

AGENDA
BUTLER COUNTY BOARD OF ZONING APPEALS
BUTLER COUNTY ADMINISTRATION CENTER
130 HIGH STREET
HAMILTON, OHIO 45011
January 15, 2008

I. Opening

- A. Roll Call Mr. Gary Salmon
 Mr. Thomas Bevington
 Mr. Alan Daniel
 Mr. Henry W. Philpot
 Ms. Lee Steenken

II. Approval of Minutes

- A. December 18, 2007

III. New Business

- A. BZA08-01V Randy Lane
 3825 Krause Lane
 Hamilton, Ohio 45013
- B. Findings of Fact for BZA Hearing November 20, 2007
BZA-07-21V – Otis, Mullins, Sr. & Beverly Mullins
- C. Findings of Fact for BZA Hearing November 20, 2007
BZA-07-23V – Kelly Mays

IV. Adjournment

REGULAR MEETING: Tuesday, January 15, 2008, 7:00p.m.
Butler County Government Services Building
Conference Room 1
315 High Street, 1st Floor
Hamilton, OH 45011

CALL TO ORDER: Mr. Bevington called the meeting to order

ROLL CALL: Mr. Gary Salmon
Mr. Thomas Bevington
Mr. Alan Daniel
Mr. Henry W. Philpot
Ms. Lee Steenken

MEMBERS ABSENT: None

STAFF MEMBERS: James Fox, Zoning & Floodplain Manager

APPROVAL OF MINUTES:

Ms. Steenken motioned to approve the minutes of the December 18, 2007 meeting.
Mr. Salmon seconded. Motion carried.

AYES: Steenken, Salmon, Daniel, Philpot, Bevington

NAYES: None

NEW BUSINESS:

BZA 08-01V

Randy Lane
3825 Kraus Lane
Hamilton, OH 45013

Mr. Lane, 2672 Boulder Drive, Hamilton, Ohio, said he is the managing member of Arco Investments, LLC, which has been in business for over twenty five years and has several pieces of rental property throughout the Ross Township community as well as Harrison, Ohio, Wisconsin and Tennessee.

Mr. Lane presented an outlay of the 3.326 acre property and described the location of the property.

Mr. Lane said he is proposing to build a 29,578 square foot strip mall which will be in an L-shape. He indicated where the entrance will be located on Route 128 and said according to Zoning there is more than adequate parking even if they do have two restaurants.

Mr. Lane said there will be plenty of parking around the back for employees and there are 24-feet if they can come in off of Krause Lane, they can bring the delivery trucks in that way. Mr. Lane said these areas are 20' x 70' stalls and there are 20' x 78' stalls with the center being 28' x78'.

Mr. Lane said Ely's Sports Bar and Grill, an establishment in Mason, Ohio, wants to expand their facility and because of the new smoking law that requires a patio outside for smoking, and so we are requesting a variance for a covered patio and the sports bar will be inside the building, and the patio will be for dining and smoking outside. He added that there will be no bands outside or any music outside.

Mr. Lane said they did apply for two variances for these patios – and he indicated the location of the second one and said he was approached by a day care center to rent a couple spots there and they would like to have the children outside in the summer time as well and if they could have a patio out there they may put in some swing sets or sand box out there for the kids to play with, but no swimming pools.

Mr. Lane said he is asking for the Board to grant the variances for the two outside patios. He then showed a preliminary drawing of what the building would look like, and said the actual structured elements are not finalized, and everything would be up to Butler County's Zoning Code.

Butler County Administration Center
Hamilton, OH

Ms. Steenken asked Mr. Lane, regarding the triangular shaped area covered by the building, is there an anticipated use for that.

Mr. Lane replied that they have been in contact with several people and have talked to (on the lower end not the higher-up in command) with (inaudible) Dollar and CVS Pharmacy, but everyone is waiting to see what he is getting ready to do and he added that they have talked with several people – from Subway to dry cleaners, to dog grooming places, but the only person they have on board for sure is Ely's Sports Bar and Grill. He added that he wanted to go through this phase first so he doesn't spend a ton of money on drawings and then have a problem with the right of way and then re-draw it.

Mr. Lane said he believes he is going the right way and that he has been communicating with Mr. Fox through the process over the last six months and it is zoned B-3 so there is no change there it is simply a variance for the two patios.

Mr. Philpot asked Mr. Lane if he has talked with everyone that is close to the property.

Mr. Lane replied yes – he spoke with the neighbor (sitting here), Gold Star and they are a go, and spoke with Wendy's International, and Chris at the Car Wash also.

Mr. Philpot asked Mr. Lane how far away is the church.

Mr. Lane said it is way across the street – probably 1,500 to 2,000 feet away.

Mr. Philpot asked Mr. Lane if he had talked with the church about it.

Mr. Lane replied no, but they had sent the church a letter as well as everyone else around - about 8 to 10 letters went out.

Mr. Fox said, just so the Board knows, he has had a lot of conversation with Mr. Lane, and asked Mr. Lane to explain to the Board that this might not be a full project right off the bat, that he may just be building in phases and asked him to explain it to the Board, and also the other covered patio that Mr. Lane mentioned about being for a day care – the reason he is asking for the patio is also in case he gets another sports bar who might want to have an outdoor dining area and that is why he is asking for two patios.

Mr. Lane said the whole reason for the patio is the smoking ban and the owner of the sports bar in Mason is here to testify how the ban has affected his business and what people do out in the parking lot. He added that once he is ready to “squeeze the trigger” they have what they call one, two and three components and will at least do one, and maybe one and two all at once and depending on what happens down the road, if the prospective tenants go in like this, then we will do the whole thing all at once but definitely do components one and two out of the gate.

Butler County Administration Center
Hamilton, OH

Mr. Lane said he and Steve, the owner of Ely's Sports Bar, have discussed it and he is 99.99% sure that he would not let another sports bar go in there as it would not be fair to the tenant right here, and he has been on the ban wagon with him since the first of June.

Mr. Fox said he understood what Mr. Lane is saying about the bar and all, but on the other covered patio area, he asked if there is any reason that Mr. Lane may think that the area needs to be bigger than what is proposed for day care, if ultimately that is what will go in there.

Mr. Lane said this particular spot is 1,560 square feet which is a pretty good sized area.

Mr. Daniel asked Mr. Lane what the width of it is.

Mr. Lane replied that the stall is 78' this way, 20' here and this one is 70' and 20' here (as he outlined on a drawing) so there are 1,400 square foot stalls and 1,560 square foot stalls.

Ms. Steenken said she knows there is a Ross Township Land Use Plan under consideration, and asked Mr. Lane how does this square with that.

Mr. Lane said it is zoned B-3 and it is on the map to be B-3 and coincides with all Zoning and Land Use plan.

Mr. Philpot asked Mr. Lane if he plans on having two egresses and ingresses.

Mr. Lane replied yes – and pointed out that one is an existing egress /ingress where you enter for Wendy's and Gold Star, and actually what he is doing is creating the Thoroughfare for the County.

Mr. Philpot stated to Mr. Lane that means that Wendy's and Gold Star are now using an entrance that actually is owned by Mr. Lane.

Mr. Lane replied yes.

Mr. Daniel asked Mr. Lane if it will be sprinkled.

Mr. Lane said yes it will be, he believes over 15,000 square feet has to be sprinkled for the permit, or actually he knows it is sprinkled because he already spoke to Steve Miller, the Fire Chief, and there are a couple of fire plugs over here and the water will run across over to Kraus Lane and the other fire hydrant . . . and there is some sort of pipe that comes up to the back of the building that has to be a certain valve hooked in the valves of the Ross Township Fire trucks – and he was not sure what the technical term is. He added that he will be sure to get it done.

Unidentified speaker said fire protection would be his concern.

Butler County Administration Center
Hamilton, OH

Mr. Lane said the building will be sprinkled for sure and he has talked with Southwest Water and they have indicated that the water will cross to the other side of Kraus Lane with a plug out here.

Unidentified speaker asked if this is approved that way, would that only be for that use.

Mr. Fox replied no, he could have anything outdoors that is permitted under the B-3 District unless the Board regulates it. He also said that the man (asking the questions) should be sworn in for the record. Mr. Fox then looked up permitted use under the B-3 District and said the only thing he would be dealing with (with outside stuff) would be a day care or restaurant – but not a gas station or Laundromat.

Mr. Lane said the whole thing with the patio is due to the smoking law and hopes that once he breaks ground he will get some businesses.

Unidentified speaker asked Mr. Lane if there a number of liquor licenses.

Mr. Lane said there is, but it has already been secured.

Mr. Fox said Butler County Zoning does not regulate liquor licenses; it is done by the State of Ohio and will not get involved in the development of it at all. If the building requires sprinkling for whatever reason, it will be sprinkled and how he gets there with the water is between Mr. Lane and Southwest Water.

Ms. Steenken asked Mr. Lane if all of the clearances in his driveway areas are appropriate for the use that he is planning – such as turning radiuses.

Mr. Lane said yes, and added that he wants to do some landscaping here and there, but some of the areas (with lines on them on the map) he does not believe they will curb them to allow extra space for turning.

Mr. Philpot asked Mr. Lane what he will do with the trash.

Mr. Lane indicated where two dumpsters are located and feels it will need three so he will put two in one area and wants to keep them in the back of the building, all enclosed in concrete block with a metal gate on it. He added how he has maintained the property to keep it looking good.

Mr. Lane said he just sold a business, “Randy Lane’s Auto Body” in Harrison, about a year and a half ago, and people can testify about the cleanliness of his facility.

Mr. Lane said that everyone in the Ross community wants this. He stated as for Southwest Water’s proposal for area development, they were going to have to loop and come back under Route 128 and they told him, if they do it, which they may or may not,

Butler County Administration Center
Hamilton, OH

they want him to take the water from over here (on map) so the loop will go under here over to their development to make it one big loop.

IN FAVOR: Steve Westerbeck, 9187 Yarmouth Drive, Loveland, Ohio

Mr. Westerbeck said he is the owner of Ely's Sports Bar and Grill in Mason, Ohio, which has been in operation for five years. He said when the smoking ban went into affect, our business actually went up as we have a family oriented business and found we lost a little bit of business initially with the smokers going away but they came back, and we actually gained a lot of families that would not come in when smoking was allowed.

Mr. Westerbeck said as far as the patio goes, on one side it does not necessarily benefit him financially in a great way, because you can only use it for part of the year and it is more to give the smokers an area to go where we can provide heat. He added that you are not going to stop the smokers from smoking and in his instance in Mason, he has 50% of them out the back door and they linger in an area or lean against their cars or the walls, and the other 50% are out at the front door pacing up and down in front and our staff has to sweep up cigarette butts all around and the reason why he would like to see the outdoor patio is that he takes great pride in his business and his reputation and it would actually allow him to control something that he otherwise would not be able to.

Mr. Westerbeck said if he can have a place for smokers to go and be able to take their drink with them, they will go there and then they are not bothering neighbors and we can keep the area clean easily. He added that customers are not allowed to take their alcoholic drinks outside – and there are signs posted to that affect.

Mr. Philpot asked Mr. Westerbeck what he will do to prevent people from leaving the patio.

Mr. Westerbeck said the patio will be secure on all sides and by code we do have to have a gated emergency/handicap access. He added that people are not really motivated to leave the premises with a beverage – but they would be more motivated to take their beverage if they were allowed to smoke on a gated patio.

Mr. Daniel asked Mr. Westerbeck if he intends to have televisions on the patio.

Mr. Westerbeck said he would look into that and would hope he could, but has not looked into it yet as far as weatherproofing, expense and what not.

Mr. Daniel asked if it would have a canopy or if it would be open.

Mr. Westerbeck said he believes it will be covered.

Mr. Lane confirmed that it will be covered and wants it to flow with the line of the building.

Mr. Daniel asked if there was any opposition from the church.

Mr. Lane said no and added that at the corner of Kraus Lane and Route 128 is Boston Butz and they also have an outdoor patio.

Mr. Daniel asked if they (Boston Butz) were closer to the church.

Mr. Lane replied yes he believes they are.

Mr. Westerbeck said he works with St. Susanna's and does Little League sponsoring, and believes the liquor license qualifications require 500 feet.

IN OPPOSITION: None

NEUTRAL COMMENTS: Tim Brennan, 2620 Boehm Farm Road, Hamilton, Ohio;
Gerald Hilbert, 3663 Layhigh Road, Ross Township

Mr. Brennan said he is neutral on the situation and, as an adjoining property owner, is concerned that the building will be a nice-looking and quality building and said Mr. Lane's reputation is that he takes good care of it. He said he is concerned that any development items that the County has would hopefully impact the property down Kraus Lane and eventually have probably 10 -12 more businesses down there and would like to have water and sewerage down there and sanitary sewer is another issue and any development decisions that are made on this property would be made to benefit that community as a whole within that area.

Mr. Philpot asked Mr. Brennan if he has any concern about potential noise.

Mr. Brennan said he owns a house there now that is a residence and zoned that it could be commercial so it would probably be turned commercial sooner or later in the future, but he does not have any concern about the noise of a bar or day care center – it's more the life saving issues.

Mr. Hilbert said one of the comments that he sees with Wendy's and Gold Star Chili is that Mr. Lane's development will help traffic because there is limited access going back around the Kraus Lane than (inaudible) and it will work very well.

Mr. Bevington asked Mr. Hilbert if he thinks it will help safety issues going in and out.

Mr. Hilbert replied yes.

Ms. Steenken said it will become a thoroughfare and it is difficult to exit if you are southbound on Route 128.

STAFF COMMENTS:

Mr. Fox said the applicant, Mr. Lane, is here to request to a variance to have two outside patio areas.

- Staff Comments:
1. The property is zoned B-3 Business District.
 2. This area is Business in character.
 3. The applicant is seeking a variance, said applicant shall be required to establish to the Board, proof by a preponderance of the evidence that unnecessary hardship will prevail unless the variance is granted.
 4. The spirit and intent of the zoning regulation is not to allow this type of activity from a commercial area, but since this will not change the character of the area the staff will recommend approval.

Mr. Fox said Staff recommends approval with the following condition:

- * No playing of music, DJs, juke boxes or having bands play in the outdoor patio area.

End of public testimony

Ms. Steenken asked Mr. Lane if he had been in conversation with the Township Trustees with regard to his proposal.

Mr. Lane replied yes, and added that he is on the Land Use Committee in Ross Township.

Mr. Lane said, at the Township meeting this month, there was something that came across their desk about this BZA meeting tonight and they did ask him some questions and he showed them a drawing of the layout and they were all in favor of it.

Ms. Steenken said she wanted to make sure they were aware of it since they are not here.

Mr. Lane replied yes.

Mr. Lane said for what it is worth, as they are not here, Mr. David Fehr and Mr. Joe Schmidt, Butler County Planning Division, said, "Randy, we want you to build this, we want this to go to Ross Township" and Ross Township is looking for some new places for businesses and that is one of the reasons why he can afford to do it and why we may break it in to two segments rather than do it all at once and said he thinks it will work.

Butler County Administration Center
Hamilton, OH

Mr. Fox asked Mr. Lane if he is committed to this property – is this for him or if the economics does not work, does he plan to sell – because if he plans to sell it, and hopefully not, that the next person would come in and want to do the same thing.

Mr. Lane asked would he sell it – well if the price is right . . . but does not have any intention of selling it and wants to continue moving forward with this and take the business to the next level and enjoys doing this kind of stuff.

Mr. Daniel asked Mr. Fox if this passes and Mr. Lane sells it in three days – does it go with the owner.

Mr. Fox said it goes with the land if he sells the property or gives it away – the variances would go with the property so the next owner could put in a bar and have an outdoor patio on it if they choose.

Mr. Daniel asked if it is possible for the Board to put a condition on it that if he sells it in three days . . . that the variance goes with the person, not the land – hypothetically.

Mr. Bevington said we can grant it just for him.

Mr. Daniel asked Mr. Fox if they can do it that way.

Mr. Fox said yes and understands where Mr. Daniels is coming from – but wanted to give him the devil's advocate and not to take it the wrong way, if he passes away and his estate gets it, and they sell it to another company, and it is out of his name, then we have a building already built and the patio is already established.

Mr. Hilbert said he is concerned about some sort of unwanted club to come in that Ross Township would not want there and he said he would agree with Mr. Daniel that maybe it would have to be re-approved if the owner changes.

Mr. Fox said he can not do that as he is one person and he will not track the property for the rest of his employment with Butler County to make sure that Mr. Lane does not sell it. He added that while it is possible, Staff would not recommend it.

Mr. Daniels said, in his 12 years experience, if the variance goes with the person...

Mr. Fox interrupted and said it always goes with the land, never with the person.

Mr. Daniel said no, Mr. Fox is wrong – a condition can go with a person – which is different. He said he is not pushing this, but is just thinking that it is possible.

Ms. Steenken asked Mr. Fox to read the last condition that the Staff recommended.

Butler County Administration Center
Hamilton, OH

Mr. Fox said, "Staff recommends approval with the following condition: No playing of music, DJs, Juke boxes, or having bands play in the outdoor patio area."

Mr. Daniel asked Mr. Fox if he added this since he sent it out.

Mr. Fox replied yes he did.

Mr. Daniel made a motion to approve the variance with the conditions stated by the Administrator and based on the Staff report (comments 1 – 5). Ms. Steenken seconded the motion. Motion carried.

AYES: Daniel, Steenken, Philpot, Salmon, Bevington

NAYES: None

Findings of Fact - BZA Hearing November 20, 2007
Case BZA-07-21V
Otis Sr. Mullins & Beverly Mullins
Request to have horses without proper road frontage

Mr. Fox said the Butler County Board of Zoning Appeals finds the following facts and asked for a motion to approve Findings of Fact items 1-6 as written.

Mr. Salmon motioned to approve the finding of facts for Case BZA-07-21V. Ms. Steenken seconded the motion. Motion carried.

AYES: Salmon, Steenken, Daniel, Bevington

NAYES: None

ABSTAIN: Philpot

Findings of Fact - BZA Hearing November 20, 2007
Case BZA-07-23V
Kelly L. Mays
Request to have horses without proper road frontage

Mr. Fox said the Butler County Board of Zoning Appeals finds the following facts and asked for a motion to approve Findings of Fact items 1-6 as written.

Mr. Daniel motioned to approve the finding of facts for Case BZA-07-21V. Mr. Salmon seconded the motion. Motion carried.

AYES: Daniel, Salmon, Steenken, Bevington

NAYES: None

ABSTAIN: Philpot

ADJOURNMENT:

A motion was made by Ms. Steenken, seconded by Mr. Daniel to adjourn. All in favor, motion carried.

These Minutes represent a summary of the proceedings and do not purport to be the entire record. A complete transcription of these proceedings was taken from an audio tape by James M. Fox under supervision of the Secretary and may be obtained upon written request. Any charges associated with preparing such transcript shall be borne by the person requesting such same and must be prepaid.

Hamilton, Ohio
January 15, 2008

Tom Bevington, Chair

James M. Fox, Secretary

Lee Margraf