



Board of Zoning Appeals
Perrysburg Township, *Established 1823*
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Russell R. Miller, *Chairman*
Bill Irwin, *Vice-Chairman*
James Bennett, *Secretary*
Russell Sturgill
Jeffrey D. Justus
Bob Warnimont, *Alternate*
Elsie Hetman, *Alternate*

Board of Zoning Appeals Meeting Minutes January 9, 2012

The Perrysburg Township Board of Zoning Appeals held a meeting on January 9, 2012.

Mr. Miller, as Chair of the Perrysburg Township Board of Zoning Appeals, called the meeting to order at 7:05 p.m. He then asked Mr. Garn to please call the roll.

Members present: Mr. Miller, Mr. Irwin, Mr. Bennett, Mr. Justus, and Mr. Warnimont

Members absent: Mr. Sturgill and Ms. Hetman

Mr. Miller stated they had a quorum to conduct the meeting. Mr. Miller began by discussing a couple of administrative matters. He asked all those present who had cell phones to please turn them on vibrate or turn them off as they would appreciate it. Secondly, he mentioned the very sensitive microphones and asked if individuals were speaking amongst themselves to step to the back of the room or do it very quietly because the microphones will pick it up. He informed the audience that in a moment they would swear in all those who intend to testify before the Board but legal counsel is excused from that as they are clerks of the court.

Mr. Miller stated that the first order of business was to approve the minutes of the December 20, 2011 meeting. He asked the Board if they had all received a copy and they indicated they had. He asked if there were any discussion, corrections, or changes to the minutes and if not the Chair would entertain a motion to approve. **Mr. Bennett made a motion to approve the minutes (Mr. Warnimont seconded)**. Mr. Miller stated there was a motion and a second to approve and asked if there was any further discussion. With no discussion, Mr. Miller asked Mr. Garn to please call roll. **YES- Mr. Bennett, Mr. Warnimont, Mr. Justus, Mr. Irwin, and Mr. Miller. Motion carried**

Next, Mr. Miller turned to the public hearing portion of the meeting. He invited all those who wished to speak before the Board to please stand and be sworn in. Mr. Miller subsequently swore in one individual.

Mr. Miller identified the first matter to go before the Board as **Application number 2011-6831**. UMG Investments LLC of 27511 Holiday Lane, Suite C & D is zoned C-2. They are doing business as a retail seller of counter tops and fixtures with custom fabrication of marble and granite counters and fixtures for residential and commercial end users. Article IV, Section A 5 classifies them as "Retail Sales Without Wholesaling of Any Commodity or Services". The application was denied on the grounds that the Zoning Inspector cannot verify that the applicant meets the use criteria for the classification sought. Mr. Miller

invited the applicant forward. Mr. Walt Celley stepped forward and asked to give the Board procedural and factual background as he believed it would be very helpful. Mr. Miller asked if the applicant was willing to defer momentarily for that and the applicant was okay with this.

Mr. Celley went to the podium and introduced himself as the Township Law Director. Mr. Celley stated that the applicant applied for a zoning certificate in April of 2011 and plans/ description of the business was provided to the Zoning Office at that time. They did receive a permit to modify the structure on April 27th and started a \$250,000 reconstruction and remodeling project. As the project progressed and upon investigation the Zoning Inspector wasn't certain if the use classification would fit what they were claiming. It was thought, at that time, that it would be a conditional use. There was an appeal from that determination which ultimately was dismissed as being, more or less, improvident. The Zoning Inspector determined a zoning certificate, for the change in use, would be required. After the initial appeal was filed, the Zoning Inspector contacted Mr. Celley with the dilemma and took this to the Trustees. The Trustees authorized Mr. Celley to take care of it. The Trustees are very happy to have a new business come to the Township but obviously the zoning standards had to be met. Mr. Celley believed they probably could be some clarification and conditions. Mr. Celley worked with the Zoning Inspector, the applicant, and their legal counsel to ascertain that this business was meeting the zoning standards. The Trustees instructed that it was their desire to have this matter presented before the Board of Zoning Appeals for final determination and this would be the purpose of this hearing. So procedurally this is going before the Board as an appeal from a determination of the Zoning Inspector. The applicant has applied for a zoning certificate for a change of use under Article IX Section B of our Zoning Resolution. The property is classified as C-2 and they are proposing they meet the criteria for retail sales without wholesaling of any commodity or services; Mr. Celley said he would refer to that as retail sales. The issue became whether the business operations of this applicant would fit the definition of the retail sales permitted use. There was some initial doubt because the company was employing some printed materials and had some signage on vehicles which indicated that the business was engaged in wholesaling which clearly would have not made it a permitted use. The applicant has represented that he does not intend to engage in wholesaling, at least not at this location. Another item that was causing the Zoning Inspector some issues is the heavy machinery this applicant uses out of necessity. The Zoning Inspector questioned the retail nature of the business as the vehicles and equipment have an industrial look to them. The applicant was representing that it was a retail operation. Mr. Celley stated that if the Township could be assured of these representations that the applicant would probably be correct that they would fall within that use classification. Mr. Celley presented the Board an agreement consisting of a set of conditions which, provided these conditions are adhered to, this business would be meet the qualifications for C-2 classification. Mr. Celley listed the conditions. (full list is attached)

Paragraph A: not necessarily covered by our Zoning Resolution but they agreed to keep their materials that were stored outside within the fenced area and they would comply with Township regulations regarding any fencing. Some things have an industrial

appearance and if they are stored outside the fenced area that might not appear to be in keeping with this classification and this zoning.

Paragraph B: Mr. Celley stated this was more informational than anything. It is a statement of Township zoning requirements.

Paragraph C: Applicant would agree to keep truck and trailers parked in the rear yard area.

Paragraph D: Mr. Celley called it a clarification. It is the applicant's representation that they are not a wholesaling business; that they do processing and fabricating on site. Mr. Celley stated that the applicant will tell the Board more about that. The applicant agrees to not use the term "wholesale" or "wholesaling" in conjunction with the business operations and more than that they are not a wholesale operation.

Paragraph E & F: Informational. Not really adding anything to the Zoning Resolution; just things they had talked about.

Paragraph G: Informational

Paragraph H: Applicant agreed to reasonable limitations on the hours they would process. In other words they can't have a small retail office and a 24 hour fab and processing shop running three shifts in back. Their processing is intended to support their retail operation.

Paragraph I: Informational

Mr. Celley wrapped up where they were procedurally and stated that the Board of Zoning Appeals is being asked to decide the question of the appeal from the decision of the Zoning Inspector. Mr. Celley believes the Zoning Inspector was correct in not granting administrative approval of the zoning certificate but with the clarifications and the representations that the applicant is making, Mr. Celley is urging that it would be correct and that decision be over ruled and that the Board would instruct the Zoning Inspector to issue the zoning certificate and attached the conditions that have been proposed as well as any other additional conditions or clarifications the Board may require. Mr. Celley stated the proposed conditions were not intended to limit the Board but that he and the applicant had gotten that far and they believed they addressed quite a bit.

Mr. Miller asked if from a procedural standpoint there were any concerns with limitations or time frames under the Zoning Resolution since they are dealing with an April 2011 application. Mr. Celley stated the appeal tonight was filed in December 2011 and the zoning certificate was applied for in December so there are not any limitation issues. Mr. Miller thanked Mr. Celley and asked the Board if they had any questions for Mr. Celley. Mr. Warnimont asked why there is a hang up on wholesale because a business is a business if they sell something at \$100 or \$80. Mr. Celley stated the business is not precluded from doing that and the agreed language they are offering does address that, it is just that the definition in the Zoning Resolution says no wholesale. The business is allowed to discount things to volume customers or repeat customers but what they can't do is produce 100 pieces of the same thing and put someone else's name on it as having been a brand name and wholesale materials. Mr. Warnimont interjected and stated he understood where Mr. Celley was going with this. Mr. Celley stated that in other words the customer may be a contractor but it would be a retail type of transaction as opposed to loading semis of the same thing to ship out of there. Mr. Celley stated he had been to the establishment and he doesn't believe that it can do much of wholesaling it just looks like a factory from the back.

Mr. Miller thanked Mr. Celley and asked for the applicant to come forward. Robert Spitler from Bowling Green came forward as a representative for Martin Yousif. Mr. Spitler stated he had the opportunity to work with Mr. Celley and agreed with everything Mr. Celley presented. Mr. Spitler wanted to add a little bit of color to it. He stated Martin wanted to bring down his operation from Toledo to Perrysburg Township in this big back room behind Holiday Park Rehab area. This seemed like a logical place to do two things: bring big slabs of granite inside for people to look at it and then where they could cut it up for kitchen, bathrooms, etc. When they went in [Zoning Office] in April it made sense to them and Mr. Garn but as they started to build it Mr. Garn could see the equipment inside and the trucks said "wholesale" right on it. Mr. Garn right away stated that they couldn't have wholesale in a commercial district as those words can't be used in that district. Mr. Spitler stated it was then brought to their attention and that's when they started working with Mr. Celley and Mr. Garn. They decided to remove "wholesale" but then wanted to make sure what they were doing fit within the criteria and they also agreed to make sure they have a good quality looking property and store everything in a fenced in area. Mr. Spitler stated that the owners are more than glad to follow the conditions as they want to be good neighbors and good business in the community. Mr. Spitler stated the owners are willing to put conditions in the agreement that may be more restrictive to be good neighbors. The owners won't start work more than two hours before retail opening or stay later than three hours. In a small business there may be times when one does have to work a little longer to get the work done. This is a good example that they aren't making a large order selling it to another retailer and having them put it under their name; they have no intention of doing that. Mr. Spitler stated he would be glad to answer any questions and the owners will be willing to answer questions about the operations. Mr. Miller stated that he would like to hear from the applicant but asked the Board if they had any questions for Mr. Spitler; there were none.

Martin Yousif, 8 Exmore Ottawa Hills representing UMG Investments. Mr. Miller opened up questions. Mr. Justus asked what the hours of retail operation were. Mr. Yousif stated they were 8:30 a.m. – 5:00 p.m. Monday- Saturday. Mr. Justus asked if there would be work done on Sunday and Mr. Yousif stated that not typically unless there was overtime because they were backed up. Mr. Justus stated there was a church right there; Jon Modene's church is close by (a few buildings over). Mr. Yousif stated he didn't know that.

Mr. Warnimont asked for Mr. Yousif to explain the process of bringing in a slab of granite what actually happens to get a concept of the noise that will take place. Mr. Yousif stated that typically a customer will walk through the show room with all the samples, chose a layout from what is available, they will get a quote and with that will head to the back and look at slabs. The slabs run 110 inches wide and 80 inches tall on A frame racks. They get carried by overhead cranes to move around. The pieces then get costumed fabricated to the customers specs for whatever they need (i.e. a kitchen L-shape). Mr. Warnimont asked how they cut it out. Mr. Yousif stated they use a bridge saw which is not a heavy duty piece of equipment but it is a decent size piece of equipment. It is a water based saw and it is similar to the noise a circular saw cutting a 2'x4'. Mr. Warnimont asked about polishing. Mr. Yousif stated that polishing is done by hand and use hand routers which run off air and

water. Mr. Yousif went into detail about the polishing.

Next, Mr. Justus stated that Mr. Yousif is saying no fabrication or manufacturing of products for others will occur on the premises or in other words nothing they produce will be sold by another company. Mr. Yousif stated it wouldn't.

Mr. Bennett asked if any fabrication or manufacturing done at this location will be sold at any other location than the Perrysburg location. Mr. Yousif said no that that will be the main location, the hub.

Mr. Irwin mentioned that the Board was given information from the Auditor's website regarding parcels. Mr. Irwin stated that three parcels are owned by UMG and two parcels are owned by the bank. Mr. Irwin asked if the bank was involved in this process even though UMG is applying for this. Discussion and clarification ensued over the sheet/drawing Mr. Irwin had illustrating the parcels. Mr. Spitler said the drawing doesn't correctly reflect the building the applicants own. Mr. Yousif stated that the old Jeds restaurant/bar is now the show room area and the old gymnasium with tennis ball courts is now where they store the slabs.

Mr. Miller asked if he understood correctly that they had no other location, wholesale or retail, other than this one at this point. Mr. Yousif stated that since they have moved from Toledo they have no other offices. Mr. Miller asked if there were any wholesale type sales out of this facility or is it 100% retail? Mr. Yousif said 100% retail. Mr. Miller stated even though those retail sales could be directly to the end consumer or their contractor there may be an intermediary but the only markup would be for their services. Mr. Yousif stated that whether the business comes from the contractor or the homeowner themselves just depends on the circumstances. Mr. Justus mentioned that there would be discounted retail pricing to licensed builders. Mr. Yousif said typically there would be for someone who frequents the company and builds 60-70 things a year rather than a person who comes in once.

Mr. Justus had a question for Mr. Celley. Mr. Justus read "the business operations that generate excess noise, vibration, or dust which cause undue annoyance to neighboring properties or constitute a nuisance" and asked whose permit is this under as far as enforcing that and determining what is a nuisance because to his knowledge they don't have a sound ordinance in the Township. Mr. Justus would like to know who deciding party in that. Mr. Celley stated that the initial deciding party would be the person being annoyed. As far as enforcement, townships can enforce nuisance violations under the Ohio Revised Code. Mr. Celley thought that language was from our Zoning Resolution and so we could enforce it as a zoning violation. If it was the Board's wish to incorporate these conditions into the certificate, it would be enforceable through the Zoning Office. The process there is a citation is issued. Initially they would go out and make contact with people but if a citation warrants further legal action it goes to Mr. Celley as Law Director.

Mr. Yousif mentioned that their location is kind of remote. They have storage units nearby and he doesn't believe they would disturb them. Mr. Yousif has spoken to Mr. Rob

Armstrong at the Holiday Inn and he is all for them moving in and doesn't feel it would bother his guests. As for the church, this was the first he had heard about it, and over the last eight years they have done work maybe a dozen times on Sunday. He doesn't foresee any nuisance for his neighbors, in his opinion.

Mr. Miller stated he has looked over the definition of wholesale use in the Zoning Resolution and from the testimony they have heard it is clearly not a wholesale operation by the definition. The retail sales only hitch is that the goods that are sold are available for immediate purchase and removable from the premises. Mr. Miller stated that he wouldn't personally like to remove granite countertops; everyone laughed. Mr. Miller said there was a little void but what they are looking at is the ultimate end user of product and services you provide at this location. Mr. Miller asked what would be the number of visit, by percentage, by the consumers versus the contractors. Mr. Yousif stated that more homeowners are going the route of renovations instead of building new; years ago they were doing 80% contractors and 20% consumers and that is now swapped. Mr. Miller asked if Mr. Yousif had an opportunity to review the conditions legal counsel has worked out and if he was in agreement with them. Mr. Yousif stated he was 100% but clarified that they are still in the process of construction but will all be in the fenced in area once that is all complete. Mr. Miller asked the Board if they had any more questions; there were none.

Mr. Miller asked if there was anyone else who was there to speak in favor of the application there was no one. Mr. Miller asked if there was anyone else who was there to speak in opposition of the application; there was no one. Mr. Miller then opened it up for discussion or motion among the Board. **Mr. Warnimont made a motion to accept Application 2011-6831 (seconded by Mr. Irwin).** Mr. Miller asked if that would be with or without the restrictions discussed. Mr. Warnimont stated it would be with the restrictions presented to them tonight and with the applicant being in full agreement with them and wanted to add that to his motion. Mr. Irwin was in agreement. Mr. Miller stated there was a motion and a second to approve and asked if there was any further discussion. With no discussion, Mr. Miller asked Mr. Garn to please call roll. *YES- Mr. Warnimont, Mr. Irwin, Mr. Bennett, and Mr. Miller. NO- Mr. Justus. Motion carried*

Mr. Miller congratulated the applicant then stated there were no other matters on the agenda to go before the Board but asked if there were any other matters the Board would like to discuss. If not the Chair would entertain a motion to adjourn. **Mr. Warnimont made a motion to adjourn (Mr. Bennett seconded).** Mr. Miller stated there was a motion and a second to adjourn and asked if there was any discussion. With no discussion, Mr. Miller asked Mr. Garn to please call roll. *YES- Mr. Warnimont, Mr. Bennett, Mr. Irwin, Mr. Justus, and Mr. Miller. Motion carried.*

Meeting adjourned at 7:45 p.m.

Respectfully submitted,

Rosanna Violi