

RECORD OF PROCEEDINGS

WALNUT TOWNSHIP, FAIRFIELD COUNTY, OH - BOARD OF ZONING APPEALS (BZA)

11420 Millersport Rd., Millersport, OH 43067

HEARING #23-11, 12 & 13 MEETING MINUTES

March 9, 2023 – 7:00 PM

Board of Zoning Appeals members present/absent:

Members present - Alex Fant, Mark Helms, Ken Rienschield, Martha Snavelly,

Members absent – Ron Sharpe

Zoning Inspector: Mike Berry - present

Invited guest(s) present: Fairfield County Prosecuting Attorney Amy Brown Thompson

Also present were Eric Wittenberg and Joshua Nagy of Cook, Sladoje and Wittenberg, Co., LPA, counsel for the appellants.

List of members of the public present, from sign-in sheet:

1. Sherry Pymmer
2. There were 39 members of the public present

The hearing was called to order at 7:00 PM by Board of Zoning Appeals Chair Fant and the Pledge of Allegiance to the Flag was recited.

The hearing is being recorded by Julia Lamb, RPR, CRR of Pri Court Reporting

Advertised Purpose of Hearing: For the Appeal Application Letters #23-11, #23-12 and #23-13. Chair Fant asked if all three (3) application appeal letters could be combined into one hearing. Counsel Eric Wittenberg had no objection.

Information provided to the Board of Zoning Appeals prior to the proceedings:

Appeal Application #23 - 11

Exhibit # 23 - 11 - A (3 pgs.): Appeal Application Letter

Exhibit # 23- 11 - B (2 pgs.): Walnut Township Zoning Commission meeting minutes dated November 17, 2022

Exhibit #23 - 11 - C (2pgs.): Zoning Violation Letter

Exhibit #23 - 11 - D (1 pg.): Notice to Property Owners

Exhibit #23 - 11 - E (1 pg.): Property Owners List Contiguous

Appeal Application #23 - 12

Exhibit #23 -12 - A (3 pgs.): Appeal Application Letter

Exhibit #23 - 12 - B (1 pgs.): Survey Description Exhibit A

Exhibit #23 - 12 - C (2 pgs.): Walnut Township Zoning Commission meeting minutes dated November 17, 2022

Exhibit #23 - 12 - D (2 pgs.): Zoning Violation Letter

Exhibit #23 - 12 - E (1 pgs.): Notice to Property Owners

Exhibit #23 - 12 - F (1 pg.): Property Owners List Contiguous

Appeal Application #23 - 13

Exhibit #23 - 13 - A (3 pgs.): Appeal Application Letter

Exhibit #23 - 13 - B (3 pgs.): Survey Description Exhibit A

Exhibit #23 - 13 - C (2 pgs.): Walnut Township Zoning Commission meeting minutes dated November 17, 2022

Exhibit #23 - 13 - D (2 pgs.): Zoning Violation Letter

Exhibit #23 - 13 - E (1 pgs.): Notice to Property Owner

Exhibit #23 - 13 - F (1 pg.): Property Owners List Contiguous

Information provided to the Board of Zoning Appeals during the proceedings:

Exhibit # 23 – 11 - F (1 pg.) community crime map

Exhibit # 23 – 11- G (1 pg.) community crime map

Exhibits provided by David Comisford, appellant

Opening Summary Comments:

Discussion: Chair Fant stated there were three hearings before the Board and asked the appellant’s counsel if all three hearings could be heard as one hearing. Mr. Wittenberg concurred. Chair Fant explained how the hearing would be conducted. The appellant’s counsel would be heard and then zoning inspector Mike Berry would be heard on behalf of the township.

Counsel for the appellants, Eric Wittenberg, addressed the Board and presented his case. Mr. Wittenberg presented numerous exhibits to the Board. And after presenting his case-in-chief, Mr. Wittenberg fielded questions from the Board.

Amy Brown Thompson, Fairfield County Prosecuting Attorney, was then given an opportunity make remarks on behalf of the Township. She too fielded questions from the Board. Zoning Inspector Mike Berry testified. And he too was questioned by the Board. Mr. Wittenberg was also given an opportunity to question Mr. Berry.

Both parties were given an opportunity to add anything else before opening the floor to the public.

Comments from the public:

The oath was administered individually to each member of the public addressing the Board by Julia Lamb, RPR, CPR of Pri Court Reporting:

Sherry Pymer – cited from the ORC under the Landlord/Tenant act does not include any of the following: Hotels/Motels, tourist homes, recreational vehicle parks, where circumstances indicate a transient occupancy.

Cynthia Drumm – had a question about the Landlord/Tenant. She said in the rental business it is not uncommon to have a month-to-month rental with an occupant. She is asking if this would be considered a short-term rental? Will this zoning or lack of wipe out her opportunity for month-to-month rentals.

Robert Slater – He asked how many of these homes were located on lakefront property. He said that lakefront homes are much different than regular residential homes. He stated that the property lot lines are very narrow for many of these homes and that parking is an issue.

David Comisford – asked if any impact of crime with these short-term rentals. He presented evidence for the record from Lexus/Nexus stating that crime had decreased from 2021. He said that in regard to the number of nights are typically rented cannot be set, however, most property owners wouldn’t rent for less than 2 nights. Chair Fant asked if there is any vetting through Airbnb or Vrbo. The response was there is reporting available through both Airbnb and Vrbo.

Scott Rohlck – He wanted to point out that Vrbo’s are typically pushed to be an LLC. He said that under ORC that is considered a business and commercial businesses are not permitted in residential areas.

Patty Yerke, (appellant) - asked how many of the Board utilized Airbnb or Vrbo. She said change is hard, but sometimes change is good. She said these are families coming to rent these places where hotels/motels cannot accommodate them.

Lori Worns – Stated that her neighbors were right next door to a short-term rental and had knocks on the door after midnight asking to borrow a picnic table, etc., also heated arguments from the tenants. She said the houses are too close and asked if anyone would want someone like that living next to them every weekend. Mr. Wittenberg asked if this was firsthand knowledge or if this was hearsay. She replied that her neighbors had shared this with her.

Brenden Doyle – stated that long-term rentals can contribute to crime as well. A long-term rental near him resulted in a lot of crime and said that a short-term rental would probably be less of a problem than the long-term rentals.

Daria Arborgast – as a retired person she said that the short-term rental provides her the opportunity to meet people from all over and have them for breakfast/dinner, etc.

Board Recess and Discussion

Chair Fant stated that there was a lot of information provided for the evening and asked the Board if they needed additional information. Chair Fant called for a recess at 8:30 p.m. The Board returned from recess at 8:56 p.m.

Chair Fant stated that based on the appellant's counsel testimony that the properties are deemed businesses under ORC 53201 "common usage". Chair Fant said that the Board considered a seven-factor variance guide in making their decision. Chair Fant asked if there were any other questions or comments from the Board. There were none.

To approve or disapprove the applicant's submission:

Motion made by Martha Snavelly to approve the Hearing Application #23 -11, #23 - 12, and #23 - 13, second offered by Ken Rienschild.

Discussion: Chair Fant referred to the variance guide in consideration of the decision.

Roll Call Vote:

Rienschild - No, Helms - No, Fant - No, Snavelly - No

Applicants proposed Hearing Application #23 - 11, #23 -12, and #23 - 13 is denied.

Reason(s) for support or non-support of the Application:

Chair Fant noted that all evidence presented, including an admission by appellant's counsel that these were businesses. And as businesses, the Board turns to the seven-factor analysis as outlined by the supreme court.

The Board found the seven-factors that would support the denial of the Application:

- i. Based on the evidence presented, the Board finds that the properties can be put to use as residential properties as they were originally designed.
- ii. There was no evidence presented that there are particular conditions on these properties that are not applicable to other properties within the districts.
- iii. The applicants purchased the properties subject to the existing restrictions, as this type of use is not permitted. No evidence was presented that they contacted the zoning inspector prior to opening their businesses to determine if the activities were allowed within the districts. As such, they created the hardship condition.
- iv. No facts were presented that the rights of adjacent owners would be adversely affected by the variance.
- v. No facts were presented that the variance would adversely affect character, safety, or general welfare.
- vi. The variance would not be consistent with the spirit and intent of the code, as a business is not permitted in a residential zone.
- vii. Granting the variance is essentially spot zoning and is not the minimum that will afford relief, as the properties can still be inhabited as residential.

Chair Fant asked the Board to state their reason for approval or disapproval. Martha Snavelly referred to the variance guide and concurred with the Chair. Mark Helms and Ken Rienschild also concurred with the Chair.

Chair Fant asked for a Motion to adjourn.

Adjournment: At 9:07 PM, Martha Snavelly made a motion to adjourn. Mark Helms seconded the motion. The motion passed with 4 yes votes.

Minutes Recorded By: Patricia McLoughlin

Martha Snavelly, Vice-Chair

Mark Helms

