

AGENDA
BUTLER COUNTY BOARD OF ZONING APPEALS
BUTLER COUNTY ADMINISTRATION CENTER
130 HIGH STREET
HAMILTON, OHIO 45011
April 21, 2009

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. March 17, 2009

III. New Business

- A. BZA09-05V Neil Hicks
 5700 West Alexandria Road
 Middletown, Ohio 45042
- B. BZA09-06V Dennis Beatty, Architect
 5622 Mosiman Road
 Middletown, Ohio 45042

IV. Adjournment

REGULAR MEETING: Tuesday, April 21, 2009, 7:00 p.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. Thomas Bevington
Mr. Alan Daniel
Mr. Henry W. Philpot
Mr. Gary Salmon
Ms. Lee Steenken

MEMBERS ABSENT: None

STAFF MEMBERS: James Fox, Zoning & Floodplain Manager

APPROVAL OF MINUTES:

Mr. Salmon motioned to approve the minutes of the March 17, 2009 meeting subject to a minor correction on page four of the draft minutes as mentioned to the Secretary earlier. Ms. Steenken seconded the motion. Motion carried.

AYES: Salmon, Steenken, Philpot, Bevington, Daniel

NAYES: None

NEW BUSINESS:

BZA09-05V

Neil Hicks
5700 West Alexandria Road
Middletown, OH 45042

Mr. Hicks, 6561 West Alexandria Road, Middletown, Ohio said he is here to request a variance to run a pizza shop on West Alexandria Road for the community.

Ms. Steenken asked what the current use is of the part of the building that he is going to use.

Mr. Hicks said it is a driving range at a Pro Shop – so we leased a part of the building.

Ms. Steeken asked if the Pro Shop is no longer there or what.

Mr. Hicks said it is the other half of the building so he is renting half the building of the Pro Shop.

Mr. Salmon stated in Mr. Hick's proposed floor plan it shows a dining area but he mentioned carry-out in his letter.

Mr. Hicks said there will be 3 – 4 tables in the dining area but it will be mostly carry-out.

Ms. Steenken said so there will be some dine-in.

Mr. Hicks said that is correct, there will be.

Mr. Salmon asked if the game room will be part of his operation too.

Mr. Hicks replied no.

Mr. Philpot asked if the game room is already there.

Mr. Hicks said he is not sure if there is anything there or not.

Mr. Fox asked Mr. Hicks if there will be any alcohol.

Mr. Hicks replied no.

Mr. Bevington asked Mr. Hicks how many employees he plans on having.

Mr. Hicks replied 1 or 2.

Ms. Steenken asked the hours of operation.

Mr. Hicks said 2:00p.m. to 9:00p.m. during the week and until 10:00p.m. or 11:00p.m. on the weekends and probably close on Sundays at around 8:00p.m. or 9:00p.m.

Mr. Daniel asked if the applicant will offer delivery of pizza.

Mr. Hicks said they will deliver a few nights a week – Friday and Saturday nights.

Mr. Daniel said, he wanted to state for the record, that the Township Trustees are behind this and think it will be a nice addition to the community and is right up from the high school and there are a lot of activities at the high school and there will be a new campus (grades K-12) and it would be nice to have athletic programs or whatever that can stop by and have pizza.

Mr. Salmon asked if they are having inside dining, then where are the restrooms.

Mr. Hicks said it is in the breeze way and they would have to go outside into the breezeway to the rest rooms.

Ms. Steenken said it appears there is no direct access for the people in the dining area to go to the game room and asked if they would have to go through the applicant's kitchen.

Mr. Hicks said they would have to go out a backdoor and into Mr. McGee's establishment but they could not go directly through the kitchen.

Mr. Salmon asked the applicant if he is serving pizza there now.

Mr. Hicks replied no.

Mr. Fox stated, for the record, the applicant has applied for a building permit and everything has been approved there – they are just waiting for this hearing to take place and said he believes Mr. Hicks is going to ask that the 10-day waiting period be waived as a condition so that he can come tomorrow and pick it up and get started.

Mr. Hicks said that is correct.

IN FAVOR: Dennis, Beatty, 1900 First Avenue, Middletown, Ohio; Mike McGee, 4547 Bonita Drive, Middletown, Ohio.

Mr. Beatty said he is the architect for Mr. Hicks, and lives in Madison so he has an interest in the project in two ways.

Mr. Beatty said they have a brand new park right next door to the driving range and there is really no place other than the Sunoco Station to go and get any food and feels it would be a good addition to the park that is going in next door as there will be soccer fields, fishing and a shelter there so people could go buy a pizza then go to the park and eat the pizza in the park.

Mr. Beatty said we have the building as an A-2 restaurant, so he is allowed to have sit-down eating and the building is approved for that. They have already had food approved in the building and have talked to the Health Department and they have literally no problem with the project and he thought they are ready to approve it also – so there is already food being served in there. He added that the applicant has just a little pizza oven (not a full kitchen) and it is a small pizza maker, the only thing they have to add is a 220 electrical outlet then Mr. McGee will move some cases around – and said he could answer any architectural questions anyone might have.

Mr. McGee said this will be something that is good for the Madison Township community and it will help the kids, it is real close to Madison High School, the park and

the park touches his driving range, and the base ball tournaments getting ready to start in a few weeks at the new community park and it will be a place for people to go to and hopefully we'll turn that little corner of Madison Township into a pretty big recreational area for all of the residents in Madison Township.

Ms. Steenken asked Mr. McGee if there is adequate parking in the vicinity.

Mr. McGee said he has a big parking lot at his place and then there is Madison Community Township Park which is within walking distance.

IN OPPOSITION: None

NEUTRAL COMMENTS: None

STAFF COMMENTS:

Mr. Fox stated the following staff comments:

Applicant is requesting a variance to operate a pizza shop.

Staff Comments:

1. The property is zoned A-1 Agricultural.
2. The area is business & residential 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 an agricultural district, but since this business will be located within an existing business the staff will recommend approval with one condition: the ten-day waiting period be waived.

Mr. Daniel said he believes this will be good for the community.

Mr. Daniel motioned to approve BZA09-05V subject to staff comments and to waive the ten-day waiting period. Mr. Philpot seconded the motion. Motion carried.

AYES: Daniel, Philpot, Salmon, Steenken, Bevington

NAYES: None

BZA09-06V

Dennis Beatty

5622 Mosiman Road

Middletown, OH 45042

Staff Comments:

Mr. Beatty said he is the architect for Ms. Stephanie Burke and designed the building that she is in now (the veterinary clinic) and had been in an existing building to the left of her property and rented it out a couple of times and the building was not in real good shape so she decided to demolish the building and had it demolished in 2007 and she has been running her business on the corner but with the five acres, she would like to maximize the use of her acreage that she has there and she and her friends have decided that they would like to run a donut and ice cream parlor and that is why we are here – to get permission to build a building – approximately 2,500 square foot building that she would like to put on that piece of property where the existing building stood.

Mr. Beatty said there is already a driveway that is cut on Route 122 and he knows that they must get approval to reuse that again but he spoke to Ohio Department of Transportation (ODOT) and because there was a building there and tore it down but did not take out the driveway – they did not think there would be a problem with re-establishing that entrance to the building site.

Mr. Beatty said that they think it would be a great addition and it is basically right across the street from the elementary school that is there now and is in close proximity to the high school. He added that they may put in a drive-thru so that the people who are going to work can drive through and get a cup of coffee, donut and after school activities in the evenings anyone can stop by and get an ice cream. We do not have any facilities like that in Madison Township now – you can get an ice cream bar or something at the Sunoco (gas station) – that is the only thing we have for food – there is another pizza shop, West Side Pizza, and they have done a good business out there so we know people in the area are looking for things - other wise they have to drive to Middletown or over to Bridgewater Falls and we feel it would be a great addition.

Mr. Beatty said he lives in Madison Township and hopes this gets approved and are asking to be able to put a building back up where there was an existing building – and it is not something new to the site as there were two buildings already on the property and when the other building was standing we obviously got permission to build the new veterinarian clinic and so we are just looking to re-establish a building where one was previously.

Mr. Beatty asked Mr. Fox if photos were included.

Mr. Fox said yes, they should have everything that we have.

Mr. Beatty said Ms. Burke is going to build a very nice building and we have already talked with the Health Department and we do not think we'd have a problem – of course we have not submitted anything to them yet for a permit.

Mr. Beatty said even after they are established they could add food later which would help the business - they make hamburger machines and French fry machines that don't require grills – there is one already in Butler County called "Fat Man's Dairy".

Ms. Steenken asked if the neighbors have been contacted concerning this.

Mr. Beatty said yes, all of the neighbors that touch the property have been notified.

Ms. Steenken said she sees that nobody is present.

Mr. Beatty said he did speak with Mr. Danny Smith, who lives across the street from Ms. Burke's existing building, and he loves the idea and the people right next to her obviously did not show up said he has told a lot of people what they want to do and everybody is very pleased and can't wait for it to open.

Mr. Steenken said, typically in a request like this, it is done through a zoning change and asked what the reason for not pursuing that avenue was.

Mr. Beatty said they did a variance for the other building so they just came back through with a variance – it's just one piece of property and not like they're asking to split it so that Ms. Burke has two properties that she can sell – its one five-acre parcel and she is not trying to split it off and make another piece that she could sell in the future. He added he thinks almost everything out there is done through a variance and that is why we went the same route for a variance.

Mr. Fox stated to Ms. Steenken that he notified approximately 11 property owners, as well as being in the newspaper and confirmed the numbers and he personally has not received any calls – only one call asking what room this was.

Mr. Daniel said he knows just about every neighbor in the area and if there was to be any complaints they would be here.

Mr. Fox said that Mr. Beatty mentioned something that was not shown on his plans as submitted and, typically, if he submits a building for a variance – that is the building we are going to go with when he applies and we would check to make sure that it was the same building. He mentioned something about a drive-thru – and his plans do not show a drive-thru but did want to bring it to the Board members' attention – and it is not necessarily a big deal because they are asking for a variance for a commercial building site.

Mr. Beatty said if you are going to do coffee and donuts it's really good to have a drive-thru like a McDonald's so people can just come around and order their food without

getting out of the car – and it may or may not happen, but he just wanted to mention it in case it does.

Mr. Fox said if the Board decides they want to approve it they can put that as a condition because if it is not on the plans and they come back a year from now (which will probably happen quicker) and it does not have it, they may have to come back to get the drive-thru approved if it is not done now because it is not on the plan as submitted as part of the variance.

Mr. Beatty said he does have a letter from Madison Township Trustees and all of them are willing to back this project and they do want it in their Township.

Mr. Beatty said the Life Squad building is right across the street on this corner and then the schools are across the street.

Mr. Bevington asked Mr. Beatty if they did have a drive-thru, upon entering would a driver be going around or out.

Mr. Beatty said they would have to get together with Apex Engineering on that and said he just put it in because people like to stay in their cars in the morning to get coffee and just drive up.

Mr. Fox asked Mr. Beatty if he could have this (the Madison Township Trustees letter) for the record.

Mr. Beatty said yes.

Ms. Steenken motioned to accept the letter from the Township Trustees. Mr. Salmon seconded the motion. Motion accepted.

AYES: Steenken, Salmon, Bevington, Daniel, Philpot

NAYES: None

Mr. Beatty asked the Board members if they received the floor plans of the building.

Mr. Fox nodded yes.

Mr. Salmon asked if the building will be approximately the same size as the one that was there.

Mr. Beatty said it's just a little bit longer but this one will be turned so it will be deeper – and won't look as big.

Ms. Steenken asked if the appearance of the proposed building will be in concert with the veterinary building.

Mr. Beatty said yes and added that Ms. Burke's existing building has brick that is half way up and then vinyl siding where this will have stone instead of brick – but very comparable to each other and said he would not design anything that wasn't. He added that they will work with Zoning and the Building Department to make sure that they have everything that is required for the permits.

Ms. Steenken asked about the signage and asked if it will be appropriate and approved.

Mr. Beatty said what Ms. Burke has now on her corner of the building is a very nice, little ground sign and would probably do another nice ground and are not putting up a big Dairy Queen sign any way.

Mr. Fox said they could not do that anyway – and are limited to ground signs now. He added that there is a whole new sign ordinance in affect for the County.

Mr. Daniel asked Mr. Beatty what his completion date is.

Mr. Beatty said they would start the working drawings and Ms. Burke is ready to go so it would be within a year – hopefully in six to seven months.

Mr. Daniel said he thinks this will be a nice addition with the school and place to go in the evening to get an ice cream.

Mr. Fox said ice cream parlors can generate a lot of traffic at times after sporting events and said he did not think the parking situation there is sufficient enough to get a lot of people in and out of there without being bumper to bumper, and asked Mr. Beatty if they do a drive-thru will they widen it so that people will not have to back out – and said it was just a suggestion to avoid any stacking on route 122.

Mr. Bevington said like Flub's – where the veterinarians parking next door is packed at times.

Mr. Philpot said it would behoove them to have adequate parking.

Mr. Beatty said he has not seen more than five or six cars – and Ms. Burke has extra parking spaces next door too.

Mr. Beatty said if they do the drive-thru then they would have more parking and with five acres they could make it work.

Mr. Fox said it is not a requirement – but could be a condition if the Board decides to approve it and is only his suggestion.

Mr. Fox said to Mr. Beatty that there is going to be a requirement – he will probably have to re-shift that parking because only 10% (ten percent) of the parking can be in front of

the building, under our code and we will discuss that. He asked Mr. Beatty to have Apex Engineering contact him when they get to the working drawings.

Mr. Beatty said they would want to be “a good neighbor” and put the parking toward Ms. Burke’s building instead of the house so that there would not be head lights shining over and obviously she wants to be a good neighbor.

Mr. Fox said that would probably a smart idea.

IN FAVOR: Stephanie Burke, 5622 Mosiman Road, Middletown, Ohio; Melissa Patrick, 710 Elwood Street, Middletown, Ohio; Kathleen Gough, 2947 Somerville West Upton Road, Somerville, Ohio

Ms. Burke said she is the owner of the property in question and wanted to speak on the aesthetics of the whole project – she has toyed in the past on what to do with this land in addition to the veterinary clinic or as an adjunct and issues have come up about grooming parlors, boarding facilities and so on, and she did have some of the neighboring property owners express some concern about not wanting a boarding facility because of the number of dogs and noise potential and frankly she does not want to take care of 100 dogs on holidays when staff is sick so she let that idea go.

Ms. Burke said she and her business associates feel they are in a good location for another food venue and said she lives and works in the Township and so she is very conscientious of the aesthetics and wants to be a good neighbor and wanted to reassure the Board, because she would get the heat immediately if there was a problem and she is very concerned about doing this “right” and that all surrounding property owners are comfortable with what they are doing.

Ms. Patrick said she is the potential office manager and head baker and just wanted to say that she and her husband have gone far and wide looking for some place that you can to have a good ice cream, donut or cup of coffee and is sadly lacking in the area and she grew up in Springboro which had the “K&W”, which employed a lot of the high school students, and they want to offer high school students a good place that they can come and hang out with their friends as well as have employment, learn a trade and it would be something good for them.

Ms. Gough said this is something that she has wanted to try for a very, very long time as far as finding a good place and her reasoning is not so much the ice cream, but the more she thinks about the donut and coffee. She added if you follow Route 122 clear up in to Gratis there is absolutely nothing – no place to stop other than a convenience store (Sunoco) or you go into town and go to McDonald’s or Wendy’s – and she wants to provide a really good cup of coffee and really good baked goods and ice cream and thinks it’s a great venue to catch the morning commute traffic going to school and to town.

IN OPPOSITION: None

NEUTRAL COMMENTS: None

STAFF COMMENTS:

Mr. Fox said, Case BZA09-06V, the applicant is seeking a variance to erect a building site for a commercial business.

Staff Comments:

1. The property is zoned A-1 Agricultural.
2. The area is business & residential 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 an agricultural district. Therefore the staff will recommend denial of the variance because the property owners' predicament can feasibly be obliterated through some other method other than a variance; the owner could apply for a zone change.

Mr. Salmon asked Mr. Fox if there is no real close commercial zone in that area anyway and does he recommend spot-zoning.

Mr. Fox said he has not looked that closely at the Land Use Plan, so he does not know if that would be spot-zoning or if it calls for that area to be zoned commercial or not.

Mr. Bevington said one of the things they did receive was a statement from the Township Trustees endorsing the project which is something that should be considered.

Mr. Fox said that is correct.

Mr. Daniel said it is zoned A-1, but a lot of rules are old and antiquated – and it has changed and is more residential than anything now. Along Route 122 there have been businesses out there as long that he can remember.

Mr. Daniel made a motion to approve BZA09-05V subject to Staff Conditions and stipulations that the Board of Zoning Appeals members would like to impose. Mr. Philpot seconded the motion. Motion carried.

Mr. Salmon said he would like to add a stipulation for the drive-thru.

Mr. Daniel said, regarding lighting, he would like to see there is consideration for the neighbors and there will be no glare. He added that both people here are well-respected and well-liked in the community and if there was opposition he would have heard about it

and it would have been raised and said there should be an option that she could put a kennel there – but 15 dogs would drive him nuts 24/7.

Mr. Fox suggested setting hours of operation since there is a motion and second to approve and asked the Board if they have any thoughts on hours of operation in reference to loitering in the area – do you think that would be a problem.

Mr. Daniel asked the applicant what hours they propose.

Ms. Patrick said they want it flexible because they are not sure what the market will bear or allow them to do but they would like to catch the morning commuters, 6:00a.m. on through lunch and would not perceive staying open late except to accommodate groups coming out after Madison Township football games and things like that. She added that because there is a veterinary clinic next door she would not want people around there late at night so she could not give exact hours at this point – just guidelines on it.

Ms. Patrick also said she would like to include that there be no alcohol allowed.

Mr. Bevington asked the applicant if they had hours from 6:00a.m. until 9:00a.m. or 10:00a.m. or maybe 11 o'clock on the weekends and open seven days a week.

Unidentified speaker said yes, that sounds good.

Ms. Patrick said we are not planning on being open seven days a week, maybe six and have Sundays off for family.

Ms. Gough said they will obviously have to look at whether it will support them to be open during those hours.

Mr. Bevington said to Ms. Gough the only catch is if they say they wish to be open from 6:00a.m. till 10:00p.m. five nights a week and then 11 o'clock the next two – it does not mean they have to be open those hours they just can not extend over those hours. He added that this will give them some flexibility and would cover the school functions.

Mr. Fox suggested 6:00a.m. to 10:00p.m. Monday through Thursday and 6:00a.m. to 11:00p.m. Friday through Sunday.

Mr. Salmon suggested 6:00a.m. to 11:00p.m. seven days a week and not worry about what day of the week.

Mr. Fox said that is fine.

Ms. Gough said she is wondering if it is proper to say 5:00a.m. not 6:00a.m. as far as the morning commute goes – would it be possible to open at 5:00a.m. or is there a problem with that.

Mr. Bevington said the applicant's baking will probably start at 9 or 10 o'clock at night and go all the way up until then, and a lot of bakeries are open at 4:00a.m.

Mr. Fox said his suggestion is 5:00a.m. until 11:00p.m. Monday through Sunday.

Mr. Salmon proposed the following conditions: the lighting is to be adequate but not to be intrusive to the neighbors and they have the ability to add a drive-thru facility to the operation and allowed hours of operation will be 5:00a.m. until 11:00p.m seven days a week.

Mr. Fox said there is a motion and a second. Motion carried.

AYES: Daniel, Philpot, Bevington, Salmon, Steenken

NAYES: None

OLD BUSINESS:

None

ADJOURNMENT:

A motion was made by Mr. Daniel, seconded by Mr. Philpot 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

April 21, 2009

Tom Bevington, Chair

James M. Fox, Secretary

Lee Margraf