

MINUTES OF
Board of Zoning Appeals
Variance of Use Hearing #2023-03
Thursday May 11, 2023
6:00 PM

I. Call to order:

The Members of the Board of Zoning Appeals met on Thursday May 11, 2023 in Council Chambers at City Hall. Board President, Stan Haines called the meeting to order at 6:03 pm.

II. Roll Call:

Board Members Present: Stan Haines, Jason Arnold, Scott Malone, Jeff Rayburn and Joshua Davis

Absent: Rob Dobson

Guests: Jacob Ahler, Jessica Call, Bryan Culp, Kevin Arnold, Robert Schenk, Sherry Urbanski and Pamela Sayler

III. Review and Approval of Past Minutes:

Stan Haines presented the minutes from the last BZA held on Thursday February 9, 2023, Conditional Use Hearing 2023-01 with D-1 Towing/Dale Nester. Motion to approve by Jeff Rayburn, second by Jason Arnold.

Motion Passed

IV. Old Business:

None

V. New Business:

A. Variance of Use; Bryan O. Culp

Bryan Culp stated that the focal reason for obtaining his Federal Firearms License (FFL) was for personal use. Bryan's hobby consists of adding to his large collection of firearms, both shotguns and hand guns, where he occasionally sells and purchases firearms. Jeff Rayburn questioned if the license was for Bryan to be able to ship the firearms from his property. The FFL obtained eliminates the need for Bryan to travel to another location to pick-up or drop-off these firearms. Mr. Culp reiterated there would not be individuals entering the property; the firearm sales are strictly online, and as of now, there will be no sales of ammo. The only anticipated traffic would be from delivery drivers, such as FedEx and UPS, which is no different than the neighbors receiving their Amazon packages.

There will be no business website where individuals can order; Joshua Davis said it is internet based, a commodity like any other drop-ship business. The ordinance states nothing about internet home based businesses. The only restriction, there should be no storage of commodities on the property. Bryan Culp stated that there is no restriction of storage per the Alcohol, Tobacco, and Firearms (ATF).

The Building Department received one letter from Michael and Mary Ann Hillbrich expressing their opposition to approve the FFL in a residential neighborhood. Bryan Culp stated that he did speak with his neighbors and explained there would not be traffic of strangers entering the neighborhood due to his FFL. He continued to say that once the conversation was over, they no longer seemed to have any concern.

The Building Department also received two phone calls from Bob and Cheryl Kay and Mary Jennings. Neither had anything negative to say, they were just inquiring about details regarding the proposal from Bryan O. Culp. Pamela Sayler came to the meeting on behalf of her and her husband. Pamela Sayler

stated that she objects to the Conditional Use Application from Bryan O Culp. She read the Federal Firearms License definition, which states that that is allows for the manufacturing for firearms and ammunition; however, this is not the intent of the petitioner. Board members confirmed with Mrs. Sayler that there would be conditions set in place for Bryan Culp, prior to approving. Pamela Sayler continued to submit a letter, objecting the variance.

Scott Malone stated that people get squeamish when anyone mentions guns, even without reason. It was said there are no security concerns and no activity to endanger anyone. Jason Arnold suggested that if Bryan Culp ever decided to expand and contain a website, he would have to come before the Board of Zoning Appeals again, for approval. Mike Davis suggested that if any individuals were noted going to the property of Mr. Culp, that his license and/or variance should void.

Stan Haines explained that the Board should approve or deny all conditions of use from the terms of this Ordinance with a roll call vote. The Board may impose reasonable conditions as part of its approval. A conditional of use from the terms of this Ordinance may be approved only upon determination in writing that:

*(This procedure for a vote includes five paragraphs; these are listed as items a. through e. on pages 10 and 11 in Chapter 28: Rensselaer Zoning Ordinance. If any one of these does not pass, then the application is denied. Joshua Davis then read the following paragraphs) ...

- a. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
 - Stan Haines said having heard paragraph a. he would entertain a motion to vote on the paragraph.

Jason Arnold: Yes

Scott Malone: Yes

Jeff Rayburn: Yes

Stan Haines: Yes

Rob Dobson: Absent

Motion Passed

- b. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
 - Stan Haines said having heard paragraph b. he would entertain a motion to vote on the paragraph.

Jason Arnold: Yes

Scott Malone: Yes

Jeff Rayburn: Yes

Stan Haines: Yes

Rob Dobson: Absent

Motion Passed

- c. The need for the variance arises from some condition peculiar to the property involved;
 - Stan Haines said having heard paragraph c. he would entertain a motion to vote on the paragraph.

Jason Arnold: Yes

Scott Malone: Yes

Jeff Rayburn: Yes

Stan Haines: Yes

Rob Dobson: Absent

Motion Passed

- d. The strict application of the terms of this Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought;
- Stan Haines said having heard paragraph d. he would entertain a motion to vote on the paragraph.

Jason Arnold: Yes
Scott Malone: Yes
Jeff Rayburn: Yes
Stan Haines: Yes
Rob Dobson: Absent

Motion Passed

- e. The approval does not interfere substantially with the Comprehensive Plan;
- Stan Haines said having heard paragraph e. he would entertain a motion to vote on the paragraph.

Jason Arnold: Yes
Scott Malone: Yes
Jeff Rayburn: Yes
Stan Haines: Yes
Rob Dobson: Absent

Motion Passed

The Board imposed the following reasonable conditions as part of the approval:

1. FFL approval and in good standing. Copy of approval or denial must be submitted to the City of Rensselaer Building Department.
2. Any changes to the corporate structure will terminate the variance.
3. Your business sales model shall only consist of listing your firearms for sale on a third party website. You may not develop your own website for advertisement or sales.
4. Absolutely no commodities bought, sold or traded at the property.
5. Business registered with the city and updated annually. The following must be included with the registration:
 - Signed disclaimer releasing the city of liability, relating to any action caused or charged against the application
 - UTD copy of your Federal Firearm License
 - Copies of all ATF inspections
 - Indiana Retail Merchant Certificate
6. Absolutely no business signage on the property.

Board of Zoning Appeals President Stan Haines entertained a motion to approve the conditions. Motion made by Scott Malone, second by Jeff Rayburn.

Joshua Davis took roll call vote for variance approval:

Jason Arnold: Yes
Scott Malone: Yes
Jeff Rayburn: Yes
Stan Haines: Yes
Rob Dobson: Absent

Motion Passed, Variance of Use granted.

B. Appeal of Building Commissioner Orders

Joshua Davis stated that Richard and Sherry Urbanski's permit lapsed in 2022. There is no documentation supporting the request of a permit renewal. When the initial permit was issued, there was no site plan provided, the addition is within the required setbacks and constructed above a natural gas line. There has been a clean-up letter sent to the property owner, as well as a Stop Work Order.

Joshua Davis informed members that the addition is currently attached to a garage, which is split between two parcels. Sherry Urbanski stated that she has lived at the property for 18 years and they have shared the shed with the current neighbor for the last 15 years. Mrs. Urbanski said her husband has continually fixed up their side of the shed over the years. It was also discussed that the purpose for the addition in question is for her husband to be able to work on their vehicles, shielded from weather elements. Scott Malone and Jason Arnold wanted confirmation that the addition is solely on their property, but attached to the shared shed. When questioned why the addition has not been completed after two years, Sherry Urbanski said that time simply got away; covid, other medical issues and the cost of lumber has prevented them from the continuation of construction.

The main concern from Stan Haines was the natural gas line. Joshua Davis reassured Stan that the Gas Utility would move the gas line, at the expense of the property owner. Joshua Davis also said that there would be plenty of salvageable wood, which would make it ideal to relocate the addition. Jason Arnold stated that based on the ordinance, the addition should not have been approved. Stan Haines was adamant when saying Sherry Urbanski needed to come before the Board for a variance approval.

C. Disapproved Zoning Violations

Joshua Davis stated that due to the way the Building Department Office was operated in the past, there are several disapproved zoning violations throughout the city. An accessory structure has a maximum height limit of 18 feet. There is one that was approved with a maximum height of 23 feet. Jason Arnold said the city has Ordinances with maximum building height guidelines for a reason.

Another violation pertains to a 6' tall privacy fence in the front yard of the property. Joshua informed the Board that this property is on a corner lot, which means that both side streets are considered the front yard. Joshua Davis wanted to address these violations for future endeavors, saying these types of projects should be brought before the Board of Zoning Appeals. Board members agreed.

D. Downtown Business Zoning: B3 Zone with Residential Uses

Joshua Davis said that apartments in a B3 Zoning District is not permitted; however, there are many apartments in our downtown area. Jeff Rayburn, Jason Arnold and Scott Malone were under the impression that there could be a residential area in a B3 Zoning District. An apartment or Airbnb is a business. Jason Arnold said that an Airbnb was required to register as a business in the City of Rensselaer. Stan Haines said Mayor Wood and the City Council were supposed to discuss this topic at a Council Meeting. Jacob Ahler said to his knowledge, it has not happened.

E. Active Zoning Violations

a. Storage Sheds; Shed Sales Location

Joshua Davis displayed concern about the locations in town where there are sales of portable sheds. This is another example of what should have been brought before the BZA. Joshua Davis stated that none of the portable sheds are secured on site. Jason Arnold asked for Jacob Ahler's advice on what can be done. Ahler stated that he *could* file an action to compel in court, but 85% of the time, the person(s) do not realize what is required. This is a matter that could be resolved by communicating with the property owner. Stan Haines concluded that the shed sales do not comply with city Ordinances, and they need to come before the Board for approval.

b. Pizza King; New Owner. Variance of Use.

Joshua Davis explained that the new owners of Pizza King will need to file a Variance of Use Application. Pizza King is zoned for residential use. A Variance of Use will need to be approved

to run the business. Scott Malone said to simply talk with the new owners and they would comply.

c. Accessory Structure on Property Line

The Building Department has received complaints regarding the addition to a property that has not been permitted and is built on the property line. The property owner has stated that the addition is not a permanent structure, and that it does not need permitted. Jason Arnold asked what makes an addition require a permit. Joshua Davis answered that any permanent structure requires a permit.

d. /e. Construction Yard on Residential Property

It was brought to the attention to the Board that there are a few properties within city limits that are utilizing their residential properties as a construction yard. Stan Haines asked what the guidelines were for this type of violation. Joshua Davis explained that there should be no such items in the required setbacks of the front, rear and side yards. Davis said that many ordinances overlap between different departments within the city. He has a plan to get with the departments, view ordinances and conform them.

f. Cloudpermit; Building Department Platform

The Building Department recently signed a contract with Cloudpermit. This platform tracks Business Registrations, Contractor Registrations, Permits, Zoning Code Violations, Fees and Citizen Reporting, which all ties to the property owner records.

VI. Adjournment:

Stan Haines Adjourned the meeting with a motion by Scott Malone, second by Jason Arnold.

Motion carried.

Meeting was adjourned at 7:42 PM.

***Next Meeting:** June 8, 2023 at 6:30 pm CST.