

PLANNING & ZONING COMMISSION
January 11, 2011 – 7:30 P.M.

The Planning Commission met at City Hall on the above date.

Present: Commission Members Mazur, Meany, Newberry, Councilwoman Richmond, Mayor Drucker, Law Director Lobe, Planning Director Frankland, Secretary McConoughey

Absent: None

Also Present: Fire Lieutenant Benedict, Public Works Commissioner Stanek

The following items remained on the Inactive Agenda:

- A. Thornbury Subdivision – Forest City Land Group – Dedication Plat for phases 7 and 8
- B. 34050 Aurora Road – BP America – Number of signs variance (to permit 16)
- C. Hawthorne Estates Subdivision – TransCon Builders

NOTES OF CAUCUS DISCUSSION:

(Secretary's note: Agenda items not mentioned under Notes of Caucus Discussion are items that were not pertinently discussed during Caucus.)

Chairman Mazur presided.

CONSIDERATION BY BOARD OF ZONING APPEALS:

1. Appeal received from Dominic B. Picone regarding Planning Director Frankland's denial of approval to start a home occupation: Mr. Mazur said the appeal will be reviewed at the start of the meeting by the Commission acting as the Board of Zoning Appeals.

NEW:

2. 29495 F.A. Lennon Drive – PP# 953-11-002 – Swagelok – a maximum structure height variance for a temporary meteorology tower and a rear yard setback variance: Mr. Ed Bayer, Swagelok, was present and said the temporary tower will be installed for approximately 16 months. The Commission discussed the length of time that should be approved for the temporary installation and it was determined it would be approved for 24 months.

COUNCIL REFERRAL:

3. Request from Wolf Family Trust to allow medical and dental tenancy in the I-2 Zoning District: In response to Mr. Mazur's question, the Clerk said the Wolf Trust

has been referred back to the Planning Commission by the Council. However, this item was tabled to be considered with a similar request from Larry Coven, Bainbridge Road Associates, LLC.

Mr. Frankland said thus far there is no official application. He said the requests have been for the City to consider the concept of changing the uses in the I-2 Zoning District. Mr. Frankland said he will meet with the Economic Development Manager to determine the vacancy rates in the office district. There was concern in the past of creating too much competition in the Office Zoning District if the uses in the I-2 District were extended.

Mayor Drucker suggested both items be combined during the Council review.

Mr. Frankland said he has one minor alteration to present. He referred to a building on Naiman Parkway where they would like to add a dock shelter to an existing loading dock. Mr. Frankland said this is a very minor prefab extension to the building. He said there are no variances associated with this item.

Mr. Mazur reviewed the meeting schedule and said the Commission's next meeting is on January 25th and the Planning Commission is scheduled to meet on February 8th and the 22nd. The Council meets on February 1st and 15th.

Mayor Drucker introduced Todd Cipollo from Law Director Lobe's office and said on occasion when Mr. Lobe is unable to attend a meeting, Mr. Cipollo would attend in his place.

The caucus ended at 7:12 P.M. and the meeting convened at 7:30 P.M.

CHANGES TO THE AGENDA:

There were no changes to the agenda.

COMMENTS FROM THE AUDIENCE:

Mr. Neil Behrman, 5050 Boulder Creek, a resident of Solon for 12 ½ years, spoke regarding Item 1 on behalf of Dominic Picone's appeal for an FFL (Federal Firearms License) to start a home occupation. He has known Mr. Picone for 8 years and has been involved with the hobby of sports shooting for 10 years. Mr. Behrman believes it would be beneficial for Solon to have this business with someone as knowledgeable as Mr. Picone regarding buying, trading and selling firearms.

APPROVAL OF MINUTES:

Motion by Mr. Newberry, seconded by Mrs. Meany to approve the minutes of the December 20, 2010 meeting as presented.

Roll Call: Aye: Drucker, Mazur, Meany, Newberry, Richmond
Nay: None

Motion Carried

CONSIDERATION BY BOARD OF ZONING APPEALS:

1. Appeal received from Dominic B. Picone regarding Planning Director Frankland's denial of approval to start a home occupation.

Motion by Mayor Drucker, seconded by Councilwoman Richmond to adjourn the Planning Commission meeting and convene as the Board of Zoning Appeals

Roll Call: Aye: Drucker, Mazur, Meany, Newberry, Richmond

Nay: None

Motion Carried

Acting as the Board of Zoning Appeals, the Commission Members considered the appeal to the Planning Director's denial to start a home occupation submitted by Dominic B. Picone.

Mr. Dominic Picone, 34540 Jaclyn Drive, and Mr. Chris Metz, 36900 Aurora Road, were present. Mr. Picone displayed information explaining FFL's (Federal Firearms License) and said there are various types of FFL's and he is interested in the type 07, which is for the manufacture of firearms and allows the ability to act as a dealer. The license also allows for dealing Title 2 weapons which include machine guns for law enforcement and short-barrel rifles, short-barrel shotguns and suppressors; also known as silencers. These items are legal for the public to own after background checks and taxes are paid.

Mr. Metz said to disregard the destructive devices section since this would not be included in the home occupation at this time.

A copy of the National Firearms Act of 1934 and the Gun Controls Act of 1968 was displayed and briefly explained.

Mr. Metz said based on the guidelines listed in the Gun Controls Act of 1968, Mr. Picone will not be able to distribute firearms to those people who are not legally eligible to own a firearm.

Mr. Picone said from 1994 to 2008, 1.8 million firearm purchases were blocked through FFL's background procedures. He said since 2009, the FBI has completed 100 million background checks on person's attempting to purchase a firearm.

Mr. Picone discussed the procedure for transferring a firearm and displayed a copy of the guidelines. He also displayed the guidelines for the manufacturing process of firearms and although he does not intend to focus on this aspect of the business, he would like to have that option. Mr. Picone said the license would give him the ability to manufacture firearms for law enforcement and government agencies.

Mr. Picone displayed photographs indicating the basement of his home and the various safes to be used to secure firearms and ammunition.

Mr. Mazur asked Mr. Frankland to explain why Mr. Picone's initial request was denied.

Mr. Frankland said Mr. Picone has been forthcoming through this process by explaining what the licensing would allow. He said Mr. Picone would require a letter from the Planning Department to the BATF (Bureau of Alcohol, Tobacco, Firearms) to allow the issuance of this license to operate the business in a residential neighborhood. Mr. Frankland said the City Code allows for customary home occupations.

Mr. Frankland conferred with Law Director Lobe and the determination was made that the manufacture of machine guns, short-barrel rifles and short-barrel shotguns are not legal for citizens to own except by paying a substantial tax. Mr. Frankland said, in addition, the accessory uses of grenade launchers and silencers were determined to not be customary items for a home occupation due to the hazardous nature of the products, as well as the requirement of special permission from the Federal government to operate the business.

Mr. Lobe explained a permitted home occupation in a residential neighborhood must be considered customary and this type of business would be considered an exception. He said the applicant discussed the manufacturing of items and the purpose clause of home occupations state the character and appearance shall not be altered. Although the appearance of the neighborhood will not be altered, the manufacturing of guns, silencers, grenade launchers, etc., in a residential area would alter the character of the neighborhood. Mr. Lobe said the criteria of requiring approval of the BATF and licensing is not considered a customary home occupation. He said the request was denied based on all of these factors.

Mr. Metz said the business will consist primarily of making small firearms with no manufacture of destructive devices.

Mr. Mazur asked what type of inventory would be maintained at the home.

Mr. Picone said there would be no inventory maintained and the creation of a firearm would be on a made-to-order basis. He said a demonstration unit would be assembled and then sold to the purchasing agency after all the proper paperwork was completed.

Mr. Mazur asked Mr. Metz what his association is with Mr. Picone and if they are business partners.

Mr. Metz said they have been friends for 10 years and he is here to support him. He said he has been involved in the trading and shooting of guns as a hobby for approximately 4 years.

Mr. Mazur asked Mr. Picone where a gun that he has assembled will be tested for reliability.

Mr. Picone said it would be tested at a firing range where it is legal to discharge it and not in his home.

Mr. Mazur said he spoke with soon-to-be new Police Chief Viland who said he spoke with Chief Godzich with regards to the letter submitted by Mr. Picone stating Chief Godzich signed the license for an FFL. Chief Godzich's recollection was he signed a license to allow silencers, but not weapons on the property.

Councilwoman Richmond said she is concerned because this is not a customary home occupation and she will not support the request.

Mr. Newberry asked for clarification of whether the FFL would allow Mr. Picone to manufacture and sell various firearms and destructive devices. Mr. Picone clarified there are different types of FFL's and the one he is requesting will not allow destructive devices.

Mr. Newberry asked if the primary focus of the business is to build or sell weapons. Mr. Picone said his primary focus is to sell or transfer weapons. Mr. Picone explained the process involved for transferring a gun and all of the necessary criteria.

Mr. Newberry asked if this occupation could be done elsewhere in the City in a different use district and Mr. Picone said it could.

Mr. Newberry asked Mr. Frankland if there is a district within the City that would permit this type of occupation.

Mr. Frankland said the manufacturing of a firearm would be permitted within the industrial district and the sale of guns within a commercial district would be something that he believes would be allowed, however, it would have to be reviewed by the Police Department and the Law Director.

Mr. Newberry said he believes there would be a way to allow for the occasional sale in the industrial district or assembly of a firearm in the commercial district.

Mr. Frankland said there is a provision in the Code that allows 10% of the area of the building used for manufacturing to be utilized for the sale of the product being manufactured.

Mr. Newberry said although Mr. Picone gave statistics of the number of applications turned down to purchase guns at 1.8 million, the next statistic he gave was that 100 million have been permitted. Therefore, only 2% of the applications were turned down which does not seem to be a very significant number.

Mr. Mazur said when the home occupation section of the Code was adopted, the Chamber of Commerce was involved and restrictions discussed were; no advertising, limited number of visitors and deliveries, etc. Mr. Mazur said during this period, gun sales or gun manufacturing from a home were never considered as a home occupation. Therefore, he will not support the request and believes it would be more appropriate in the industrial district.

Mrs. Meany said she agreed with Mr. Mazur and is not comfortable with this type of occupation in a home. She asked Mr. Picone how many guns he has in his home. Mr. Picone said he was unsure of the number.

In response to Mrs. Meany's question about machine guns, Mr. Picone said they are manufactured only for law enforcement agencies. He said, since 1986, no civilian is allowed to own a machine gun unless it was manufactured before 1986.

Motion by Mr. Mazur, seconded by Councilwoman Richmond to approve the appeal of Dominic Picone to allow a home occupation for the sale, manufacturing and distribution of automatic weapons.

Roll Call: Aye: None

Nay: Drucker, Mazur, Meany, Newberry, Richmond Motion Failed

Mr. Mazur said the appeal is denied and as the Board of Zoning Appeals they have the ultimate authority to deny the request, therefore, this business is not permitted to be operated in the residential area. Mr. Mazur encouraged Mr. Picone to contact the Economic Development Manager to determine if there is a location in the City that is available for a reasonable rent where he can operate this business.

Motion by Mr. Newberry, seconded by Mayor Drucker to adjourn as the Board of Zoning Appeals.

Roll Call: Aye: Drucker, Mazur, Meany, Newberry, Richmond

Nay: None Motion Carried

The Planning Commission meeting reconvened.

Law Director Lobe introduced his associate, Mr. Todd Cipollo, who will assist him and possibly attend various meetings if Mr. Lobe is unable to do so.

NEW:

2. 29495 F.A. Lennon Drive – PP# 953-11-002 – Swagelok 001-2011
- 197' 8.25" maximum structure height variance for temporary meteorology tower
 - 5' rear yard setback variance

Mr. Ed Bayer, Director of Sustainability, Swagelok, and Public Works Commissioner Stanek were present. Mr. Stanek displayed a map and said this is a project that has been under review for three years and through a grant awarded annually with Green Energy Ohio, Solon has been selected as a site for one of the three anemometer stations. Mr. Stanek said the City is fortunate that the Swagelok Company is willing to allow this on their site. The location for this station provides one of the best opportunities to perform this type of study. He indicated the area on the map and said it is an ideal site because of the western prevailing wind which is perfect for the study.

Mr. Bayer said the location is in the prevailing wind patterns and there are a series of anemometers located on the tower which will take at least 12 months of

readings. Once the readings are completed, an economic benefit analysis can be performed.

Mr. Stanek said the purpose of the study is to determine if wind energy has any potential in the City of Solon.

Mr. Mazur said as discussed in caucus, it was determined that approval for 24 months should be adequate.

Mr. Stanek said 24 months should be more than enough time to complete the study.

Mr. Mazur asked if the guide wires being used to keep the structure stable could be identified or flagged to prevent any potential safety issues. Mr. Stanek said something will be added to make them obvious.

Mr. Newberry asked how large the anemometers mounted to the tower will be. Mr. Stanek said he has not seen them yet, however, they cannot be too large since the antenna is only 8" to 10" in diameter.

Mr. Newberry said he has some familiarity with the testing recently done on Lake Erie where a shorter tower was installed because there will obviously be more wind on the lake. He said smaller, approximately 6" diameter propellers on a guide that resembles an airplane body were installed and were not obtrusive or noisy. Mr. Newberry said there has been much interest in wind generation of energy in this area of the country and he has heard that some other communities have been resistant to wind generated energy.

Mr. Frankland said two variances were identified, one for the maximum structure height and one for a rear yard setback. However, the rear yard setback has been eliminated with a revised plan.

Motion by Mayor Drucker, seconded by Mr. Mazur to approve a 197' 8.25" maximum structure height variance for a temporary meteorology tower for a 24-month period.

Roll Call: Aye: Drucker, Mazur, Meany, Newberry, Richmond
Nay: None

Motion Carried

Motion by Mr. Newberry, seconded by Mrs. Meany to accept the withdrawal of the 5' rear yard setback variance.

Roll Call: Aye: Drucker, Mazur, Meany, Newberry, Richmond
Nay: None

Motion Carried

Mr. Lobe said that he and Mr. Stanek have been formulating the contractual issues with Mr. Bayer and Swagelok and Green Energy and are still making revisions to the contract; including, insurance, liability, permits, etc.

COUNCIL REFERRAL:

3. Request from Wolf Family Trust to allow medical tenancy in the I-2 Zoning District 095-2010
4. Request from Larry Coven, Bainbridge Road Associates, LLC, to allow medical and dental occupancy in the I-2 Zoning District 002-2011

Mr. Mazur said Items 3 and 4 will be reviewed together since they are similar requests. The Commission determined it would be appropriate to have the Planning Director confer with the Economic Development Manager to assist with determining what impact making this change to the Code would have and to forward their findings to the Commission, as well as the Council.

Motion by Mr. Mazur, seconded by Mayor Drucker to direct Mr. Frankland to consult with the Economic Development Manager and provide the Commission and the Council with their findings.

Mayor Drucker asked the Clerk to provide the minutes from 2008 regarding this subject to the Commission.

Mr. Newberry is not opposed to allowing medical uses, in certain circumstances, in the I-2 district. However, he is concerned that by attracting uses into the I-2 district, it might detract businesses from the office district. Mr. Newberry said he would be interested to see the information from the Economic Development Manager related to occupancies and the demand for medical office space in various locations throughout the City.

Roll Call: Aye: Drucker, Mazur, Meany, Newberry, Richmond
Nay: None

Motion Carried

MINOR ALTERATIONS FROM THE PLANNING DEPARTMENT:

1. 5101 Naiman Parkway – Iron Mountain

Mr. Frankland displayed an aerial of the location and indicated the area where the applicant would like to add a dock shelter to an existing loading dock. He said this is a prefab type of structure which attaches to the loading dock door. Mr. Frankland displayed a photograph depicting different variations of shelters. He said this is a very small addition to the building and it will only project out 2 additional feet and it will not affect the appearance of the building. However, it is considered an alteration which does require approval.

The Commission members agreed no further review of this item was necessary.

COMMENTS FROM THE COMMISSION:

Mr. Newberry and Mr. Frankland welcomed Mr. Todd Cipollo from Mr. Lobe's office.

Mr. Mazur congratulated Chief Godzich on his retirement and Christopher Viland on his appointment as Chief of Police.

Motion by Mayor Drucker, seconded by Councilwoman Richmond to adjourn the meeting at 8:05 P.M.

Roll Call: Aye: Drucker, Mazur, Meany, Newberry, Richmond

Nay: None

Motion Carried

After the meeting was adjourned, Mr. Heinz Knoll, 5875 Liberty Road, spoke regarding Item 2. He asked if an existing meteorology tower could be used instead of building a new tower.

Mr. Newberry said the existing police radio tower is being used with the addition of antennas and the approach is critical because of the need for open space.

Chairman

Secretary