

**COLERAIN TOWNSHIP BOARD OF ZONING APPEALS**

Regular Meeting

2200 Springdale Road - Cincinnati, OH 45251

**Wednesday, June 26, 2013 - 7:00 p.m.**

Meeting called to order: 7:00 p.m.

Pledge of Allegiance.

Explanation of procedures.

Roll Call: Present: Mr. Grubbs, Mr. Martin, Mr. Price, Mr. Reininger, Mr. Roberto.

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: The case began in March and was continued in May at which time it was questioned if the meeting was properly noticed to allow for a variance. After further research and discussion with legal counsel, the conclusion was that the meeting was properly noticed and a variance is not needed. On May 22, 2013 a nonconforming use certificate was issued, so as of that date the site was legal. Mr. Milz asked that the Board come to a conclusion on this case.

Motion to close public input by Mr. Roberto, 2<sup>nd</sup> by Mr. Price. Motion carried.

Board Deliberation:

Mr. Martin expressed concern that the decision made at the May meeting was refuted by staff and the application was not re-noticed. He believes a variance is needed and doesn't think the applicant was served properly. The application was noticed as a Conditional Use which it cannot be since it doesn't meet the setbacks, and if it is a nonconforming use, setbacks must be met for an expansion. He said the trailer was placed on the premises 2 years ago, so it didn't exist when the nonconforming use was established. He agrees that the Conditional Use approval given for the trailer was incorrect and the Board is trying to rectify this error with a Conditional Use and a variance. He said he doesn't see the justification for the church receiving a nonconforming use.

Mr. Roberto had no questions.

Mr. Grubbs said the characterization that Mr. Milz unilaterally made the decision is not accurate. Mr. Grubbs said after the May meeting there was subsequent review and

discussion with counsel which led to the change of course. Mr. Barbieri said he was not present at the last meeting. He explained that it is the Zoning Administrator's responsibility is to interpret the Zoning Resolution and Mr. Milz made an interpretation back in May that the site is nonconforming and since it hasn't changed since that nonconforming permit was issued, a variance isn't necessary. Mr. Barbieri said these discussions have clarified how to proceed with these cases in the future and generally speaking a variance will be needed.

Mr. Price had no questions.

Mr. Martin said if a vote is taken and subsequent information is discovered through conversation with legal counsel, the appropriate action is to consult the Board to see what action they want to take to change their action. Mr. Martin said the associate counsel was present last month and was then overruled by town counsel and the Board did not have the opportunity to engage in that conversation. Mr. Martin said this is the first time he has heard that the nonconforming permit was issued. Mr. Milz said the information was given to the Board at the last meeting and is noted in the meeting minutes. Mr. Martin read the passage from those minutes and disputed that such gave notice to the Board. Mr. Milz said, as previously stated by himself and Mr. Barbieri, after the meeting and further study and review with counsel, a decision was made that no variance is needed and asked for closure to the matter. Mr. Martin asked that it go on record that he is displeased and not impressed with staff work on this case.

Mr. Reininger asked for a motion to approve the conditional use for a religious place of worship.

Mr. Martin asked are they giving a conditional use permit and Mr. Milz said yes. Mr. Martin asked are they not granting a variance for the parking. Mr. Milz said it is a nonconforming use and is being transitioned to a conditional use. Mr. Martin asked when they put up a new building will they come back in for parking. Mr. Price said they're already pre-approved. Mr. Milz explained that expansion of a conditional use in a residential district is permitted and BZA approval is not needed. He explained that when a use is conditionally permitted, it means that generally speaking, that use is compatible in that zoning district. Mr. Martin asked how can you say this is a conditional use including the temporary structure that they want to make permanent because it did not exist when the plan was approved. Mr. Milz repeated that on May 22, 2013 the church was granted a certificate of nonconformance. Mr. Martin asked on what basis and for what structures. Mr. Milz said he had enough evidence and, acting within the responsibilities given to him by the Resolution and the Board of Trustees, he issued a nonconforming use certificate for the site as it existed on that date. Mr. Milz said the facts of the case are that currently it's nonconforming and as of May 22, 2013 and per Section 11.2.1, the legality of the nonconforming use was established and at that moment it became legal. Mr. Milz said what the applicant is trying to do is to get a conditional use approval so that by the virtue of their status, they may enjoy the privileges of a conditional use, which include, and possibly most importantly, signage. Mr. Milz explained that in residential districts, if you're an approved conditional use, you can have the type of sign that you would expect to see at a church or school. Mr. Milz said this case is not unprecedented and referenced the church at the corner of Pippin and Kemper which the BZA issued a conditional use to and said this will not be the last time that an existing church applies for a conditional use. Mr. Milz said this is the most fair and equitable way of dealing with these types of uses, and this case is very

simple; they want to go from a nonconforming use to a conditional use and the questions is what will the vote be. Mr. Martin said they all agreed that their plan was approved prior to the current Zoning Resolution, so consequently they are a nonconforming use and have all the rights and privileges thereto. However, they came in 2 years ago for a temporary office structure after the new regulations were adopted and that was erroneously granted. The 2 years expired and they came in and said they want to make this structure permanent and staff advised them to apply for a conditional use which they cannot get because they don't meet setback requirements. Mr. Martin asked did they or did they not expand the nonconforming use. Mr. Milz said they were never issued a nonconforming use certificate. He said there was no review of the nonconformance until May 2, 2013, however, it is germane to this conversation. The question is can the Board issue them a conditional use. Mr. Milz said it is his opinion and the opinion of the law director that they can get a conditional use. Mr. Barbieri agreed; he said there has been no expansion since the time the nonconforming permit was issued. Mr. Barbieri said the point of importance is that a nonconforming certificate was issued by the Zoning Administrator and it is his job to make those decisions and to interpret the Zoning Resolution. There's been no expansion since the nonformance permit was issued and for that reason no variance is needed. Mr. Martin said their authority as a Board was overthrown; there was a unanimous opinion of the Board to grant a variance which in the long run would have served everyone better.

Board Action: Motion to grant conditional use by Mr. Roberto, 2<sup>nd</sup> by Mr. Price.

Roll Call: Mr. Price – aye, Mr. Grubbs – aye, Mr. Reininger – aye, Mr. Roberto – aye, Mr. Martin – nay.

B. Case No.: BZA2013-0002  
Subject Property: 8760 Colerain Ave., Cincinnati, OH  
Applicant: Timothy Sizemore, Furniture Fair  
Owner: Maurice Christie Investments  
Application: Variance for temporary outdoor display –  
Article/Sections 12.10.4(B) (G), 12.10.5(C).

Staff: Applicant applied for zoning certificate on May 10 2013. The Zoning Resolution prohibits outdoor sales, displays and storage in parking lots. They've had tent sales for a number of years. He has no problem with these types of sales and is going to ask the Zoning Commission to rethink this restriction. These sales are enjoyed by many people. Provided aerial map of Furniture Fair, zoning map and drawing of tent. Provided the following Duncan Factors to be considered and weighed for this type of variance:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance.
2. Whether the variance is substantial.
3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance.
4. Whether the variance would adversely affect the delivery of governmental services (e.g. water, sewer, garbage).
5. Whether the property owner purchased the property with knowledge of the zoning restrictions.

6. Whether the property owner's predicament feasibly can be obviated through some method other than a variance.
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance.

Mr. Milz also provided the variance review criteria set forth in Section 4.4.2 of the Zoning Resolution.

Applicant: Timothy Sizemore, 505 Smiley Blvd., Hamilton, OH. Furniture has had tent sales for as far back as he can remember. They were never aware of any problem and it was always approved by Zoning as well as Hamilton County Building Dept. and Colerain Township Fire Dept. They meet all of the criteria required. This is a very important sale for Furniture Fair. It helps them purge old inventory to bring in new merchandise. Losing this tent sale would be detrimental to them and a hardship to sales staff.

Walt Fanthorp, 7200 Dixie Hwy., Fairfield, OH. District Manager. On behalf of the owners, appreciates the Board for hearing their case. As Mr. Sizemore stated, they rely on this tent sale and it's an annual event for residents of the Township. They lower prices to get rid of merchandise. It's very well regulated. They get all permits required. Safety is their top priority. For over year 15 years they've had this tent sale. They also do special buys and have substantial investment for these tent sales as well as clear out merchandise. They have close to \$100,000 invested in merchandise for this tent sale. They have bedroom and living room sets. There are true values at the sale and the sale is enjoyed by Colerain residents. Some of the items are sold below cost, but it allows them to liquidate merchandise to free up space for new merchandise. It's a win-win situation for everyone. There have never been any injuries or problems in the past. Asking the Board to please grant them their permit.

Motion to close public input by Mr. Price, 2<sup>nd</sup> by Mr. Roberto. Motion carried.

Board Deliberation:

Mr. Martin asked did they receive a permit last year and he said yes for the past 15 years they have. Mr. Martin said he thinks there is a hardship here and asked is this a one time or permanent variance. Mr. Milz said this has been an opportunity to revisit this issue as a policy and he will speak with the Zoning Commission and Trustees to find out if we want to prohibit tent sales in all parking lots or not. Mr. Martin has asked is a 1 year variance agreeable and Mr. Fanthorp said a temporary approval would work and if they have due notice they can adapt and overcome some things for next year. Mr. Martin said another variance is needed for the aisles because they have to be 5 ft. and they're only 4 ft. Mr. Fanthorp said the Fire Dept. will also address this and they will meet the requirement. Mr. Martin asked does Furniture Fair own the whole building and Mr. Fanthorp said they lease it.

Mr. Roberto said there's a conflict in the Code with regard to temporary tents for outdoor sales which states they may be permitted 14 days every 90 days and asked how long will the sale be. Mr. Fanthorp said they usually have it for 3 weeks, but can scale down it to 2 if necessary. Mr. Martin said he'd be willing to allow the sale for 3 weeks.

Mr. Price asked when is the sale. Mr. Fanthorp said it's on hold and they've made other arrangements, however, if granted it would be the end of July. Mr. Price asked if the tent proposed on the plan is the same size as used in previous years and Mr. Fanthorp said yes.

Mr. Grubbs asked Mr. Milz when you have discussions with the Zoning Commission and Township officials, do you intend to discuss the time period since the Code limits these types of sales to 14 days and Mr. Milz said yes.

Mr. Reinginer asked for a motion to grant a variance for 1 year for a duration of 3 weeks for a temporary outdoor sales.

Board Action: Motion by Mr. Roberto to accept recommendation, 2<sup>nd</sup> by Mr. Martin.

Roll Call: Mr. Price – aye, Mr. Grubbs – aye, Mr. Reinginer – aye, Mr. Roberto – aye, Mr. Martin – aye.

Resolutions for Adoption: None.

Unfinished Business: None.

Approval of Minutes: Motion by Mr. Price to approve minutes of May 22, 2013 meeting, 2<sup>nd</sup> by Mr. Martin. Motion carried. Mr. Martin referenced the minutes with regard to the nonconforming permit for the church and Mr. Milz said he would have to listen to the tape.

Administrative Matters: Mr. Martin asked in the future when the Board takes a vote and there is subsequent discussion between Mr. Milz and counsel and it's decided they're off on the wrong course, can the Board be consulted. Mr. Barbieri cited the Sunshine Law and that all deliberations occur in public. He said that any time any members want to call him, he represents the Board and officials of the Township and he will be happy to talk to them. Mr. Martin said his concern is that deliberations did take place. Mr. Barbieri said there were no deliberations among the BZA and that Mr. Milz is not a member of the Board and Mr. Milz is able to have discussions with counsel. Mr. Reinginer said no deliberations were done in private. Mr. Price said the issue at the last meeting was regarding was the hearing noticed properly and the Board decided to defer. Mr. Price asked Mr. Milz did you not go back to counsel to verify if it was properly noticed and Mr. Milz said yes. Mr. Price said it is a moot point.

Adjournment. Motion to adjourn by Mr. Roberto, 2<sup>nd</sup> by Mr. Martin at 7:55 p.m. Motion carried.

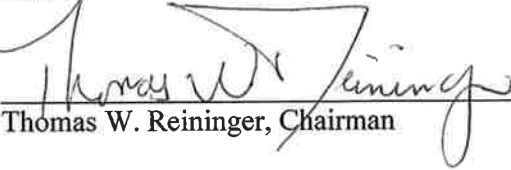
Respectfully Submitted:

  
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Rebecca J. Reno, Zoning Recording Secretary

Secretary:

  
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Ronald J. Roberto, Secretary

Accepted by:

  
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Thomas W. Reinginer, Chairman

