

AGENDA  
BUTLER COUNTY BOARD OF ZONING APPEALS  
BUTLER COUNTY ADMINISTRATION CENTER  
130 HIGH STREET  
HAMILTON, OHIO 45011  
July 17, 2012

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. June 19, 2012

III. New Business

- A. BZA12-3C      Michael Murphy  
                         7161 Elk Creek Road  
                         Middletown, Ohio 45042

IV. Adjournment

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**REGULAR MEETING:** Tuesday, July 17, 2012  
Butler County Government Services Building  
Conference Room 1  
315 High Street, 1<sup>st</sup> Floor  
Hamilton, OH 45011

**CALL TO ORDER:** Mr. Bevington called the meeting to order at 7:00P.M.

**ROLL CALL:** Mr. Thomas Bevington  
Mr. Alan Daniel  
Mr. Gary Salmon

Absent: Mr. Henry W. Philpot  
Ms. Lee Steenken

**STAFF MEMBERS:** James Fox, Zoning & Floodplain Manager

**APPROVAL OF MINUTES:**

No Meeting Minutes to approve

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**NEW BUSINESS:**

**BZA12-13C**  
Michael J. Murphy  
7161 Elk Creek Road  
Hamilton, Ohio 45013

Mr. Bevington stated Mr. Michael Murphy is not present and it is now 7:15 p.m. and we will give him another 10 minutes and dispose of the case properly.

Mr. Murphy arrived to the hearing.

Mr. Bevington stated this is a five (5) member Board with only three (3) members present so three (3) positive votes are required in order for the case to be approved. Since there are only three (3) Board members present the applicant can postpone the case until all five (5) Board members are present, or he can proceed and must have all three (3) votes in favor in order to pass.

Mr. Michael J. Murphy, 7161 Elk Creek Road, Middletown, Ohio was sworn in and stated he would like to proceed with the hearing and he is here tonight because he would like to get a Home Occupation Zoning Permit to have a gun smith business from his home. He said he is in a situation that he is about to retire and would like to take up a hobby that he can make a little money. He said he explained to Mr. Fox that it will not be a storefront business or anything like that, strictly for friends and family and he is required to get his Permit from the FFL (Federal Firearms License) and he will also do an outlet business in firearms.

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Mr. Murphy said he will repair firearms and he has a room in his house that is concrete walled with a shop set up down there in the basement and just wants to do repair work and clean guns and the outlet business will be done through friends and family ordering weapons and selling nothing serious because he and his wife hope to open a gun range up in town later on after he gets settled with his retirement stuff. Mr. Murphy said he will need the FFL and experience in gunsmithing in order to open up the range and also to establish contacts.

Mr. Bevington asked the applicant if he will have ammunition (ammo) on his property.

Mr. Murphy replied yes.

Mr. Bevington asked the applicant if he will be selling any ammo.

Mr. Murphy replied if someone wants a couple of boxes of ammo with the gun that is fine, but outside of that, he is not going to be a warehouse and he has bought an extra gun safe that will secure what he does purchase but he is not established or set up for any big storage of ammo.

Mr. Bevington asked Mr. Murphy if he would be doing any reloading.

Mr. Murphy replied no and he is not familiar with reloading.

Mr. Daniel asked Mr. Murphy if he will allow people to go in his backyard and shoot 5 or 6 rounds.

Mr. Murphy replied no. These will be brand new guns and the only guns that are questionable of being fired are ones that he repairs and he does not foresee that for a while because he just finished his gunsmithing course three (3) weeks ago so he is not that experienced.

Mr. Salmon asked Mr. Murphy if he will have a gun safe in his office.

Mr. Murphy replied he has a 36-gun safe in his small office and a 42-gun safe in the mechanical room and most of the guns he keeps are his personal ones and the guns he'll be working with and will be in the office area. The other guns that he would purchase would be in the other safe as we use that office for household records and stuff like that.

Mr. Bevington asked Mr. Murphy what hours he will be working.

Mr. Murphy said not many at the onset and this will not be an established business per se, he has to claim it as a business for his FFL and this is basically going to be a hobby, he will not have any store hours or anything like that, and no signs in the yard or anything like that.

Mr. Bevington asked Mr. Murphy how many days a week.

Mr. Murphy replied as many as he can, if it is lucrative it will be five (5) days a week, and if it is not, it will be a couple days a week, which will be no more than what he does now.

Mr. Salmon asked Mr. Murphy if he intends to do any selling on the internet.

Mr. Murphy said possibly later on, when he has his license he will have that ability, that is why we call it an outlet business because basically it is taking orders in from people, purchasing the merchandize and then forwarding it on to them.

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Mr. Salmon asked if he will have to sell or send it to another licensed person.

Mr. Murphy said that is what the FFL is for. He explained that he will buy from a distributor, say you wanted a gun, I would go ahead and take the order, call a distributor and he would send him the gun because I have the FFL, then he will have to do a 4473 on you, in order to sell you the gun. He added that any internet sales would still have to go through all of the same legal requirements as far as applications and paper work on NCIS.

Mr. Bevington asked Mr. Murphy where he will be retiring from.

Mr. Murphy replied AK (Steel) and he has been on sick leave since January 12 and his doctor said he is not going back so he has already filed for Social Security and is waiting to hear back on that, and AK will likely fight his long term disability, and this will give him something to do until he knows how it is going to go.

TESTIMONY IN FAVOR OF: Lisa Klenke-Murphy, 7161 Elk Creek Road, Middletown, Ohio.

Ms. Klenke-Murphy said she is in support of her husband, and their long term goal is to open an indoor gun range and again, this is a stepping stone in doing the gun range, because the FFL is required for the contact and the distributors for the equipment for the indoor gun range. We cannot establish the FFL and start the gun range until he has the FFL, so the Home Occupation License/zoning is required for us to have it at our house and there was no way of getting around it, and because it is a family home, with a 7-year old, we keep everything locked up. She said she is a teacher and security and education for children are most important to her and they are not going to have any individual strangers to their house, and they will not be firing, and he, being an ex-police officer, has guns and we live out in the country and it will not be random people coming to our house and with him being forced into retirement due to his back issues, he is too young to not do anything and he needs something to occupy his time and he has taken the initiative to do course work and graduate from a college with the gunsmithing license and she is trying to help him pursue something that will occupy his time and something that he can enjoy and the home occupation zoning is required for us to work with.

Mr. Fox said he had a call from a neighbor, and wanted to clarify something, and said one of the conditions he jotted down, which he wanted to discuss a little bit is: "No outside shooting allowed on the property from the gunsmithing business". He added Mr. Murphy has a right to shoot weapons on his property for himself, and he does not want to get into a situation where a neighbor calls him up and says, "Mr. Murphy is out there shooting guns" and he does not want to get put in the position where he is stuck trying to find out if Mr. Murphy is shooting his own gun or if he is shooting his gunsmithing business gun, so he would like to make it perfectly clear that when he puts this condition in, if the Board decides to approve it, he had better not shoot any other guns besides his own person guns on the property, and there is no way that he would ever be able to tell which gun it is – and if it is more than what the neighbors typically see or have heard in the past, they are going to be concerned with it, which is the only concern from the staff's standpoint, and I believe we covered it here but wanted to express how hard it will be for him to prove that but he still put it in there as a condition.

Mr. Daniel asked Mr. Murphy if he shoots (inaudible) now.

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Mr. Murphy replied yes. He has revolvers, automatics and handguns. Mr. Murphy explained where the range area is on the property where they shoot.

Mr. Klenke-Murphy said there are multiple acres still behind there, and there are multiple acres between where they shoot currently and any neighbor in the back of them.

Mr. Fox said the Murphy's have the right to shoot their own gun on their property, but there are two conditions here, and another condition, Condition A, "All home occupations shall be carried on completely within the residence and shall occupy a maximum of one-quarter (1/4) of one (1) floor of the residence. So if the applicant repairs a gun, and takes it outside to shoot, they would be in violation of that as well as the other potential condition, so there are two (2) conditions that cover it, but he wanted to make sure that neighbors are aware that the applicant does have the right to shoot his own personal guns on their property, and not the gunsmithing business.

Mr. Klenke-Murphy said she feels they are in a catch-22 situation and she does not care to run an entire business out of their house. Our intent in getting this is to do the indoor shooting at a different place, but we can't get approved for the FFL without this step as a stepping stone in the plan and he can and plans on doing a small and lucrative business.

Mr. Fox said we've had about ten (10) of these cases in the past year where people wish to operate internet businesses and sell weapons from their internet and do some other things as well, and this Board has been very nice to people, but he wants them to understand.

Mrs. Klenke-Murphy said their house is their home and there will not be strangers coming and they have children.

Mr. Fox said he just wanted everyone to be clear on this.

TESTIMONY IN OPPOSITION: None

NEUTRAL TESTIMONY: Sturgill Napier, 7062 West Alexandria Road, Middletown, Ohio

Mr. Napier said he is concerned about weapons that have the potential to shoot for miles, so four (4) acres is not a lot of room when you talk about weapons that can shoot up to 2 miles, depending on what type of weapon and he would like to go on record with the assurance that the business-related firearms will not be fired on the property and that my rights as a neighbor, to protect my family and have a peaceful environment to live in, will be maintained.

Mr. Bevington asked Mr. Napier if he can hear the shooting.

Mr. Napier said he has no issues with what has been shot over the past, but he is concerned about it if five or six customers a day, 20 to 30 rounds of ammo to be shot out to make sure they fire properly, that would now become a concern.

Mr. Fox said hopefully we answered that with the staff conditions we have offered and they would have to abide by.

Mr. Napier said thank you.

Mr. Bevington asked Mr. Napier if, so far, Mr. Murphy has been a good neighbor.

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Mr. Napier said yes, absolutely no complaints at all.

Mr. Daniel said he spoke with the other two (2) Township Trustees, and that was a question they discussed, and in all his years out there he has never heard gun shots out that way and we, as Township Trustees, have no objection either.

Mr. Murphy said he was a police officer, deputy sheriff for a number of years, and on the SWAT team, and undercover team, and is very knowledgeable about safety of firearms and he is very protective as far as safety goes with concern to weapons.

Mr. Bevington asked the applicant when he is doing this gunsmithing, would he be doing high powered rifles, revolvers, shotguns.

Mr. Murphy said to be honest he really hasn't decided what specialty to go into, and as of now he has been doing pretty much his own weapons, working on trigger pulls, clean ups and stuff like that and feels there won't be many high-powered rifles in this area because of the area and the way that hunting is – it is mostly shotgun or handgun or add-on specialty work.

Mr. Fox asked Mr. Murphy if his license will allow him to work on any gun.

Mr. Murphy replied yes, and he has been in school for all of it.

**STAFF COMMENTS:**

Mr. Fox said regarding case number BZ12-13C, Michael Murphy, 7161 Elk Creek Road, Middletown, Ohio 45042, the request is to operate a home occupation to establish a gun smith business.

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 conditional use; the spirit and intent of the zoning resolution is to allow appropriate uses as long as they are compatible with the surroundings. Therefore since this use is compatible with the surroundings 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 area 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 on the residence but may employ no more than one (1) non-resident of the dwelling.

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- 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 into the premises daily for the purpose of conducting business.
  - I. No more than five (5) drop-offs or pick-up deliveries are allowed on a daily basis.
  - J. No outside shooting allowed on the property from the gunsmithing business.

Mr. Salmon made a motion to approve the request for BZA12-13C variance, subject to staff conditions A – J, as submitted. Mr. Daniel seconded the motion. Motion carried 3-0.

**ADJOURNMENT:**

Mr. Daniel made a motion to adjourn, which was seconded by Mr. Daniel. 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  
July 17, 2012

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Tom Bevington, Chair

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James M. Fox, Secretary

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Lee Margraf