



Present: Anthony Murad, Chairman
Ted Salem, Member
Phyllis Stoller, Member
Jeannine Tonetti, Member
Chuck Gerald, Member

Absent: None

Others Present: Cissy Hernandez, CEO; Jeff Hattat, Deputy CEO; Daniel J. Tuczinski, Esq., Town Attorney; Jesse Newton; Cynthia Creech; Tegan Joy Cook; Michael Darcy; Tammie Darcy, Ryan Darcy, Blayne Darcy; Patricia Farnam; Kevin Smith

I. Call to Order

Chairman Murad called the regular meeting of the Town of New Lebanon Zoning Board of Appeals to order at 7:30 p.m.

II. Minutes Review

Upon review of the February 6, 2018, regular meeting minutes, a motion was made by Phyllis Stoller, seconded by Ted Salem, to accept the minutes as submitted and carried on the following vote:

Phyllis Stoller	Aye
Jeannine Tonetti	Aye
Chuck Gerald	Aye
Ted Salem	Aye
Chairman Murad	Aye

III. Regular Meeting

Upon conclusion of the Public Hearing on Case No. ZBA-2018-001, Chairman Murad called the resumption of the Regular Meeting of the Town of New Lebanon Zoning Board of Appeals to order at 8:10 p.m.

Case No.: ZBA-2018-002 – Tegan Joy Cook, Buffalo Concrete Designs (20.1-1-60.1)

The applicant is seeking a Special Permit for a SBO (Small Business Operation) with signage that exceeds code to operate a small artist studio that would fabricate small concrete items, with some retail sales and art classes.

Chairman Murad apologized to Ms. Cook and advised her that due to a misstep, her request for a public hearing was not advertised or noticed properly and would have to be postponed until next month since the newspaper only publishes on Thursday and the meeting cannot be held until five days after publication. After discussion, Chairman Murad said they will hold a special meeting in two weeks, on March 20, 2018.

Member Tonetti made a motion to hold a special meeting on March 20, 2018 at 7:30 p.m., and Chairman Murad seconded. The motion carried with the following vote:

Phyllis Stoller	Aye
Jeannine Tonetti	Aye
Chuck Gerald	Aye
Ted Salem	Aye
Chairman Murad	Aye

Ms. Cook presented her mailing receipts to abutters. Chairman Murad advised the applicant that she does not have to re-notice abutters. The Town Attorney confirmed this and said publication in the newspaper was the only requirement.

Case No.: ZBA-2017-008 – Shaker Mill Properties c/o Lori Bashour (19.2-1-51)
(Prelim) Mike Munsinger M&M Tap Room is requesting an area variance for a shed that was issued a stop work order and is too close to the property line. Additionally, he is seeking a sign law variance for two small signs to the left of his entrance door.

Chairman Murad duly noted receipt of a letter of apology from the applicant for missing the previous meeting. However, the application has to be refiled. CEO Hernandez asked if the Board was vacating its previous decision to abandon or must the applicant start from the beginning of the application process. Chairman Murad said he must start over and the Board will hear the case again; however, since the only differences in the application will be date filed and case number, the applicant does not have to complete a new application. The applicant has signs on his property in excess of what the sign law permits for which he wants a variance.

Member Phyllis Stoller moved to schedule the public hearing on this matter for the April 3, 2018 meeting. The motion was seconded by Ted Salem and carried on the following vote:

Phyllis Stoller	Aye
Jeannine Tonetti	Aye
Chuck Gerald	Abstained
Ted Salem	Aye
Chairman Murad	Aye

Ted Salem asked if the signs are still up now that football season is over (i.e., banner in the window, Direct TV sign under the window, and Pabst Blue ribbon sign). CEO

Hernandez asked Mr. Munsinger to forward the abutter letter to her for review prior to mailing same.

Case No.: ZBA-2018-001 – Michael Darcy – (19.2-1-85)

The applicant is appealing a Notice of Violation and is seeking an interpretation regarding home occupations.

The Board continued to discuss this matter. Chairman Murad mentioned that a member of the CAC submitted letters which he is submitting for the record. Ted Salem said the letters belong at the Planning Board should the case move in that direction. The Zoning Board can't make a determination as to what the CAC is saying. Ted Salem said the CAC has asked that the Board be sensitive to the environmental issues before it. This should be part of the conditions if the matter goes forward.

Jeannine Tonetti does not believe this is an HO at all and changes the character of the neighborhood, even if you don't see the parked vehicles. An HO is a way of letting people have businesses in their homes while keeping the neighborhood the same. Lovers Lane has smaller, nice homes on it. There large vehicles are a detriment to the neighborhood as they create pollution and noise.

Phyllis Stoller said the definition is not clear as it allows some noise or traffic but cannot appreciably alter it. She sees this as being an HO. The big trucks are a violation since they alter the character of the neighborhood. Contractors can work in an HO3.

Chairman Murad reminded everyone of an issue before the Board in 1993 regarding a home in the Springs. The person next to it had a tree truck. The zoning committee tried to draft rules and regulations. The meeting was attended by 70-80 people. Everyone was in opposition to any regulation of vehicle size and no decision was made. Ted Johnson, a ZBA member at the time, wrote up HO rules which were purposely made vague since every situation is different and has to be discussed by the applicant, the board, and neighboring homeowners. There has to be some reasoning as to what works for the applicant and other property owners too. There is nothing in the zoning law that specifies certain size vehicles, sound levels (although noise should be at a minimum), and the types of special vehicles that are permitted. It all depends on the actual location of the property, and the neighborhood concerns have to be weighed. Chairman Murad wants to move this matter to the Planning Board so they can do site plan review. The ZBA's only issue is if this matter should move forward to the Planning Board.

Chuck Gerald said electrical and plumbing contractors are allowed, and they also use big trucks and equipment in their businesses, which trucks are no bigger than what the applicant has in his yard. The rules allow specialized vehicles and doesn't limit diesel or gas. As to character of the neighborhood, the Board has leeway and he believes can suggest conditions to approval. The applicant's use is no different than any other contractor who has vehicles parked in their yard.

Jeannine Tonetti said you can't list everything in the code; you must look at the spirit of the HO, and businesses must be in keeping with the character of the neighborhood, and this property is not.

Chuck Geraldi said the Planning Board can set conditions to make this in the spirit of an HO. An HO3 does allow for specialized vehicles as well as being somewhat intrusive to the character of the neighborhood and generate some noise.

Ted Salem said if we determine this is an HO, the matter will then go to the Planning Board for a special permit and site plan review.

Chairman Murad reminded everyone that just because the matter is sent to the PB, it could still be denied.

Attorney Tuczinski said the Board could determine that this may qualify as a special action permit and send it to the PB for their determination. It sounds like the Board is moving to not deny based on facts. This could be an HO3 and it will be referred to the PB to make a determination. No cease and desist will be sent to Darcy. The attorney will draft two decisions for the Board's review: (1) either denying or saying it doesn't qualify, or (2) send it on to the PB. If the majority think it's an HO, the PB has to exercise its jurisdiction to grant a special permit with conditions. The two versions will be available for the next meeting, and they can vote on it at the March 20th meeting.

Ted Salem thinks its stretching the definition of an HO.

Chairperson Murad said they have to go by what it says. It's difficult to take the Code with no specifics and the board is tasked with deciding the specifics that govern.

Jeannine Tonetti again asked if it fits into your neighborhood.

Chuck Giraldi said an HO3 can somewhat alter the character of the neighborhood.

Chairman Murad said the Planning Board must decide if it's an HO3. Under an HO3, you may store more than one specialty vehicle provided they are screened or under cover (garaged).

Chuck Geraldi moved to say this fits into an HO3 and send the matter to the Planning Board with conditions to consider. The motion was seconded by Ted Salem. The Town Attorney said this Board does not have the jurisdiction in its capacity as Board members to set conditions. This is a narrow issue to be decided by this Board: Might this qualify as an HO3? (This could qualify, not that it does.) The Zoning Board doesn't have the power to impose conditions. The matter is to be referred to the Planning Board - this could qualify as an HO3, and ask them to consider conditions.

The motion carried on the following vote:

Phyllis Stoller	Aye
Jeannine Tonetti	Nay
Chuck Gerald	Aye
Ted Salem	Aye
Chairman Murad	Aye

Chairperson Murad said the Planning Board has to be free to make decisions. The ZBA will meet in two weeks and have the written decision from the Town Attorney which will become part of the record. They will make a decision and vote in two weeks.

The Town Attorney will provide a resolution. If the ZBA provides conditions, it could taint the record. The issue is how to discharge their duty on this question. This Board has determined that this could be an HO3 and will now send it to the Planning Board for further review. This Board doesn't have the authority to recommend conditions. It is outside their authority to make recommendations and doing so would muddy the record. If the Zoning Board members have concerns, they can appear at the Planning Board as private citizens and make their concerns known. The Applicant has the burden of proof. The Planning Board will impose its own conditions and make a determination before granting an HO3 permit. The Zoning Board will review the record the attorney prepares and edit it, then it will get passed to the Planning Board.

Chuck Gerald moved to adjourn the meeting at 8:52 p.m. and Phyllis Stoller seconded. The motion carried with the following vote:

Phyllis Stoller	Aye
Jeannine Tonetti	Aye
Chuck Gerald	Aye
Ted Salem	Aye
Chairman Murad	Aye

Respectfully submitted,

Donna M. Gedeon

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Planning/Zoning Clerk