

## COLERAIN TOWNSHIP BOARD OF ZONING APPEALS

Regular Meeting

4200 Springdale Road - Cincinnati, OH 45251

May 22, 2013 - 7:00 p.m.

Meeting Called To Order: 7:00 p.m.

Pledge of Allegiance.

Explanation of Procedures.

Roll Call: Mr. Grubbs, Mr. Martin, Mr. Price, Mr. Reininger, Mr. Bartolt.

Swearing In: Appellants, attorneys and all speakers in the cases.

Hearing of Appeals:

- A.      Case No.:                      BZA2013-0001 - Continued  
         Subject Property:        12190 E. Miami River Rd., Cincinnati, OH.  
         Applicant:                Terry Blosser  
         Owner:                      Fairfield Church of the Nazarene  
         Application:              Conditional Use for Religious Place of Worship –  
   Article/Section 7.2.3.

Staff: Site is located at the northern tip of the Township at the intersection of Colerain and E. Miami River. In 2011 the BZA granted approval of a conditional use for a modular building to be used as the church office. Approval was conditioned on removal of the building after 24 months. In May of 2011 the BZA granted another conditional use approval for a temporary maintenance building. This year Mr. Blosser contacted the Zoning office and advised us that the time is running out; the new building was never built and they need to address the time period. At that time, staff reviewed the case history and discovered that an error was made in the approval as a modular building is not a conditional use. At the March 2013 BZA meeting the request was for a conditional use on the property for a religious place of worship. At the hearing, it was learned that several months before the effective date of the current Zoning Resolution when Mr. Blosser was issued a zoning permit for development of the site, religious places of worship were allowed in residential districts and now the current Zoning Ordinance states that religious places of worship are conditional uses. At the March meeting there was a dialogue about how to handle this situation. There are many churches in the Township that do not meet the criteria of the Zoning Ordinance, so they are non-conforming uses. Non-conforming uses have limitations on how they can expand and don't have the same privileges regarding signage. Since the last hearing, staff believed that he could issue a non-conforming use certificate that will take care of the erroneously issued approval. Mr. Blosser was agreeable, however, if in the future they want to expand, he asked won't they need a conditional use approval. The BZA needs to come to a resolution as to how to handle this case and also what to do about non-conforming churches in residential districts because the Board is going to see more of these cases. Aerial map of the site showing the church and modular building was provided. The site plan that was previously approved allowed parking within 50 ft. of the lot line. Another issue to consider is a federal law called RLUIPA

which prohibits municipalities from imposing any land use regulation that impose a substantial burden on religious activity. Although a RLUIPA claim hasn't been mentioned, if we were to have to defend a claim we would have to show that that the imposition of the burden is 1) in furtherance of a compelling government interest and 2) is the least restrictive means for furthering its interest. The law also allows successful litigants to recover attorney's fees. Religious uses in America enjoy more protection than other types of uses. There is a Lutheran Church at Kemper and Pippin that was non-conforming and in November of last year they wanted a sign that was only permitted in residential districts and the BZA granted the church a conditional use approval despite the fact that their parking is within 50 ft. of the lot line. Another example was provided of a church located at Livingston and Blue Rock that is non-conforming and has parking close to the lot lines and if they were to expand, they would need to become a conditional use. The purpose of the conditions placed on conditional uses with regard to parking is to mitigate traffic noise and dust to neighborhoods. In the case of the Nazarene Church, it is set back from any residences and the parking in question is adjacent to Route 27, so very little negative impact to residential uses will occur. Staff has discussed this issue with the Township law director and he agrees that this is the best way to move forward. Staff's interpretation of the zoning rules and Comp Plan leads him to believe that the BZA can, in this instance where there is a non-conforming use, grant the conditional use as it meets the Conditional Use Review Criteria in Section 4.4.3 despite that it doesn't meet the setback of parking.

Applicant: Terry Blosser. The issue was explained thoroughly by staff and has nothing additional to add, but will answer any questions.

Motion to Close Public Input: Motion by Mr. Price, 2<sup>nd</sup> by Mr. Grubbs. Motion carried.

Board: Mr. Martin expressed concern with regard to RILUPA. He thinks there's a simple resolution; we can grant a conditional use with a variance on setbacks. All of the reasons outlined, justify a variance. In terms of the site plan, since it was approved in 2006 and they didn't act on the site plan, whatever they want to do will be an expansion of a conditional use. Asked if they can cut back on parking and install landscaping in the parking lot in conformance with the ordinance. If RILUPA is going to come into play, possibly the Zoning Ordinance needs to be amended to take out the 50 ft. setback requirement. Mr. Milz said regarding reducing the parking, he's not comfortable with making them change something that has already been approved. He said any future development will have to be in accordance with the conditions set forth in the Code and they wouldn't be allowed to build any new parking within the 50 ft. setback, however, whatever is currently there is legal. He said we're treading on dangerous ground when we start requiring modifications to a previously approved plan. Mr. Martin said if not acted on in 2 years, the non-conforming use is abandoned, so the site plan is no longer valid. Mr. Milz said the parking lot was built. Mr. Martin asked if all of the parking lot is used. Mr. Blosser said all of the storm sewers were installed in the ground based on the master site plan that was approved, and the parking meets the requirement for the additional sanctuary and education center. Mr. Martin asked if the future building is built, will they have the required parking. Mr. Milz said if built according to the approved plan, they have the required parking. Mr. Blosser said there are parking spaces for 500, which is what the new building was designed for. Mr. Blosser said everything was based on the Township's approval of their site plan;

detention ponds were installed and the ground was raised 2 or 3 ft. He said an agent of the Township approved the site plan and there was no understanding that it was a 2 year issue and asked if this is something that was enacted with the new zoning laws. Mr. Price asked how will this be addressed in the future for churches that are non-conforming. Mr. Milz said the intention of the Zoning Resolution is to prevent negative spillovers into residential communities from churches and in the future when a new church is going to be built, the conditions in the Code will be applied. He said as churches desire to go from a non-conforming use to a conditional use, they will go before the BZA for approval on a case by case basis. Mr. Price cited churches where their parking borders residences and Mr. Milz said they wouldn't be allowed to expand their parking. Mr. Blosser said they have plenty of land and it could have been configured so that the parking would have been 50 ft. from the border. Mr. Price said he is okay with the variance. Mr. Grubbs said he doesn't see an issue with the non-conforming use as it currently exists and if they want to modify it, they'll have to following the conditional use criteria. Mr. Grubbs asked for clarification of what they're trying to get approved. Mr. Blosser said all future parking is graveled with all of the storm sewers in place and they can't blacktop it until the new building is built due to the damage that heavy equipment would cause. He said he'd like to get the conditional use resolved so that they don't have to come back again when they are ready to expand. Mr. Grubbs asked if they grant a conditional use will they not have to come back in when they want to expand and Mr. Milz said they'll move from a non-conforming to a conditional use. Mr. Grubbs said if they grant a conditional use, all future development would have to comply with the Code and Mr. Milz said that is correct; all new projects will have to comply with the 3 conditions. Mr. Martin said they're here because they are expanding a non-conforming use. Mr. Milz said they are not; the modular building was granted in 2009 and they were erroneously told they needed a conditional use for the building. Mr. Martin asked is the modular building not an expansion of the conditional use. Mr. Milz said a modular building is an accessory building, so it should have been looked at as an accessory building, not a conditional use, as accessory structures are permitted in residential districts. Mr. Martin said it was a non-conforming use and Mr. Milz reiterated that it's an accessory building and it meets the setback requirements. Mr. Milz stated that the whole complex received a non-conforming use certificate today and in 2009 it didn't have a non-conforming use certificate; it may have been a non-conforming use, but it didn't have a certificate. Mr. Martin cited 11.8.2 regarding the BZA granting expansions to non-conforming uses. Mr. Grubbs said if that had been the issue brought before the Board in 2009, that may have been the correct analysis, but that wasn't what was brought before the Board and the reality is that it was built 4 years ago and it exists now under a non-conforming use certificate issued today, so whatever is there as of today is of right. Mr. Milz said we're all trying to make Colerain a better place. Among other things, the Zoning Ordinance as well as the Comp Plan are to prevent property values from going down and to allow residents the enjoyment of their property. Mr. Bartolt said he agrees that existing churches are okay as they currently stand and asked as far as the modular building, does it have a permit. Mr. Blosser said yes and it meets all of the specifications of the Hamilton County Building Dept. Mr. Grubbs said this is a unique issue because of what happened previously before this Board and that any other religious places of worship that are currently non-conforming will be a simple straight forward analysis. Mr. Blosser said hopefully their case can be a part of transitioning the past into the future for all existing churches in the Township.

Board Action: Mr. Grubbs made a motion to approve the conditional use and a motion to approve a variance for any violations of the conditional use as it stands today, 2<sup>nd</sup> by Mr. Price. Mr. Martin questioned if a variance can be granted since it wasn't noticed and does the Board need to do another hearing. Mr. Milz said this hearing was properly noticed and it began in March. Mr. Solomon said they're limited to whatever was noticed. Mr. Milz said if it would please the Board, we can notice the variance. Mr. Grubbs inquired if it is okay to proceed since it's a straw vote and there is a waiting period. Mr. Milz said they're unable to grant a conditional use without the variance. Mr. Martin said if we vote for a variance, someone could challenge that because it wasn't properly noticed and therefore not properly voted on. Mr. Solomon inquired about the variance and Mr. Milz said one of the conditions was that parking may not be within 50 ft. of the property line and in order to grant the conditional use approval, a variance is required.

Mr. Grubbs withdrew previous motion and made a motion to postpone the hearing for another month to allow it to be noticed as a conditional use and a variance, 2<sup>nd</sup> by Mr. Price.

Roll call: Mr. Grubbs – aye, Mr. Martin – aye, Mr. Price – aye, Mr. Reininger – aye, Mr. Bartolt – aye.

Resolutions for Adoption: None.

Unfinished Business: None.


Approval of Minutes: Motion by Mr. Price to approve minutes of March 27, 2013 meeting, 2<sup>nd</sup> by Mr. Martin. Motion carried. Mr. Reininger did not vote because of his absence from that meeting.

Adjournment: Motion by Mr. Grubbs to adjourn at 7:45 p.m. 2<sup>nd</sup> by Mr. Bartolt. Motion carried.

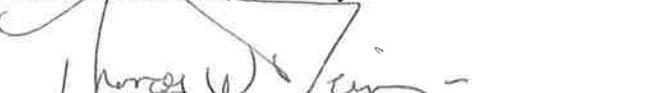
Respectfully Submitted:

  
Rebecca J. Reno, Zoning Recording Secretary

Secretary:

  
Ronald J. Roberto, Secretary

Accepted by:

  
Thomas W. Reininger, Chairman