

BOARD OF ZONING APPEALS

MEETING MINUTES

MARCH 29, 2012

AGENDA

New Case:

- 1. Wanko Residence – Home Occupation Sign Variance 12-015V (Disapproved 5 – 0) 5609 Tuttle Crossing Blvd. Non-Use (Area) Variance**

Presentation:

- 2. 2012 Annual Items of Interest – Common Zoning Terms**

Administrative Business

Chair Victoria Newell called the meeting to order at 6:30 p.m. Other Board members present were Brett Page, Patrick Todoran, and Kathy Ferguson. Brian Gunnoe arrived before the first case began. City representatives present were Rachel Ray, Tammy Noble-Flading, Tori Proehl, and Flora Rogers.

Motion and Vote

Victoria Newell made a motion, seconded by Patrick Todoran, to accept the documents into the record. The vote was as follows: Ms. Ferguson, yes; Mr. Page, yes; Mr. Todoran, yes; and Ms. Newell, yes. (Approved 4 – 0.)

Motion and Vote

Victoria Newell made a motion, seconded by Brett Page, to approve the February 23, 2012 meeting minutes as presented. The vote was as follows: Ms. Ferguson, yes; Mr. Todoran, yes; Mr. Page, yes; and Ms. Newell, yes. (Approved 4 – 0.)

Communications

Rachel Ray presented a plaque to Chair Victoria Newell to recognize her service to the Board of Zoning Appeals. Ms. Ray commented that it had been a pleasure having Ms. Newell's participation for the past four years as an excellent Chair and wonderful role model to her fellow Board members. Ms. Ray said Ms. Newell's service was much appreciated and that she will be missed on the Board of Zoning Appeals, but wished Ms. Newell the best of luck serving on the Planning and Zoning Commission. Ms. Ray said that Planning feels that she will do a wonderful job continuing her service to the City.

Victoria Newell said that it had been an honor and pleasure to serve with everyone on the Board and an honor to serve the City of Dublin. She said she took great pride in this community.

Ms. Ray said all the Board members should have received an invitation to the Board and Commission member recognition on April 4 at the Golf Club of Dublin. She said there is also a new board member orientation scheduled Tuesday, April 10 at City Hall at 6:30 PM. She said if existing Board members would like a refresher, they were welcome to attend.

Ms. Ray congratulated Brett Page on his reappointment to the Board and said that since the Chair is moving to the Planning and Zoning Commission, the Board has a new member, James Zitesman, that will start at the next meeting. She said the Board will make their elections for Chair and Vice Chair at that time as well.

Ms. Ray reported that City Council approved the Bridge Street Corridor Development Code on Monday, March 26th. She said it represented a lot of work on the part of Council members, Planning and Zoning Commission, staff and others. She said a City Council vote on the Area Rezoning is scheduled April 9th.

Ms. Newell swore in those who wished to address the Board in regard to the cases on the agenda, including Delilah Wanko, representing the applicant Singh Billa, Diane Lowery (5625 Tuttle Crossing Boulevard), and City representatives.

**1. Wanko Residence – Home Occupation Sign Variance 5609 Tuttle Crossing Blvd.
12-015V Non-Use (Area) Variance**

Tammy Noble-Flading presented this non-use (area) variance request for a sign associated with a home occupation. She described the site, zoned R-1, Restricted Suburban Residential District and described the uses and zoning on adjacent properties. She said this site contains a single-family residence and a small, detached accessory structure to the rear of the home. Ms. Noble-Flading explained that the Zoning Code allows residential properties to have limited commercial activity as long as they meet a set of standards defined by the Home Occupation section of the Zoning Code. She said the standards are very restrictive and are designed to limit home occupations as an accessory use to a residential property. She briefly reviewed the standards for home occupations.

Ms. Noble-Flading presented a photograph showing the existing site conditions. She said that as part of this application, Planning has reviewed this application as it relates to the future land use recommendations of the Community Plan. She said this area is recommended for 'Mixed Use Neighborhood Commercial' development, based on the future extension of Tuttle Crossing Boulevard west to Avery Road. She stated that neither the future land use recommendation nor the future extension of Tuttle Crossing Boulevard classifies as a special condition based on the fact that this future land use recommendation is for all properties located along Tuttle Crossing Boulevard, as well as numerous other parts of the City that are currently residential in character but are expected to transition to commercial uses in the future.

Ms. Noble-Flading said regarding the second criteria, whether the variance is necessitated by any action or inaction of the applicant, the applicant has chosen this location with the full understanding of the regulations of the City of Dublin, including standards for home occupations, and as a result, the variance request is necessitated by the applicant's actions, and therefore that the criterion has not been met.

Ms. Noble-Flading said regarding the third standard, whether the requested variance will cause any adverse impacts to the surrounding community, it is Planning's opinion that advertising a commercial use in an area that is zoned and used for residential uses will have an impact on the surrounding area, and therefore the third required standard has not been met.

Ms. Noble-Flading said that at least two of the four standards in Section B need to be met in order to meet the criteria for approval. She said regarding the first standard, granting this variance would constitute a special privilege for the applicant because no other approvals for signs associated with home occupations have been granted by the Board. Ms. Noble-Flading said regarding the second standards, no other similar requests have been made in the City of Dublin, and therefore it is not a situation that is so recurrent in nature that a general Zoning Code modification is warranted, and as a result, that standard has been met. Ms. Noble-Flading said regarding the third standard, there is nothing that is associated with a sign that would prevent the delivery of governmental services and therefore the standard is met.

Ms. Noble-Flading said regarding the fourth criteria, there may be other methods available to advertise the business other than a sign, and therefore the criteria has not been met.

Ms. Noble-Flading reiterated that none of the standards in Section A have been met, while two of the four standards in Section B have been met. She said the proposal does not meet the criteria of Zoning Code, and Planning therefore recommends disapproval of this request.

Victoria Newell asked if the applicant had been issued a Home Occupation Permit.

Ms. Noble-Flading said not at this time.

Delilah Wanko, 5609 Tuttle Crossing Boulevard, pointed out that all of the regulations regarding home occupations are intended to protect the rights of the residents in a neighborhood setting. She said the property associated with the request is located along a major thoroughfare. She stated that a special condition does exist for this property, based on the fact that the area is a highly commercial area and the properties to the north are zoned for commercial uses. She said there are very few homes along Tuttle Crossing Boulevard, and most properties have already transitioned to commercial uses. She said the fact that the area is planned to transition to commercial in the future should be an incentive to approve this variance application.

Ms. Wanko said that with respect whether the request is a result of any action or inaction of the applicant, she has not been operating the home occupation and therefore has not done anything to necessitate the variance. Ms. Wanko explained that she rented the home with the assumption that it was a commercial property. She said that the Franklin County Auditor's office listed the property as 'Other Residential', not R-1. She said that because all of the other properties across the street are zoned commercial, she simply assumed both sides were commercial. She said if this property were in a predominantly residential area, the presence of a sign would be a nuisance, but considering the area and the fact that most have already transitioned to a commercial area, a nuisance can be avoided. She pointed out that a change of character for this area had already been considered by the City and was currently underway through the previous zoning actions and the adopted future land use map, and therefore the residential character of Tuttle Crossing Boulevard would not be influenced by the sign associated with her business. Ms. Wanko concluded that she believed that this proposal meets all of the required review standards.

Brian Gunnoe asked if a tenant could request a variance on behalf of a property owner.

Ms. Ray said that the property owner signed the application acknowledging that he is aware of the application and has authorized the applicant to represent the property during the application process.

Kathy Ferguson asked if the applicant could renew their request for a sign after the transition took place.

Ms. Noble-Flading stated that the applicant could request a sign if the property were zoned commercial, although the request would most likely be part of an overall transition of the area to commercial development through a rezoning application. She noted that the future land use recommendations are long term in nature, and could take 20 years or longer for implementation.

Ms. Ferguson asked when Tuttle Crossing Boulevard would be extended to Avery Road.

Ms. Noble-Flading said that the City of Dublin does not have any funds programmed in the City's five-year Capital Improvements Program for that project.

Ms. Newell confirmed with Ms. Noble-Flading that there are no plans at this time to rezone the property in this area zoned R-1.

Ms. Newell invited public comments regarding this case.

Diane Lowery, who lives in the adjacent property to the west at 5625 Tuttle Crossing Boulevard, said her concern was that the area remain residential. She said she did not join with the property owners to the north when they rezoned to PCD, Planned Commerce District. Ms. Lowery said she is also concerned about the taxes on the land. She stated that she pays over \$10,000 in taxes per year on her property and she does not want the amount to increase due to the transition to commercial uses in the area. She said that Dublin acquired one-half-acre of their property by eminent domain for the widening of Tuttle Crossing Boulevard. Ms. Lowery stated that this area was proposed as the 'gateway' into Dublin and should be representative of those standards.

Brett Page said that he thought this was a very clear case and that none of the standards of Section A had been met. Mr. Page said it would be impossible for him to vote to approve this variance.

Ms. Newell said that she did not believe that there are any special circumstances associated with this property. She said that Dublin's Zoning Code clearly states that home occupation signs are not permitted, and there was nothing in the presentation from the applicant that would convince her that the standards had been met.

Motion and Vote

Victoria Newell made a motion, seconded by Brian Gunnoe, to disapprove the non-use (area) variance request to permit a sign for a home occupation, because the request does not meet all of the required non-use (area) variance standards.

The vote was as follows: Mr. Todoran, yes; Mr. Page, yes; Ms. Ferguson, yes; Mr. Gunnoe, yes; and Ms. Newell. (Disapproved 5 – 0.)

Presentation:

2. 2012 Annual Items of Interest – Common Zoning Terms

Brett Page excused himself before this presentation was completed, but asked to have the presentation sent to him.

Tammy Noble-Flading said the Board had requested this presentation on common zoning terms as part of their Annual Items of Interest. She said the presentation was structured specifically for the Board to include terms that the members will encounter during their reviews of typical cases, the types of legal documents they may see, and 'legalese' used in the quasi-judicial type of hearing processes.

Ms. Noble-Flading started by commenting on the difference between the terms 'building' and 'structure.' She clarified that the definitions were not legal definitions, but layman versions of how buildings are differentiated versus structures.

Principal Structure versus Accessory Structure

Ms. Noble-Flading explained that a *principal structure* is the primary structure on a site. An *accessory structure* is incidental and accessory to the principal structure.

Principal Use and Accessory Use

Ms. Noble-Flading explained that principal and accessory uses shared the same symbiotic relationship as structures. She stated that a *principal use* is the primary use of a site and an *accessory use* is incidental and subordinate to the principal use.

Ms. Noble-Flading explained that the previous application (Case 12-015V) was an example of an accessory use. She said the principal use was the single-family residential use of the site and the accessory use was the home occupation.

Ms. Newell asked if there was a definition for an accessory tenant like the banks and coffee shops at a grocery store. She asked if that secondary tenant would be considered an accessory use.

Ms. Noble-Flading said there is not a definition for an accessory tenant however Dublin has had cases, and subsequent litigation, on the definition of a 'sub-tenant'.

Terminology

Ms. Noble-Flading said there are various types of regulations that are enforced in different manners.

Deed Restrictions and Zoning Regulations- Ms. Noble-Flading stated that the most common type of regulations that have very distinct purposes are deed restrictions and zoning regulations. She said the primary distinction between the two is the body, or entity, that enforces them. She said deed restrictions are enforced by the community itself, one neighbor versus another neighbor. Ms. Noble-Flading stated that zoning regulations are enforced by a public body, whether it be a county or a city. She pointed out that deed restrictions can be more encompassing than zoning regulations, which are statutorily driven to ensure the health, safety, and general welfare of the community.

Ms. Ray said that Planning informs property owners when they submit for permits to check with their homeowners associations for additional deed restrictions, even though the City does not enforce them, in order to at least make property owners aware of the difference.

Zoning Regulations versus Subdivision Regulations. Ms. Noble-Flading said that zoning regulations are development standards such as lot sizes, setbacks, yards, and fences. She stated that subdivision regulations determine how land is divided. She said an example of a subdivision is the minimum dimension of a property, a minimum width of a property or the actual configuration that a property must have to meet local subdivision requirements.

Ms. Ray said one of the common ways in which the Board of Zoning Appeals encounters subdivision regulations is where a property owner requests a variance to put a structure or fence within a platted setback based on the shape of the lot. She said shape of the lot could be a 'special condition' in a variance case to warrant considerations for a variance request, but the Board cannot approve variances to platted setback requirements.

Community Plan. Ms. Noble-Flading stated that community plans make future recommendations on land use classifications, transportation network projections, acquisition of open space, and utility extensions that provide a community with a framework to adopt day-to-day policies regarding land development. She said that a community plan determines policies and procedures that a community will implement, but it was not an enforceable document.

'Legalese'

Practical Difficulty and Hardship. Ms. Noble-Flading said many words are used interchangeably, but 'practical difficulties' and 'hardships' are two common yet very different terms with very different meanings that are used specifically with this particular Board.

Ms. Noble-Flading explained that a 'hardship' requires the applicant to prove that a property cannot be developed, or used, without a *use variance*, whereas a 'practical difficulty' is typically the standard that the Board uses to review area variances.

Planned Districts and Standard Zoning Districts. Ms. Noble-Flading stated that 'Planned Districts' and 'Standard Zoning Districts' are two separate types of zoning districts that can be found in most

communities. She said a planned district is very specific, in terms of development standards, and creates zoning standards for one specific site. She said zoning requirements, from one planned district to another, can be very different. She explained that a standard zoning district sets the standards for every property that have the same zoning classification. Ms Noble-Flading explained that standard zoning districts are designed to have the same development patterns amongst all properties in the same district.

Kathy Ferguson asked for an example of a planned district in Dublin.

Ms. Noble-Flading pointed out that Muirfield Village was a planned district.

Ms. Newell suggested it would be helpful to explain the difference between a Planned Unit Development (PUD) and a Planned Commercial Development (PCD).

Ms. Ray said the three other types of Planned Districts, including Planned Commerce Districts, Planned Industrial Parks, and Planned Low-Density Residential Districts were eliminated in the early 2000's in lieu of just using PUDs. She said they allowed very large areas of land to be zoned as planned districts, but did not provide much detail about how that land would be developed until a final development plan was approved. She said the problem was that if a large piece of land is zoned for a particular use, but not necessarily about how the land will be developed in terms of design, it did not provide a lot of foresight about the complete project. Ms. Ray said with the PUD process, that was standardized by requiring that the first step is the preliminary development plan, would indicate permitted uses, as well as the general building and parking arrangements, access, and aesthetic requirements of a site. She stated that the PUD process provided a better idea of how a project would be completed, at an earlier stage in the review process.

Ms. Newell asked if there were properties in Dublin that still are considered Planned Commercial District (PCD) developments.

Ms. Ray said an example of a very large PCD was Perimeter Center which includes the Giant Eagle, the Manor Craughwell Village condominiums, and the Midwestern Auto Group (MAG), as well as most of the development in that area up to Emerald Parkway. She said properties have redeveloped or rezoned to PUDs, such as MAG for Volvo and Giant Eagle for an expansion, with specific provisions to those developments. She said the existing PCDs in the city are transitioning over time to PUDs.

Lot versus Parcel. Ms. Noble-Flading said typically 'lot' and 'parcel' are used interchangeably. She explained that in larger development proposals, multiple parcels of land will be identified as a 'lot' on the basis that it develops through phases. She stated that most of the applications that are presented to the BZA deal with parcels of land.

Flood Plain versus Floodway. Ms. Noble-Flading said 'flood plain' and 'floodway' are often used interchangeably, but they are in fact different. She said the floodway includes the boundaries of a stream or water body. She explained that flood plain is the boundary outside the stream corridor in which a site can experience flooding issues. Ms. Noble-Flading referred to an illustration and indicated where the floodway or parameters of the stream itself were located.

Nonconforming Structures, Uses, and Lots. Ms. Noble-Flading said that there Dublin's Zoning Code defines nonconforming uses, structures, and lots. She said many times when the term 'nonconforming' is used, it is used in terms of use, but it can mean structure, use or lot. She said a nonconforming use is one that predates the current zoning regulations. Ms. Noble-Flading said a residential property in a commercial corridor that predated the current Zoning Code and was legal under the past Zoning Code is considered a nonconforming use. She said the important part is that it is a *legal* nonconforming use, and therefore not illegal as long as the use stays the same.

Ms. Noble-Flading said structures on the other hand can be nonconforming based on their location on a site. She said that lots can be nonconforming based on the fact that they do not meet a minimum development standard of the zoning district in which they are located. She stated that this includes not meeting a minimum lot width or lot size requirement of the Zoning Code or Subdivision Regulations.

Grandfathered. Ms. Noble-Flading stated that the term 'grandfathered' is a term used interchangeably with the term 'nonconforming,' but is not an official zoning term.

Yard versus Setback. Ms. Noble-Flading said a yard is any area that encompasses a site. She said a setback, however, is a defined area that indicates where development can occur, in the 'buildable area.' She stated that a yard is usually the width of the property, but a setback may be only a percentage of the property width. Ms. Noble-Flading provided some examples of typical setback requirements in the City of Dublin.

Ms. Newell confirmed that there were no further questions for Ms. Noble-Flading, and thanked her for the informative presentation.

Administrative Business

Mr. Gunnoe, who was not present when the motion to approve the February 22, 2012 meeting minutes was made, pointed out that the vote incorrectly reflected that he had seconded the motion on the Wendy's parking variance, but he had recused himself.

Ms. Ray stated that the vote would be corrected.

Ms. Newell adjourned the meeting at 7:44 p.m.

As approved by the Board of Zoning Appeals.