

AGENDA
BUTLER COUNTY BOARD OF ZONING APPEALS
BUTLER COUNTY ADMINISTRATION CENTER
130 HIGH STREET
HAMILTON, OHIO 45011
March 16, 2010

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. November 17, 2009
 December 15, 2009

III. New Business

- A. BZA10-01V Ralph Jester / Kirk Fritzsche
 2063 Darrtown Road
 Hamilton, Ohio 45013
- B. BZA10-02C Travis Depew
 1622 Smith Road
 Hamilton, OH 45013

IV. Adjournment

REGULAR MEETING: Tuesday, March 16, 2010, 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
Lee Margraf, Administrative Secretary

APPROVAL OF MINUTES:

Mr. Salmon made a motion to approve the November 17, 2009 and December 15, 2009 meeting minutes. Mr. Daniel seconded the motion. Motion carried.

AYES: Salmon, Daniel, Steenken, Philpot, Bevington

NEW BUSINESS

BZA10-01V

Ralph Jester/Kirk Fritzsche
2063 Darrtown Road
Hamilton, Ohio 45013

Mr. Ralph Jester, 2474 Stahlheber Road, Hamilton OH, said he is here representing Mr. Kirk Fritzsche who is looking (for a variance) to build a pole building a parcel which he believes is .92 acres, where a 24-foot by 24-foot building is allowed and he would like to build a 30-foot by 40-foot building which requires one acre, so they are shy and trying to get a variance for a little bit nicer building for the size.

Mr. Bevington asked if they plan to have electric in the building.

Mr. Jester replied no.

Mr. Bevington asked if they plan to have water.

Mr. Jester replied no.

Mr. Bevington asked if the applicant plans to run a business there.

Mr. Jester replied no.

Mr. Bevington asked if they intend to put everything that is in the yard in to the barn.

Mr. Jester said yes, that is why he is here.

Mr. Bevington asked if they have talked with all of the neighbors around there.

Mr. Fritzsche, 2063 Darrtown Road, Hamilton OH 45013, said he spoke with Mr. Blaine McCleese, his immediate next door neighbor, and he is all fine with it. Pam and Bob Klink, who live behind him where the barn will be closest to, are in favor of it, and he called Mr. John (last name inaudible), who owns the vacant lot on the other side of Darrtown Road, the old house they tore down, and he approves of it; and he did call the church people and knows they do not care.

Mr. Bevington asked about the one on Old Oxford Road, right next to where it is going to be built.

Mr. Fritzsche said that is Bob and Pam Klink and they got a letter and she called him up and left voicemail saying they did not have any problems with this.

Ms. Steenken asked if anyone would be living in the structure.

Mr. Fritzsche replied no, it is just for farm equipment.

Mr. Fox said it was brought to one of our Board members' attention while walking around the property, that one of the neighbors that Mr. Jester talked to, had a little bit of concern about the intersection right there and a potential site distance issue with them coming out of their driveway and the barn. Mr. Fox said he knows the barn is going to be 100 feet back from the center line, 50 foot from the right-of-way – and asked the applicant if they have any wiggle room to push it back a little bit further back so they can eliminate any potential site distance issues with the neighbor coming out of their property. Mr. Fox pointed to the property and asked who the owners were.

Mr. Fritzsche said that is Pam and Bob Klink they are the back door neighbors and their driveway is off of Old Oxford there.

Mr. Jester said pushing it back further is going to be kind of tough – but they can go back and look at it and go back as far as they can.

Mr. Fox suggested the applicant go and sit on the Klink’s driveway and make sure the barn is not going to create a site distance issue.

Mr. Fritzsche said he was surprised to hear of the neighbor’s concern.

Mr. Fox said the information was given to one of the Board members and wanted to let the applicant know about the neighbor’s concern, and he does not necessarily have a concern with that because he sat in their driveway and did not see it as an issue, but he does not want it to become an issue for either one of them and it should not be a safety issue because they are well within the setback requirements.

Mr. Fritzsche said they will see what they can do about pushing it back and said they like to keep the peace and do not want to make the neighbors mad.

Mr. Salmon asked a question, to which Mr. Fox replied; the 100-foot is from the center line of Old Oxford Road, not edge of pavement.

Mr. Fox suggested that the applicant go and show their site plan to Mr. and Ms. Klink and that he personally did not receive any calls from anyone on this.

Mr. Bevington commented that they may have thought the applicant was going to put it right on the edge and if someone had a concern you would think they would be here but it was just a concern, and if it was a big deal you would think they would be sitting here.

Mr. Fritzsche said they will go talk with Mr. and Mrs. Klink.

IN FAVOR: None

IN OPPOSITION: None

NEUTRAL TESTIMONY: None

STAFF COMMENTS

Mr. Fox said BZA10-01V, applicant is requesting a variance to build an accessory structure larger than zoning allows. Staff comments are as follows:

1. The property is zoned A-1 Agricultural.
2. This area is rural 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 an unnecessary hardship will prevail unless the variance is granted.
4. The spirit and intent of the zoning resolution is not to allow this type of variance, but since this will not change the character of the area the staff will recommend approval with the following conditions:
 - A. A Building Permit is required.
 - B. The building must be a minimum of 100 feet back from the right-of-way of Old Oxford Road.

Mr. Salmon asked Mr. Fox if would like to include that the two properties be combined.

Mr. Fox said we can do that as well, he is in the process of doing that, but he will add that as a third condition (that the two properties be combined on the Deed and can not be sold separate and apart through a 711 transfer (Ohio Revised Code).

Mr. Jester said they have that in progress.

Mr. Fox said he will need a copy of the new Deed once it is done before a Building Permit can be issued.

Mr. Salmon made a motion to approve BZA10-01V with the three (3) conditions. Mr. Daniel seconded the motion. Motion carried.

AYES: Salmon, Daniel, Steenken, Philpot, Bevington

NAYES: None

BZA10-02C

Travis Depew
1622 Smith Road
Hamilton, OH 45013

Mr. Travis Depew, 1622 Smith Road, Hamilton OH, 45013, said he has been running an online internet business out of his home for almost ten (10) years and started out doing it around 2000 or 2001 as a part-time job and then started doing it full-time in 2004 and the nature of the business is primarily H1 Hummers.

Mr. Depew said all of his business is conducted online and if a customer calls and orders something it is drop-shipped directly from one of his many suppliers and he does not see the product except when some of his suppliers will not ship direct to

overseas customers so what he will do is bring the product in and package it all together and ship it overseas himself.

Mr. Depew said if he has a delivery it is by UPS and he has pick ups at 5:00pm daily, they swing by whether he has something or not.

Mr. Depew said he understands there was a complaint made that he was running a business – it was not the noise or traffic, nothing like that. He added that he has a good relationship with his neighbors and he has a letter which they have signed off on, with the exception of Mr. Tom Kornylak, whom Mr. Depew said he made several attempts to contact Mr. Kornylak by phone both at home and at work. He added that Mr. Kornylak has a gated driveway and lives as far back in from the road as he does and he can not just swing up to his house.

Mr. Depew said he knows Mr. Kornylak and has not had any problems or issues and that is the neighbor that he did not get signed off – outside of that he has three of the neighbors and one across the street as well signed off.

Mr. Depew said he is applying for a Home Occupation Permit and was unaware there was such a thing and that is why he obviously did not have one.

Mr. Depew said he does not have a lot of traffic, the only cars sitting outside are his and his wives – and he collects cars so he does have a few cars and they are H1 Hummers and there are no forklifts or product in the yard. His house does look like a garage because he spun it around and the living quarters of the house is pointed toward the back of the property and what is visible from Smith Road is the six-car garage section and all of the cars he owns are parked inside the garage.

Mr. Depew said he has no idea who would have made the complaint from any of his neighbors.

Mr. Philpot asked if the complaint was about his business or about traffic.

Mr. Fox said it was a complaint emailed to him, and he does not know the real name of the person who complained.

Mr. Depew said he knows the name - its either *Roger Nelson* or *Nelson Rogers*, and he does not know anyone by that name but he did do an internet search on it after Mr. Fox had carbon copied him on a reply to the original complaint. Mr. Depew said the person is not within 20 miles of him – he did find a *Nelson Rogers* that lives in McGonigle.

Mr. Philpot said so it was not a complaint of traffic – just that it was a business.

Mr. Fox said he got the complaint in an email with all of the details and it even gave him Mr. Depew's email address.

Mr. Fox said when he went to respond to the complaint he clicked on Mr. Depew's email address in error, and emailed Mr. Depew and said he would go check it out and review it and he will get back to him. Mr. Depew then emailed Mr. Fox asking him what is going on and that is when he realized he had sent the message to Mr. Depew as well as part of the description of the original complaint, so he ended up responding to Mr. Depew and not the person who made the complaint.

Mr. Fox said he contacted the person who complained and said Mr. Depew is going to apply for a zoning variance to apply to operate a Home Occupation and have never heard a word back since. He added that he notified via mail all of Mr. Depew's neighbors, including the one Mr. Depew could not get a hold of and he has not received any complaints since that first one, three months ago.

Mr. Daniel asked where the person who complained lives.

Mr. Fox said he has no clue – just an email address and he did not get into it.

Mr. Daniel said it bothers him to see Mr. Depew come here and he is supposed to pay the \$500.00 for something that nobody knows exactly who complained and asked if there is such a thing to dissolve this.

Mr. Fox said Mr. Depew needs the variance because approximately two (2) years ago we required them to be Conditional Uses and it is just better for him and his business to get this approved.

Mr. Depew said what he is applying for will actually allow him to do more than what he is doing.

Mr. Daniel said with that type of business, no one knows what he is doing 746 feet or so from the road anyway.

Mr. Fox said he has not heard anything from the person who complained since the time he replied and said Mr. Depew was going to apply for a variance.

Mr. Depew said he does not know the person but knows it is not one of his neighbors and had never heard of that name before.

Mr. Daniel asked if it might be a competitor of Mr. Depew's.

Mr. Depew said he can tell they do not live on Smith Road, Sky Meadow Road or New London Road - not anywhere near the person that complained and he doesn't know how he'd be affecting that person's life – and Mr. Fox suggested the possibility that the person made up the name and said that is entirely possible and it could be Mr. Kornylak, but asked if he has an alias why would he be trying to hide and how would he be affecting his life.

Mr. Daniel said the person who complained is not here to represent himself tonight.

Mr. Depew said there are only two houses that can see his house; one is his mother and the other is a house owned by Mr. Dennis Kohler but it has been vacant for a few years.

Mr. Daniel asked Mr. Depew how many acres he has.

Mr. Depew said he personally has ten (10) and then his mother has two (2), so that makes twelve.

Mr. Salmon asked Mr. Depew if he sells the cars or just the parts for the H1 Hummers.

Mr. Depew said no, he does not sell the vehicles. He sells to the military and a lot of his business this year is from Dubai, Kuwait and Saudi Arabia and basically world-wide and there really is only one other competitor that he has and they are in California and its been a good business and this is his livelihood and it probably is not going to last so he has picked up some other lines because he knows the Hummer thing will dry up eventually, but it's been a great run so far.

Mr. Fox asked Mr. Depew what percentage of his business is on the internet.

Mr. Depew said 100%.

Mr. Fox asked about deliveries.

Mr. Depew said about 80% is done online, and maybe 20% overseas and the actual product he does see is going overseas simply because his suppliers will not ship directly overseas.

IN FAVOR: None

IN OPPOSITION: None

STAFF COMMENTS:

Mr. Fox said case BZA10-02C, Travis Depew, 1622 Smith Road, Hamilton OH 45013; the request is to conduct a Home Occupation. Staff comments are as follows:

1. The property is zoned A-1 Agricultural.
2. This area is rural in character.
3. Home occupations require a Conditional Use from the Butler County Zoning Resolution and since this use will not change the character of the area the staff will recommend approval with the following conditions:
 - A. All home occupations shall be carried on completely within the residence and shall occupy a maximum of one-quarter (1/4) of one floor of the residence.
 - B. Home occupations shall not require any alteration to the exterior of the residence.
 - C. Home occupations shall not require use of any mechanical equipment not customarily used in a residential dwelling.
 - D. Home occupations shall be carried on solely by occupants of the residence but may employ no more than one (1) non-resident of the dwelling.
 - E. Accessory buildings shall not be used as space for home occupations.
 - F. One (1) sign no larger than one (1) foot square shall be permitted, provided that it is attached flat against the building.
 - G. All uses, customers, clients, drop-off or pick-up activities shall be conducted between 7:30 A.M. and 9:00 P.M. local time.
 - H. No more than six (6) customers or clients may be brought onto the premises daily for the purpose of conducting business.
 - I. No more than five (5) drop-off or pick-up deliveries are allowed on a daily basis.

Mr. Philpot asked Mr. Depew if any of the staff comments or conditions bothered him.

Mr. Depew replied no because he does not have clients over and has, at best, three (3) deliveries and that is DHL, Fedex and UPS.

Mr. Bevington asked if that would be a maximum of three (3) deliveries a day or a week.

Mr. Depew said he may go for two weeks without a delivery then every day for a week. Deliveries are, on average, two times a week and pick-ups are scheduled every day at 5:00 P.M.

Mr. Salmon asked Mr. Depew if essentially he does not have anything for a pick up then the driver does not pick up and they just drive through.

Mr. Depew said exactly – it's cheaper to pay \$7.00 a week rather than calling them and having them come out and pay more each time, so it does not make sense to do that.

Mr. Philpot made a motion to grant approval for conditional use of BZA10-02C subject to staff conditions. Ms. Steenken seconded the motion. Motion carried.

AYES: Philpot, Steenken, Daniel, Salmon, Bevington

ADJOURNMENT:

A motion was made by Mr. Salmon, 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
March 16, 2010

Tom Bevington, Chair

James M. Fox, Secretary

Lee Margraf