Domestic Animal. The keeping of domestic animals exclusively for the use and personal enjoyment of the occupants of the principal building, *but not including a kennel.* (Emphasis added.)

27. A kennel is defined by Fairfield Zoning Ordinance §1133.01(43) as “any structure or lot on which more than two dogs or cats over four months of age are kept.”

28. Ms. Glardon’s housing of seven (7) dogs on her property meets the definition of a kennel as set forth in Fairfield Zoning Ordinance §1133.01(43).

29. Ms. Glardon claims her dogs are “therapy” for her various health conditions.

30. The Americans with Disabilities Act of 1990, as amended (“ADA”), prohibits municipalities from implementing zoning ordinances and administrative practices which have the effect of unfairly limiting the access of people with disabilities to treatment and supportive services.

31. The ADA, §36.104, defines a service animal as:

any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability....The work or tasks performed by a service animal must be directly related to the individual's disability....The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for purposes of this definition.

32. Ms. Glardon's dogs are not trained to do work or perform tasks for her benefit.

Ms. Blevins admits that they are not specially trained to provide therapy to individuals suffering illnesses, but claims that they provide such therapy for her and her mother, Ms. Glardon.

33. The Glardon and Blevins dogs do not meet the definition of a "service animal" as set forth in the Americans with Disabilities Act of 1990, as amended.

34. The Fair Housing Act ("FHA") prohibits discrimination in housing on the basis of disability/handicap.

35. The FHA defines a disability/handicap as "a physical or mental impairment which substantially limits one or more of such person's major life activities." See 42 U.S.C. § 3602(h).

36. The FHA prohibits municipalities and/or other local government entities from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including persons with disabilities.

37. The FHA requires municipalities to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing. For purposes of the FHA, an assistance animal does not need to be individually trained or certified in providing assistance, including emotional assistance.

38. The Rehabilitation Act of 1973, Section 504 states:

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service

39. Ohio Revised Code §4112.02 states:

It shall be an unlawful discriminatory practice:

.....

(H) For any person to do any of the following

(1) Refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, military status, familial status, ancestry, disability, or national origin;

....

(19) Refuse to make reasonable accommodations in rules, policies, practices, or services when necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling unit, including associated public and common areas;

40. Ohio Revised Code §4112.01(A)(1) defines a person as "...the state and all political subdivisions, authorities, agencies, boards, and commissions of the state."

DECISION

Based upon the foregoing Conclusions of Fact and a review of the record and relevant ordinances and statutes, the Board of Zoning Appeals for the City of Fairfield, Ohio hereby denies Ms. Glardon's application for a use variance to maintain a kennel for seven (7) dogs on her property for the following reasons.

For purposes of this Board's review, the ordinance limiting a property owner to two animals and prohibiting a kennel as defined in the R-1 zoning district is presumed valid and constitutional. It is not necessary to determine that Ms. Glardon's property constitutes a nuisance and the Board's decision is not based upon such a standard.

The Board finds that the use variance requested by Ms. Glardon does not satisfy the requirements of §1137.08(a) of the Fairfield Codified Ordinances. There is no condition which is unique to Ms. Glardon's property that is not ordinarily found in the same zone or district. Ms. Glardon's property is located in a residential neighborhood wherein each lot is approximately the same size and subject to the same zoning laws and ordinances. There is no hardship condition relative to the Glardon property itself which would justify an exception to the zoning ordinance.

The Board cannot determine that a variance will not adversely affect the right of neighboring property owners to use and enjoy their own property. The complaints received suggest that other property owners are affected. Ms. Blevins argued that they have never received any complaints regarding the dogs, and in fact approached at least four neighbors following notification by the City of Fairfield that they were in violation of the two animal limit. Ms. Blevins alleged that the neighbors had no problem with the dogs. However, individuals often wish to avoid confrontation with their neighbors and instead report problems or issues to local authorities anonymously. The Fairfield Zoning Department appropriately investigated the anonymous complaints and independently verified the violation. It is not necessary that the original complainants in this case be identified.

It also cannot be determined that the granting of such variance would not adversely affect the public health, safety and general welfare. Large amounts of dog urine (which cannot be effectively removed) and feces left by the dogs on the property would adversely affect the public health, safety and general welfare, as would the dogs barking, which Ms. Blevins stated was an issue with the larger dogs being loud.

This Board cannot determine that the granting of such variance would be consistent with the general spirit and intent of the Zoning Code. The general spirit and intent of the two animal

limit is to prevent homeowners and/or tenants from having so many animals that it negatively impacts the rights, health, safety and general welfare of adjacent property owners and the general public. As discussed above, the complaints received suggest that other property owners are being negatively impacted by Ms. Glardon and Ms. Blevins having more than two dogs. Granting the requested variance would allow such negative impact to continue and would be inconsistent with the general spirit and intent of the two animal limit.

This Board also cannot determine that the requested variance is the minimum which will afford relief to the applicant. Ms. Glardon and Ms. Blevins are requesting a variance to maintain a kennel for seven (7) dogs on their property. There has been no evidence presented to this Board that seven (7) is the minimum number of dogs that would afford relief for Ms. Glardon and Ms. Blevins. As discussed below, Ms. Glardon and Ms. Blevins did not acquire the dogs for therapeutic purposes. All were acquired for personal reasons other than therapy. Furthermore, Ms. Blevins stated at the hearing that she would "not be standing here today" if she had known about the two animal limit. This statement suggests that Ms. Glardon and Ms. Blevins could have complied with the two animal limit, and therefore seven (7) dogs is not the minimum which will afford them relief.

Furthermore, this Board cannot find beyond a reasonable doubt that there is no other economically viable use which is permitted in the R-1 zoning district. Failure to grant the requested variance does not leave the property with no other economically viable use. The property is in a residential district and is intended to be used as a residence. The denial of the requested variance does not hinder the property from being used for its intended purpose.

Ms. Glardon and Ms. Blevins claim that the variance should be granted because the dogs provide "therapy" for their disabilities and illnesses. However, the documentation from the

physicians were written after being notified of the violation. Ms. Blevins admitted that no medical records or evidence of a need for seven dogs for therapeutic purposes for her or her mother existed prior to being notified of the violation. Ms. Blevins provided specific information to this Board during the hearing that indicated the dogs were acquired over a period of time for personal reasons other than therapy. Peanut (#1) was acquired in 2006 as a puppy from a member of Ms. Blevins' family. Corky (#2) was acquired as a rescue dog in 2008. Ms. Glardon acquired Romeo and Little Man (#3 and #4) from a family friend in Kentucky because it "was love at first sight." Zoe (#5) was acquired because she was "born into the family". Maggie (#6) was essentially a replacement for another dog which had passed away, and Sarah (#7) was acquired as a "playmate" for Maggie. At no time during the hearing did Ms. Blevins state that the dogs were acquired because they were therapeutic for her and/or her mother. Furthermore, Ms. Blevins stated at the hearing that had she known about the two animal limit she "would not be standing here today". This statement suggests that if aware, she could have complied with the limit and, presumably, would be able to receive adequate therapy from two animals. The physicians' notes offer no explanation as to why the large number of dogs is medically necessary or appropriate. The notes offer little more than the physicians' after-the-fact support of their patients' personal request to keep their dogs.

This Board has considered the Americans with Disabilities Act ("ADA"). The ADA protects the rights of disabled persons who use service animals which are trained to do work or perform tasks for their benefit. As discussed above, the Glardon/Blevins dogs do not meet the requirements to be considered "service dogs" under the ADA. They are not specifically trained to perform any task related to Ms. Glardon or Ms. Blevin's disabilities. Ms. Blevins admitted that they are not trained to provide therapy to disabled persons or persons with illnesses, but

provide emotional support for herself and Ms. Glardon. The ADA further states that the crime deterrent effect and the provision of emotional support do not constitute work for purposes of classifying a dog as a service animal. The ADA does not apply to the seven (7) dogs in this case and is not a basis to grant the variance.

The Fair Housing Act ("FHA") also prohibits municipalities and/or other local government entities from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including persons with disabilities, and requires municipalities to make "reasonable accommodations" in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing. Because it requires no special training or certification for assistance animals, the Glardon/Blevins dogs do meet the definition of an assistance animal under the FHA. However, this Board finds that the allowance of seven (7) dogs is not a reasonable accommodation necessary to afford Ms. Glardon or Ms. Blevins an equal opportunity to enjoy their housing. They are permitted to have up to two dogs without a variance. For the reasons stated above with regard to the history of how and why the dogs were acquired and the medical evidence, Ms. Glardon and Ms. Blevins are being provided a reasonable opportunity to use their housing. No accommodation beyond the existing limit has been shown as necessary to provide them with the same opportunity as the rest of the general public. Therefore, this Board finds that while the FHA is applicable, Ms. Glardon's request for a variance is not a reasonable accommodation necessary to afford her and/or her daughter an equal opportunity to use and enjoy their housing.

The Rehabilitation Act of 1973, Section 504 prohibits discrimination on the basis of disability by any program or activity receiving Federal financial assistance or under any program

or activity conducted by any Executive agency. The Rehabilitation Act requires that such program or activity make reasonable accommodations to allow a person with a disability to participate fully in a program, take advantage of a service, or perform a job. The City of Fairfield receives federal financial assistance for certain programs conducted by the City. However, the Rehabilitation Act does not apply in this matter as Ms. Glardon is not being discriminated against by a program or activity which receives federal financial assistance. While the City receives assistance for certain programs, the Zoning Department and Board of Zoning Appeals are not included in those programs. If, however, the Rehabilitation Act does apply, Ms. Glardon's request for a variance is not a reasonable accommodation for the same reasons discussed above with regard to the FHA.

The Ohio Civil Rights Commission, Ohio Revised Code Chapter 4112, prohibits the state and all political subdivisions, authorities, agencies, boards, and commissions of the state from denying or making unavailable housing accommodations because of race, color, religion, sex, military status, familial status, ancestry, disability, or national origin. Chapter 4112 also requires the state and all political subdivisions, authorities, agencies, boards, and commissions of the state to make reasonable accommodations in rules, policies, practices, or services when necessary to afford a disabled person an equal opportunity to use and enjoy a dwelling unit. This Board finds that the Ohio Civil Rights Act may have application, but finds that Ms. Glardon's variance request is not a reasonable accommodation for the reasons discussed above.

Finally, this Board expresses its concern with the precedent that would be set if Ms. Glardon's variance request were approved. Approving a significant variance request to operate a kennel with seven (7) dogs within an R-1 zoning district on an after-the-fact basis that they are needed for emotional support or therapy purposes could potentially lead to a wholesale

repudiation of the ordinance. There is nothing about this request to distinguish it from many other property owners who love dogs and feel that they receive emotional support or therapeutic benefit for their particular physical or mental illness or disability. The general spirit and intent of the two animal limit is to prevent homeowners and/or tenants from having so many animals that it negatively impacts the rights, health, safety and general welfare of adjacent property owners and the general public. The evidence presented does not justify the granting of the requested variance.

For the reasons stated above, the variance is denied.



Ron Siciliano, Chairman



"Protecting Your Source Water"

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August 30, 2013

Rick Helsinger
Chief Building Official
City of Fairfield
Building and Zoning Division

Re: Source Water Protection Program

Dear Rick,

On August 23, I went to observe the property at 2401 Bobmeyer Road in response to a request by the Building and Zoning Division to evaluate any concerns regarding the aquifer. The purpose of my visit was to see approximately where the property is in relationship to wells owned by homeowners in the area. As I understand it, most of the homes on Ramona lane do not get their drinking water from the City of Fairfield but they get it from the local aquifer.

Attached to this letter, is a map showing the Source Water Protection Zones for the local public water suppliers in the region. The property in question does not exist in the sensitive Source Water Protection Zones for the municipal water supplies; however, the property does exist over the sensitive drinking water source for private drinking water wells near this area.

We do not have specific information about the private drinking water wells such as the depth to water, pumping rates, or existing water quality data. This proposed type of business could be a risk to these homeowners if the property is not managed well. Spills, illegal dumping of hazardous materials, accidents on the property and vandalism are some of the risks associated with this type of activity. Improper storage and or disposal of hazardous materials or waste can also present a risk to the local aquifer. Parked cars with leaking fluids on a gravel lot or a grass lot would be a risk to the aquifer. Having an asphalt or concrete impervious surface where cars would be parked would minimize that risk. Storage of hazardous materials and waste products that are labeled and stored on an impervious surface capable of containing the material in the event of a release would also minimize risk to the aquifer in this area.

The general geology in the region is sand and gravel with the depth to ground water at about 40 feet on average. While there are intermittent clay layers throughout the region, there really is no protective layer that would prevent pollution from migrating into the aquifer which is why we work to protect the municipal supplies from pollution.

The City of Fairfield adopted a Source Water Protection Program Ordinance in 1999 and this Ordinance was updated in 2011 to help safeguard the city's drinking water supply within specific Time of Travel zones. Enclosed with this

letter is a brochure describing what the Source Water Protection Program is and a map of the Source Water Protection areas in the vicinity of Romona and Bobmeyer. Also enclosed herewith is a copy of City of Fairfield Code of Ordinances Chapter 1192, Specifically, I'd like to direct your attention to Section 1192.04 (g)(6) of that ordinance, which reads as follows:

Liability. *The City is authorized to order the cleanup or abatement, or take such other actions as may be necessary to cause cleanup or abatement, of any hazardous material release to soils, surface water, and/or groundwater in or near a SWPA which may present a threat to groundwater quality or violate Ohio's water quality standards. The entity or person responsible for the release shall be liable for any reasonable expense, loss or damages attributable to the release incurred by the City in response to such an incident, in addition to a fine imposed under Ohio and Federal law, and these Codified Ordinances.*

Please be advised that this letter only indicates some of the risks to the aquifer based on the information we have about the project. If you have any questions, I can be reached at 785-2464. Thank you for the opportunity to comment on this issue.

Sincerely,



Tim McLelland
Ground Water Consortium Manager
Hamilton to New Baltimore Groundwater Consortium

Encl.

