

The Tuesday, October 28, 2008 meeting of the Delhi Township Board of Zoning Appeals was called to order by Chairman Jerry Kearns at 7:00 p.m. at the Administration building with the Pledge of Allegiance to the Flag.

Members present:  
Robert Ashe  
Jerome Kearns  
Charles Brigham III

Also Present:  
Thomas Stahlheber, Director of Development Services  
David Lane, Law Director

Mr. Stahlheber certified that the requirements of Section 121.22 of the Ohio Revised Code and the rules adopted pursuant thereto had been completely complied with as they concerned the meeting.

**Resolution 2008-8**

Mr. Ashe moved and Mr. Brigham seconded to approve the minutes of the February 5, 2008 meeting but to dispense with the reading. Msrs. Ashe, Kearns and Brigham voted Aye. Motion carried.

**Resolution 2008-9**

Mr. Ashe moved and Mr. Brigham seconded to approve the minutes of the March 18, 2008 meeting but to dispense with the reading. Msrs. Ashe, Kearns and Brigham voted Aye. Motion carried.

The hearing in Case VA2008-05 (5341 Panther Court) was convened.

Mr. Stahlheber (sworn) advised that on July 30, 2008 the Department of Development Services ordered the accounting office operating at 5341 Panther Court to cease and desist. He commented that the office (business) was operating in violation of zone district regulations affecting the property as well as the home occupation regulations. He noted that the property owners, Gerald & Anna Martini, were notified of the violation by an order letter via certified mail on July 30, 2008. He advised that in the letter were stated the reason for the order which included: the premises known as 5341 Panther Court is located in Delhi Township, Hamilton County, Ohio and in the "C" Residence districts as shown on the maps of the Township Zoning Resolution; during inspections of the subject property in response to complaints he observed on several occasions persons coming and going from a basement office; the Township Zoning Regulations prohibits the operation of businesses in residence zone districts.

Exhibit "A" violation case file #A2008-0049

To Mr. Kearns' question as to how it was determined that a violation to the home occupation provisions of the code existed Mr. Stahlheber advised of there being a previous complaint alleging the same violation which, at the time of its inspection, such violation was observed and at which time the regulations prohibited such use had been discussed with the property owner.

Mr. Gerald Martini (sworn), 5341 Panther Court, advised that he is requesting a variance to facilitate the continued operation of his tax service as a home occupation at his residence. He commented that he is busy with taxes for about three months out of the year. He noted that Section 31.26 of the Delhi Township Zoning Resolution provides that no commodity be sold, no person be employed other than a member of the immediate family residing on the premises and that no mechanical equipment be used except such as is customary for purely domestic or household purposes, and that home occupations shall not include barber shops, beauty shops, shoe or hat repair or tailoring shops or any type of pick-up station or any similar commercial activities. He advised that his tax service does not in any way violate such regulations. He commented that when meeting with his builder prior to building the house that he was advised that he would be allowed to have an office in his home. He commented that his builder has an office located in his home. He noted that the money he earns from his tax service is his primary income and he will lose his home if he can't work.

To Mr. Kearns' question as to what type of office equipment was in the home Mr. Martini responded he has a computer, fax machine and a printer.

To Mr. Ashes' question as to how many clients do you have Mr. Martini responded he has about four hundred.

To Mr. Kearns' question as to whether the subject use can be construed as a home occupation Mr. Lane advised that should the Board find that the use as described falls within the definition of home occupation then the use is permitted and a variance is not needed. Mr. Lane advised that if such was the case that the Board would need to find that there was an error on the part of the inspector and that there are no violations. He commented that if the Board found that such is not a permitted use, but can meet all the elements, that they could consider it eligible for a use variance.

Roger Kathmann (sworn), 5334 Panther Court, advised that the only opposition he has is with clients parking on the private street.

To Mr. Brigham's question as to if Mr. Kathmann lived on the private street Mr. Kathmann responded in the negative. Mr. Kathmann advised he lives across the street from the private street.

Dennis Fahey (sworn), 5337 Panther Court, advised that he has trouble getting out of his driveway onto the private street due to cars parking on it. He commented that with the increased traffic on the private street due to Mr. Martinis' tax business that he and his wife are concerned for the safety of neighborhood children.

To Sherry Petroff's (sworn), 5337 Panther Court, question as to the request for a variance so to operate a home business Mr. Brigham responded that the Zoning Resolution permits one to operate a home business, subject to specific criteria, and that the Board has been asked to make a determination as to whether or not the office operating at the subject property is operating in compliance with those criteria.

Mrs. Petroff advised that she was concerned for the safety of the children in the neighborhood due to the increase in traffic generated by the business operating at the subject property. She commented that Mr. Martinis' client's park on the private street and obstructs her driveway at times.

To Mr. Brigham's question as to if there was a deed restriction affecting use of the private street Mrs. Petroff advised of being of the belief that there was. Mr. Brigham advised that most such restrictions contain a non obstruction clause. He commented that the use of the private street issue is not relevant to the subject case and that she should consider seeking legal counsel concerning such matter.

Mr. Kearns advised that he felt that the Board should consider further the request Mr. Martini filed. Mr. Lane commented that the request was for a variance. Mr. Kearns noted that the Board needs to determine whether what Mr. Martini is doing complies with the home occupation definition.

Mr. Lane reiterated that the Board first has to decide if there is a violation and if there is no violation then a variance can't be granted. He advised that the provisions of the Zoning Resolution that the Board needs to look at are the use regulations, those things that are permitted in residential districts. He commented that in the "C" Residence District a building or premises may be used only for single-family residences and home occupations. He noted that home occupations have the same standing as a use as do single-family residences, and that if the Board finds that the current home occupation is compliant with the definition for same that it would be considered a permitted use.

To Mr. Ashes' question as to if anyone works with Mr. Martini he responded in the affirmative, noting that his son works with him and lives at the subject residence.

To Mr. Brigham's question as to if Mr. Martini has a name plate or other such sign on the subject residence Mr. Martini responded in the negative.

To Mr. Brigham's question as to why there was an investigation into the subject property Mr. Stahlheber responded that there was a complaint received and that it was difficult for his department to observe the alleged activity during traditional business hours. Mr. Stahlheber noted the last sentence of Sec. 31.26 of the Zoning Resolution prohibits the type of activity the complaint alleges, that being generating traffic.

To Mr. Kearns' question as to if the definition of home occupancy addresses traffic issues Mr. Stahlheber responded in the negative, noting that it is interpreted to include such issue.

To Mr. Kearns' question as to if hundreds of clients come to his home Mr. Martini responded in the negative noting that he receives most of his work through the mail, fax, and his son bringing it home. Mr. Martini advised that typically only one client comes to his home at a time.

The Board discussed their findings and determined that the tax preparation business operating at the subject property to be in compliance with Sec. 31.26 of the Resolution, and that as such there is no need for a variance. They noted that the concern for the issue of parking on the private street issue is best addressed civilly. They commented that Mr. Martini should make a good faith effort to inform his clients where they should park.

To Mrs. Petroffs' question as to if the issue of parking on the private street and the increase in traffic were two separate issues Mr. Kearns responded in the affirmative.

### **Resolution 2008-10**

Mr. Brigham moved and Mr. Ash seconded the motion finding that there was an error by the Zoning Inspector in interpreting Sec. 31.26 of the Zoning Resolution and further moved to dismiss the variance request and close the violation case.

#### Finding of Fact:

1. The case number was VA2008-05.
2. The date of the action by the inspector was July 30, 2008 where an order was issued for an accounting business to cease and to desist.
3. The applicants' names were Gerald and Anna Martini.
4. The date the appeal was filed was August 5, 2008.
5. The address of the subject premises was 5341 Panther Court.
6. The zone district of the subject premises was "C" Residence.
7. Sections of the Zoning Resolution on which the order was based included: 51, 51.1, 81, 82, 61, 62, 62.13, 62.14-4, 31.26, 251, 281, 282, and 291.
8. Sections of the Zoning Resolution authorizing the Board to grant or deny the appeal included: 183, 184, 184.2, 184.6, 185 and 186.
9. There were no Sections cited by the appellant as authorizing the Board to grant the appeal.
10. There was opposition present at the meeting expressing concern for:
  - a) parking on the private street;
  - b) traffic on the private street.
11. The Board finds there was an error on the part of the inspector.
  - a) The Boards finds that the accounting business operating at the subject premises is a permitted use under Sec. 31.26 of the Zoning Resolution inasmuch as there is no commodity being sold, no sign or name plate is displayed and as there are no employees living outside the subject residence.

The hearing in Case VA2008-06 (580 Anderson Ferry Road) was convened.

Mr. Stahlheber (sworn) advised that on September 24, 2008 the Department of Development Services received an application filed by Pendelton Sears Architects on behalf of Shiloh United Methodist Church for an institutional addition at 580 Anderson Ferry Road. The application was denied on October 2, 2008 with the applicant notified of the denial by certified mail on that same date. He commented that in the letter were stated the reasons for the denial which included: the premises known as 580 Anderson Ferry is located in Delhi Township, Hamilton County, Ohio and in the "C" Residence district as shown on the maps of the Township Zoning Resolution; the subject premises is a corner lot; at the time of construction of the existing buildings at the subject premises the yard designations were determined to be - front yards north & west, side yard east and rear yard south; the submitted application and drawings indicated a proposed building addition extending from the southeast facade of the existing building, a proposed expansion of the parking lot at the southwest corner of the property and a proposed expansion of the parking lot at the northeast corner of the property, such parking lot expansion extending into the north front yard and within 10' of the east property line adjacent neighboring residences, with no landscape plan submitted. He commented that the Township Zoning Resolution requires that a zoning certificate be obtained prior to construction of institutional additions, prohibits parking lots in front yards in all residence zone districts, prohibits parking lots less than 10' from adjacent residence zone districts and requires that parking lots be screened from adjacent residential properties. The denial was also based on the following Sections of the Zoning Resolution: Sections 51.1, 81, 82.2, 144# 1, 2 & 4, 191, 192, 194, 251, 281, 282, and 291. Pursuant to Article XVIII of the Zoning Resolution the applicant had the right to file an appeal of the denial within twenty days of the action with an appeal being filed in the form of an application received October 7, 2008. Pursuant to the requirements of the Ohio Revised Code the hearing was advertised in a newspaper of general circulation at least ten days before the hearing and those parties of interest were notified by first class mail at least ten days before the hearing.

Exhibit "A" - application

Exhibit "B" - site plan

Exhibit "C" - landscape plan

Michael Sieving (sworn), advised that he represented the property owner, Shiloh United Methodist Church. He commented that Pendelton Sears Architects has prepared plans for improvements to the church's property including a proposing a gym addition to the existing building complex and expansions to the existing parking lot both at the southwest and northeast corners of the property. He noted that the plans now include the previously missing landscape plan. He advised that the encroachment of the proposed parking lot into the north front yard is minimal and will be effectively screened from Foley Road. He commented that the encroachment of the proposed parking lot into the east side yard setback is no greater than the

encroachment of the existing parking lot and that it too would be effectively screened from the neighboring residences east.

Mr. Stahlheber advised that adjacent the subject properties west are properties zoned retail business where parking is permitted in the front yard. He commented that the parking lot extending into the front yard of the adjacent middle school north was approved via a variance granted by the Board. He noted that the subject church was built sometime in the 1950's and that whereas the County Zoning Regulations weren't enforced in the Township until 1959 that this development predates any zoning regulations. He advised that as much as there is no screening device along the boundary of the rear parking lot there is a buffering device. He commented that there has been no opposition to the proposal which the Board could construe as there being no concern by the neighbors to the current lack of screening.

### **Resolution 2008-11**

Mr. Brigham moved and Mr. Ashe seconded to grant the variance as requested in case VA2008-06. Messrs. Brigham, Ashe and Kearns voted Aye. Motion carried.

#### Finding of Fact:

1. The case number was VA2008-06.
2. The date of the action by the inspector was October 2, 2008 where a zoning certificate was denied for the construction of an institutional addition including a parking lot extension, for the reason that a portion of the parking lot extension would extend into the north front yard and into the required parking lot setback to the east, and as no screening was indicated.
3. The appellants name was Michael Sieving on behalf of Shiloh United Methodist Church.
4. The date the appeal was filed was October 7, 2008.
5. The address of the subject premises was 580 Anderson Ferry.
6. The zone district of the subject premises was "C" Residence.
7. Sections of the Zoning Resolution on which the denial was based included: 51.1, 81, 82.2, 144# 1, 2 & 4, 191, 192, 194, 251, 281, 282 and 291.
8. Sections of the Zoning Resolution authorizing the Board to grant or deny the appeal are: 183, 184, 184.2, 184.6, 185 and 186.
9. Sections cited by the appellant authorizing the Board to grant the appeal included: 144 & 184.2.
10. There was no opposition present at the hearing.
11. The Board finds no error on the part of the inspector.
12. The Board finds that practical difficulties exist as a result of an area zoning requirements with respect to the following non-exclusive factors:
  - a) The property owner purchased the property with knowledge of the zoning restrictions.
  - b) The property owner's predicament cannot feasibly be obviated through some other method other than a variance.
  - c) The variance is not substantial.
  - d) The subject property has an irregular shape, topographic, and other conditions present.
  - e) The essential character of the neighborhood would not be substantially altered nor would adjoining properties suffer a substantial detriment as a result of the variance.

- f) The property in question will yield a reasonable return and there can be a beneficial use of the property without the variance.
- g) The variance will not adversely affect the delivery of government services.
- 13. The Board finds that the spirit and intent behind the zoning requirements would be observed and substantial justice done by granting the variance.
- 14. The Board finds that the granting of the appeal would not be contrary to the public interest, the general welfare and adjoining landowners. Basis of finding:
  - a) The proposed improvements retain the architectural character of the existing buildings at the subject property and at substantial expense.
  - b) The proposed improvements are necessary to expand the church functions for the benefit of the community.
  - c) Similar parking conditions exist at adjacent locations, therefore, the community will not be negatively impacted.
- 15. The Board wishes to review any alterations regarding the variance.

Old Business:

- Mr. Stahlheber advised he will have the April 2008 meeting minutes ready for the Boards' next meeting.
- Mr. Stahlheber thanked all who attended the annual departmental golf outing and dinner.

New Business:

- Mr. Stahlheber advised there were no cases currently pending.
- Robert Ashe accepted and will be appointed chairman of the Board in 2009.

There being no further business on motion of Mr. Ashe, seconded by Mr. Brigham the meeting was adjourned at 8:35 pm. Messrs. Ashe, Kearns and Brigham voted aye.

Board of Zoning Appeals:

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Thomas R. Stahlheber, Secretary

