WEST CHESTER TOWNSHIP BOARD OF ZONING APPEALS January 13, 2016 – Regular Meeting

MEMBERS PRESENT:

Mr. Hackney, Mr. Moeller, Mr. Lenz, Mr. Riddell, Mr. Whited

MEMBERS ABSENT:

STAFF PRESENT:

Michael Juengling, Community Development Director

CALL TO ORDER:

6:30 PM

ADJOURNMENT

8:00 PM

Mr. Hackney called the meeting of the West Chester Board of Zoning Appeals to order.

Mr. Juengling called the roll.

BZA 16-02 Steven Brock

Mr. Juengling was sworn in by Mr. Hackney.

Mr. Juengling presented the staff report including a PowerPoint presentation, current zoning in the area, aerials, background of request, staff comments and case history. Mr. Juengling stated that the applicant is requesting a variance for the property 7790 Service Center Drive to allow a reduced rear yard setback. Mr. Juengling reviewed the standards for a variance with the board members.

Mr. Lenz asked for clarification that the drive to the west was an access drive not a roadway.

Mr. Juengling stated it was.

There was discussion regarding the location of the property.

Mr. Riddell asked for clarification on the comments from the Butler County Engineer's Office.

Mr. Whited asked for clarification on easements and questioned how you can build on top of an easement.

Mr. Juengling stated the applicant owns the easement. He also clarified the comments from the Butler County Engineer stated they would not be using it.

Mr. Hackney questioned what the business to the north was.

Mr. Juengling stated he did not know.

Mr. Lenz questioned whether the parking requirement would be met for this use.

Mr. Juengling stated it would.

Applicant: Steven Brock

6212 Sugartree Court Hamilton, Ohio 45011

Mr. Brock stated that being able to have the addition verses having to add the necessary piping, wiring and mechanicals is less expensive. He presented photos indicating the building would not impede the drainage.

Mr. Lenz questioned whether the addition would be the same height as the existing building.

Mr. Brock stated after meeting with engineers and architects they are looking at a pre-engineered building that would be the same height.

Mr. Whited questioned whether the applicant was aware of the ingress/egress easement.

Mr. Brock stated he was not aware of the easement.

Mr. Whited asked if they have had an architect look at the property.

Mr. Brock stated they have had an architect look at it and they have tried to obtain plans from the Butler County Building Department.

Mr. Lenz questioned whether Mr. Brock owned the property.

Mr. Brock stated they would be leasing the property.

Mr. Riddell questioned the floor plan and pictures presented by Mr. Brock and if there was additional building area not shown.

Mr. Brock stated there was not additional building area.

Mr. Riddell asked Mr. Brock if he knew what the business was to the north.

Mr. Brock stated it was an indoor workout facility.

Mr. Moeller questioned if they had talked with that building owner.

Mr. Brock stated they did research on the owner but they are out of state so they did not contact them.

Mr. Riddell asked if there was an area for customers to come in to the building.

Mr. Brock pointed out the entrances from all sides of the building and stated there were 45 parking spaces on each side of the building.

Mr. Hackney questioned whether they were looking to put a sign up.

Mr. Brock stated they would only need something directional. He also stated whatever signage was allowed per the current regulations would be sufficient.

Mr. Hackney asked if the building was visible from Cox Road.

Mr. Brock stated yes and no. He stated you could see it with a passing glance.

Mr. Whited questioned whether the building owner was present.

Mr. Brock stated he was.

Mr. Whited requested the building owner come forward.

Anthony Campailla 6573 Red Pine Drive Middletown, Ohio 45044

Mr. Whited asked Mr. Campella what he knew about the easement. He stated the applicant was making a request to build on an easement and stated someone should know who owns the easement and what can be done on it.

Mr. Campailla stated he had no idea there was an easement. He stated he saw the plot plan from the Butler County Engineer's Office and stated it was not only for his property but the entire neighborhood. He stated there were no easements shown on the drawing.

There was discussion regarding the easement.

Mr. Whited stated the applicant could ask the Board to continue the case in order to obtain more information.

Mr. Lenz stated the approval could be contingent on the easement issue.

Mr. Juengling stated the Board has the right to continue the case until all the information is

available.

Proponent: None

Opponent: None

Neutral: None

Board Deliberation

Mr. Whited stated he believes the case should be continued until they have all the facts.

Mr. Lenz disagreed and stated if it's an access easement it would be for the public entities to access the property. He stated it was accessible from three sides other than the easement. He also stated that with the access drive it's like a corner lot where the back is really the side.

Mr. Riddell stated that when the Board gives permission it is contingent on the applicant getting proper permitting.

There was discussion regarding the easement and recording.

Mr. Whited reiterated that the Board did not know the wording of the easement.

Mr. Lenz stated the approval is for Zoning.

There was further discussion on the applicant having to get proper permits.

Mr. Moeller stated the responsibility was on the County.

Mr. Whited stated he was speaking from his experience and questioned whether the Board should approve something that could be torn down due to the easement. He reiterated he believed the board should wait to vote until they have all the information.

There was further discussion regarding an approval being for a variance from Zoning requirements only.

Mr. Lenz made a motion to approve BZA 16-02 as submitted.

Mr. Moeller seconded the motion.

Aye: Mr. Hackney, Mr. Moeller, Mr. Riddell, Mr. Lenz

Nay: Mr. Whited

BZA 16-01 Manley Burke, LPA for Stanford Group, LLC

Mr. Hackney stated that this case was an administrative appeal from staff's decision and that the Board would only be deciding whether staff acted appropriately and not whether the use should be allowed.

Mr. Juengling was sworn in by Mr. Hackney.

Mr. Juengling presented the staff report including a PowerPoint presentation, current zoning in the area, aerials, background of request, staff comments and case history. Mr. Juengling stated the applicant is requesting an appeal from an administrative decision by the Community Development Department to rescind a Zoning Certificate.

Mr. Moeller asked if the applications were submitted as a package.

Mr. Juengling stated there are two separate applications.

Mr. Moeller asked if they were submitted together.

Mr. Juengling stated they were.

Mr. Riddell asked if they could have been submitted separately.

Mr. Juengling stated they could.

There was discussion regarding the need for both applications.

Applicant:

Mr. Timothy M. Burke

Manley Burke

225 West Court Street Cincinnati, Ohio 45202

Mr. Burke stated he had not been sworn in and is appearing as an attorney for a client. He stated his intention was to ask Mr. Juengling a series of questions as their testimony.

There was discussion regarding the procedure for questioning and rebuttal.

Mr. Burke asked Mr. Juengling to identify his position with the Township.

Mr. Juengling stated he is the Community Development Director.

Mr. Burke asked Mr. Juengling what his role is in approving Zoning applications.

Mr. Juengling stated the Community Development Department reviews all plans and approves or disapproves based on the Zoning code.

Mr. Burke clarified that this was an appeal from the rescinding of the Zoning certificate and not the Sexually Oriented Business license.

Mr. Juengling stated he understood.

Mr. Burke asked Mr. Juegnling if he approved a Zoning permit for a Sexually Oriented Business at 9834 Harwood Court.

Mr. Juengling stated that was correct.

Mr. Burke asked for confirmation that the property was zoned M-1.

Mr. Juengling stated it is.

Mr. Burke asked if there was a Sexually Oriented Business Overlay on the property.

Mr. Juengling stated there was.

Mr. Burke asked if that was provided for in the Zoning code.

Mr. Juengling stated it was.

Mr. Burke asked if a Sexually Oriented Business was a permitted use as long as it meets the requirements of the Zoning Code.

Mr. Juengling stated as long as it meets the requirements of the Zoning Code and resolution 15-2011.

Mr. Burke questioned where in the Code it links the approval of a Zoning permit with the approval of a Sexually Oriented Business license.

Mr. Juengling stated it's linked in that the use is approved by the Zoning Code and that a Sexually Oriented Business doesn't exist if it doesn't have a Sexually Oriented Business license based on resolution 15-2011.

Mr. Burke stated that the Zoning code provides that certain uses are not permitted without a license.

Mr. Juengling stated resolution 15-2011 required the licensing and is linked to the Zoning Resolution. He also stated that if there is no license there is no Sexually Oriented Business.

Mr. Burke stated that a daycare center is required to be licensed by the Zoning Resolution.

Mr. Juengling stated that was correct. However in 2011 the Trustees decided to have a separate resolution regarding the licensing of Sexually Oriented Businesses and that the two go hand in hand.

Mr. Burke stated the Zoning certificate was issued because the use met all requirements of the Zoning code.

Mr. Juengling stated that included the licensing.

Mr. Burke stated the Sexually Oriented Business license was also issued.

Mr. Juengling stated that was correct.

Mr. Burke asked if that was because the local report, BCI report and FBI report on Ms. Warren were received.

Mr. Juengling stated that was correct and stated Community Development, in error, thought all reports were received.

Mr. Burke asked if the local and BCI report were received for Mr. Adams.

Mr. Juengling stated that was correct.

Mr. Burke asked if for some reason the Township received a letter from BCI dated November 2 and received by the Township on November 12.

Mr. Juengling stated that was correct.

Mr. Burke stated that letter was included in the appeal as part of exhibit 4. Also in exhibit 4 was an email to Mr. Adams stating the Township had just received the letter.

Mr. Juengling stated that was correct.

Mr. Burke asked Mr. Juengling if Mr. Adams was called and told about the letter.

Mr. Juengling stated he was.

Mr. Burke asked Mr. Juengling what he understood Mr. Adams to do as a result of the letter.

Mr. Juengling stated the notice requires the applicant to apply for the record. He stated in the meantime, since the Township did not know what the record would say, the Township felt the license had been issued prematurely and rescinded it.

Mr. Burke stated that was not his question and again asked Mr. Juengling what his understanding was of what Mr. Adams did as a result of the letter.

Mr. Juengling stated Mr. Adams informed the Township that he would obtain a copy of the report.

Mr. Burke asked Mr. Juengling if the BCI letter stated that Mr. Adams did not meet the requirements.

Mr. Juengling stated that the letter said he may not meet the qualifications. He also stated that the license was rescinded because the license and permit should only be issued when full information has been obtained.

Mr. Burke asked when the Township received full information.

Mr. Juengling stated he believed it was November 17, 2015.

Mr. Burke asked Mr. Juengling to look at exhibit 5. He clarified that exhibit 5 was the FBI rap sheet.

Mr. Juengling acknowledged it was.

Mr. Burke asked if the FBI rap sheet revealed that Mr. Adams had any convictions that disqualified him from receiving a Sexually Oriented Business license.

Mr. Juengling stated it did appear that it did but that it was not fully vetted and he did not have a chance to speak to with council to verify it.

Mr. Burke asked if Mr. Juengling spoke to council when he received the reports on Ms. Warren.

Mr. Juengling stated he believed his office did and that those reports were completely clean.

Mr. Burke asked if anything in the document that a layman could not understand what Mr. Adams was convicted of.

Mr. Juengling stated on the surface it did not appear so but that policy is to run all of these items by the attorney before taking action.

Mr. Burke asked if Mr. Juengling read the provisions of the FBI report that states the applicant had the opportunity to complete or change the accuracy of the information obtained should the information disqualify them from licensing.

Mr. Juengling stated he did not remember seeing that.

There was discussion regarding the location of the information.

Mr. Burke asked Mr. Juengling how long the report was.

Mr. Juengling stated it was four pages.

Mr. Burke asked if the pages were filled.

Mr. Juengling stated not completely.

Mr. Burke asked Mr. Juengling again if he recalled reading that statement.

Mr. Juengling said he did not.

Mr. Burke asked Mr. Juengling if he would have read that statement would it have caused him any concern in doing the opposite of the statement.

Mr. Juengling stated the report was received after the permit was rescinded so it would not have changed that decision.

Mr. Burke asked Mr. Juengling to look at exhibit 1 which is the Township's letter dated November 13, 2015. He asked if this was the letter that rescinded the Zoning permit and Sexually Oriented Business license.

Mr. Juengling stated that was correct.

Mr. Burke pointed out the last statement in the letter that discussed contacting Mr. Adams after the required information was received and verified. Mr. Burke also clarified that the only missing information was received on November 17, 2015.

Mr. Juengling stated yes.

Mr. Burke asked if the required information was received prior to the Township Trustees adopting the moratorium resolution.

Mr. Juengling stated the Township had the information but it had not been reviewed.

Mr. Burke asked when the attorney was consulted.

Mr. Juengling stated he was immediately notified that the information had been received but they had not had a chance to go over it.

Mr. Burke asked, if based on all the information that Mr. Juengling has today, did Mr. Adams meet the qualifications for a Sexually Oriented Business license.

Mr. Juengling stated the review was not completed when the moratorium was put into place. He also stated that this hearing was to determine if the Zoning permit was rescinded properly and not what took place after that. He also stated the review would need to be complete before deciding whether a license would be issued.

Mr. Burke asked what was meant by the last statement in the letter stating the Township would be in touch after reviewing the information.

Mr. Juengling stated that if everything checked out and they reapplied, the permit would be issued.

Mr. Burke asked they applicants were told they would have to reapply.

Mr. Juengling stated not in the letter but in a conversation with Mr. Adams in the office.

Mr. Burke asked Mr. Juengling if the applicants provided everything required.

Mr. Juengling stated that they had.

There was a brief break requested by Mr. Burke. He then indicated he was finished.

Mr. Hackney stated that there had been approximately fifteen emails received in support of the case.

Mr. Moeller pointed out that the emails were in support of the business being allowed to operate and did not pertain to the administrative appeal.

Mr. Hackney agreed.

Mr. Phillips, Township Council, stated the emails are hearsay and should be kept in the record but have little evidentiary value because they don't address the issue at hand.

Proponent: None

Opponent: None

Neutral: None

Mr. Burke came back to give a closing statement. He stated that he believed the rescission was not an indication that the entire application had been rejected. He stated the record reflects the fact that BCI was slow in getting information to the Township and as soon as the applicant found out a question had been raised he moved immediately to get the report. He stated the Zoning Resolution is not directly linked to the licensing of the Sexually Oriented Business and is different from other uses in the resolution that require licenses. He stated everything was received for issuing a Zoning permit. He stated that today we know Mr. Adams is qualified to run a Sexually Oriented Business. He also stated the other applicant was always qualified to run a Sexually Oriented Business and therefore the permit should not have been rescinded. He further discussed that this business was applied for prior to the moratorium being placed on Sexually Oriented Businesses.

Scott Phillips made a statement to clarify the law. He stated 5.02 of the Zoning Resolution incorporates the use in the approval. He clarified that in order for the use of a Sexually Oriented Business to be approved it requires a permit and without such permit there can be no Zoning certificate. He stated the appeal was for the letter issued to the applicant stating the Zoning Certificate was being rescinded. He also stated he believes that the Zoning Certificate as a matter of law was rescinded when it became apparent that the decision had been prematurely made. He referred to 5.011 that allows the Township to void any Zoning Certificate issued in error. He also stated that Ohio Law allows an Administrative body to change their mind. He stated in this case if Mr. Juengling determined that a mistake was made he has the discretion to go back and change it as long as the appeal period has not expired.

Board Deliberation

Mr. Lenz stated this was a tough case. He stated he is all for freedom but that he was here to judge whether what was done conforms to the Zoning code. He also stated that considering everything including article 5.011 he believes the Director did what he needed to do.

Mr. Whited stated staff would not have known when the complete information would have been received and there was a twenty day appeal period and believes the Director had no choice but to rescind the permit.

Mr. Moeller stated in all cases brought before the Board the use is always made known. He does not have recall any appeal that was approved without knowing the use.

Mr. Lenz stated that was not the question before the Board.

Mr. Moeller stated he believes it supports that you cannot have a Zoning permit without the knowledge of the use.

Mr. Hackney stated the Board is trying to decide whether staff correctly rescinded the certificate. He stated he believes the Township clearly knew what the use was going to be but did not have enough information to make the right decision on issuance of the Zoning Certificate.

Mr. Riddell stated this was close to him as this was the same code that he dealt with and that caused him to apply to be on the Board. He stated the issue of the code and 5.011 is clear and covers employees that make a mistake. He also stated he feels for the applicant in that this could have been implemented better. He stated he is having trouble connecting the code to resolution 15-2011. He stated that in the end when a mistake is made, it is null and void per the code and the letter was issued properly.

Mr. Lenz stated when reading 5.011 and states "The Resolution", it means the code in its entirety and anything done wrong is null and void.

Mr. Whited stated he believed the Director did what he had to do when he received the letter based on the code. He also stated the applicant could reapply with the new information.

Mr. Riddell stated the issue was that the Zoning department made a mistake and the code is written to address when a mistake is made.

Mr. Lenz stated it's important to note they didn't know there was a mistake until they received the subsequent information.

Mr. Whited stated he doesn't think you can call it a mistake when a decision is made based on missing facts.

Mr. Riddell stated a checklist could have prevented this.

Mr. Whited stated he listened to both sides open minded and would like to present a motion.

Mr. Whited made a motion to affirm staffs decision.

Mr. Moeller seconded the motion.

Ave: Mr. Hackney, Mr. Riddell, Mr. Lenz, Mr. Moeller, Mr. Whited

Nay: None

ADMINISTRATIVE MATTERS

Mr. Juengling stated there were four cases for December.

The minutes and resolutions from the November 18, 2015 meeting were approved.

The next meeting will be Wednesday February 10, 2016 at 6:30 pm.

The board adjourned the January 13, 2015 meeting at 8:00 pm.

These Minutes do not purport to be the entire record. A complete transcription of these proceedings was taken under supervision of the Secretary from an audiotape and may be obtained upon written request. Any charges for preparing such transcripts shall be borne by the person requesting same and must be prepaid.

BZA Chairman:

BZA Secretary:

Cliff Hackney

Cathy Walton

WEST CHESTER TOWNSHIP BOARD OF ZONING APPEALS RESOLUTION WHOLLY AFFIRMING APPEAL NO. BZA 16-01

WHEREAS,

Manley Burke, LPA for Sanford Group, LLC, on December 3, 2015, filed Appeal No. 16-01 with the Board of Zoning Appeals under Article 8, subsection 8.04 of the Zoning Resolution, seeking an Administrative Review in response to the recission of a Zoning Certificate as applied to the property at 9834 Harwood Court, containing parcel M5620-343-000-011 in Section 8, Town 2, Range 2 (West Chester Township, Butler County, Ohio); and

WHEREAS,

a public hearing was held on said appeal on January 13, 2016, notice of which was given to parties in interest in writing and also by publication in a newspaper of general circulation in the Township at least ten (10) days prior to date of the hearing in accordance with Section 519.15 of the Ohio Revised Code; and

WHEREAS,

Article 8, Section 8.051 of the Zoning Resolution empowers the Board to decide appeals where it is alleged that there is error in any order, requirement, decision, grant, or refusal made by the West Chester Township Community Development Department in the interpretation of the provisions of the Zoning Resolution; and

WHEREAS,

through findings of fact, the Board determined the issuance of a Zoning Certificate was in error; and

THEREFORE BE IT RESOLVED, that by virtue of the foregoing, the Board of Zoning Appeals does hereby wholly affirm the decision of the Community Development Staff with regards to rescinding the Zoning Cerficate.

BE IT FURTHER RESOLVED, that all plats, plans, applications and other data submitted be and are hereby made a part of this Resolution.

Adopted at a regularly scheduled meeting of the West Chester Township Board of Zoning Appeals in session on the 13th day of January, 2016 and journalized on the 10th day February, 2016.

Cliff Hackney BZA Chairman Cathy Walton Secretary

I. FINDINGS OF FACT

- A. Sanford Group, LLC (the "Applicant"), applied for a zoning certificate and sexually oriented business license with respect to property located at 9834 Harwood Court, containing parcel M5620-343-000-011 in Section 8, Town 2, Range 2 (West Chester Township, Butler County, Ohio) (the "Property").
- B. The Applicant notes that the Community Development Department communicated that it would deem the request for a zoning certificate pending until after the Community Development Department had reviewed and approved the request for a sexually oriented business license.
- C. On November 6, 2015, the Township Community Development Department issued both a zoning certificate and sexually oriented business license to Applicant with respect to the Property.
- D. On November 12, 2015, the Community Development Department received notice from the Ohio Attorney General's office that further results of a background check with respect to the Applicant were still pending and that the results of that check "may" disqualify Applicant from operating a sexually oriented business as requested.
- E. On November 13, 2015, the Community Development Director sent a letter to the Applicant notifying it that both the sexually oriented business license and the zoning certificate were rescinded effective immediately and that the Township would reach back out after receiving the additional information required.
- F. On December 3, 2015, the Applicant filed an administrative appeal of the Community Development Director's decision with the BZA pursuant to Article 8, subsection 8.04 of the Zoning Resolution (the "Appeal"). The Applicant essentially argues that the zoning certificate and the sexually oriented business license are not interdependent, and that it should be allowed to continue its build-out of the Property pending an appeal with respect to rescission of the license.
- G. The BZA held a public hearing on January 13, 2016 (the "Hearing"), whereat all witnesses were sworn in, the Applicant was permitted the opportunity to present its position, offer and examine witnesses, present evidence in its favor, and cross-examine any witnesses potentially adverse to its position.

II. CONCLUSIONS OF LAW

- A. Pursuant to Section 5.02 of the Zoning Resolution, zoning certificates are intended to "show that such building or premises or part thereof, and the proposed uses thereof, are in conformity with the provisions of this Resolution."
- B. Because the authority to issue both sexually oriented business licenses and zoning certificates rests with the Community Development Department, and because both the license and the zoning certificate are required in order for a sexually oriented business to operate, these two approvals are clearly intended to be interdependent. Moreover, the Community Development Department has historically always considered the two approvals to be interdependent, and that the Applicant was

- made aware of this interdependency at all times while the applications were pending.
- C. Zoning Certificates do not only represent approval of area requirements such as height regulations and setbacks. They also represent approval of the proposed use of property. It would be completely contrary to the spirit and purpose of the Zoning Resolution for this Board to conclude that a zoning certificate related to a sexually oriented business must be issued, even when the underlying proposed use of the property has not been affirmed by means of an approved sexually oriented business license.
- D. The Community Development Director had the authority both inherent under Ohio law regarding the ability of administrative decision makers to reconsider their decisions and explicit under Section 5.02 of the Zoning Resolution¹ to rescind the Zoning Certificate upon his determination that the sexually oriented business license had been improperly issued to Applicant and should be rescinded.²
- E. As such, the Community Development Director's decision to rescind the Zoning Certificate related to the Property is hereby affirmed.

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¹ "[N]o Zoning Certificate for a use or building which is in conflict with the provisions of this Resolution shall be issued. Any Zoning Certificate issued in conflict with this Resolution shall be null and void."

² This appeal relates solely to the authority of the Community Development Director to rescind a zoning certificate. The propriety of the Community Development Director's decision regarding the sexually oriented business license is not on appeal before this Board.

WEST CHESTER TOWNSHIP BOARD OF ZONING APPEALS RESOLUTION GRANTING APPLICATION NO. BZA 16-02

WHEREAS,

Steven Brock, on December 8, 2016 filed Application No. 16-01 with the Board of Zoning Appeals under Article 8, subsection 8.04 of the West Chester Township Zoning Resolution, seeking a variance to allow a building addition to encroach the rear yard setback by 20' as applied to the property at 7790 Service Center Drive, West Chester Ohio 45069 and containing Parcel # M5620-362-000-003 in Section 18, Town 3, Range 2; (West Chester Township, Butler County, Ohio); and

WHEREAS,

a public hearing was held on said application on January 13, 2016 notice of which was given to parties in interest in writing and also by publication in a newspaper of general circulation in the Township at least ten (10) days prior to date of the hearing in accordance with Section 519.15 of the Ohio Revised Code; and

WHEREAS,

Article 8 et. seq. of the Zoning Resolution empowers the Board to authorize upon appeal in specific cases, variances from the terms and conditions of the Zoning Resolution as will not be contrary to the public interest, and that are consistent with the criteria provided within the Zoning Resolution; and

WHEREAS,

the board has considered all of the information and testimony presented at the public hearing and concludes that the requested variance from the terms and conditions of the Zoning Resolution will not be contrary to the public interest and is consistent with the standard for variances set forth in the Zoning Resolution, paying particular attention to Section 8.053

THEREFORE BE IT RESOLVED, that by virtue of the foregoing, the Board of Zoning Appeals does hereby grant the request to allow a building addition to encroach the rear yard setback by 20'.

BE IT FURTHER RESOLVED, that all plats, plans, applications and other data submitted be and are hereby made a part of this Resolution.

Adopted at a regularly scheduled meeting of the West Chester Township Board of Zoning Appeals in session on the 13th day of January, 2016 and journalized on the 10th day of February, 2016.

Cliff Hackney BZA Chairman Cathy Walton BZA Secretary