

**TOWN OF ELKTON
BOARD OF ZONING APPEALS
FEBRUARY 16, 2012
MINUTES**

Present: Robert Olewine; Jared Roudybush; Shirley Hicks; Dawn Schwartz; J. Craig Trostle, Jr., Director, Building & Zoning; Jason L. Allison, Esquire, Attorney; Brenda Humphreys, Building & Zoning Department

Absent: None

Mr. Olewine called the meeting to order at 7:00 p.m.

ACTION: Motion was made by Mr. Roudybush to approve the minutes of the December 22, 2011 meeting. Motion was seconded by Ms. Schwartz and unanimously approved.

CASE # 1427 – REQUEST OF REBECCA SCOTT-RISPERS, 111 AUTOMOTIVE BOULEVARD, ELKTON, MARYLAND FOR A SPECIAL EXCEPTION TO CONDUCT A DISPATCH OFFICE FOR A TAXI SERVICE. THIS ACTION CONCERNS PROPERTY LOCATED AT 111 AUTOMOTIVE BOULEVARD, ELKTON, MARYLAND, TAX MAP 312, PARCEL 2431, ZONED R-3

Ms. Rebecca Scott-Rispers was in attendance to represent this request. She stated she wished to operate a taxi dispatch office from her home. She would be using one room in her home for the office and would place no signs at the residence and there would be no vehicles lined up at the property. Mr. Olewine said his understanding is that only one vehicle would be used for the taxi service. Ms. Scott-Rispers confirmed only one vehicle would be at the location and if she should require additional vehicles in the future those vehicles would be placed at another location. Ms. Schwartz asked how many personal vehicles are at this location. Ms. Scott-Rispers stated that they have two personal vehicles and also one vehicle which would be used for the taxi service.

Mr. Roudybush asked if the taxi service is currently operational. Ms. Scott-Rispers stated the service is not currently operational but they are in the process of getting all the necessary approvals.

Mr. Olewine entertained questions from the Board. There were none. He entertained questions from the audience. There were none.

Mr. Olewine read the Planning Commission recommendation from their meeting on February 6, 2012 regarding this request.

MOTION: Motion was made by Ms. Hicks to approve the special exception for the home occupation requested for 111 Automotive Boulevard for the period of one (1)

year and provided that only one (1) taxi vehicle be allowed to be parked at this location. The motion was seconded by Mr. Roudybush and unanimously approved.

CASE # 1428 – REQUEST OF RAMSEY FORD OF ELKTON, 503 EAST PULASKI HIGHWAY, ELKTON, MARYLAND FOR THE FOLLOWING VARIANCES: 1) ONE ADDITIONAL WALL SIGN; 2) EXCEED THE MAXIMUM SIZE OF EACH WALL SIGN BY 26.8 SQUARE FEET. THIS ACTION CONCERNS PROPERTY LOCATED AT 603 EAST PULASKI HIGHWAY, MARYLAND, TAX MAP 315, PARCEL 2058, ZONED C-2

Mr. Mark Hyman was sworn in and introduced to the Board. Mr. Hyman stated that they are requesting an additional wall sign on the east side of the building due to the fact that most of the visual traffic is coming from Delaware.

Mr. Olewine confirmed that the sign was single sided and would not be lighted. Mr. Hyman confirmed that information.

Mr. Olewine entertained comments from the Board and the audience. There were none.

MOTION: Motion was made by Mr. Roudybush to approve the variance for one (1) additional wall sign. The motion was seconded by Ms. Hicks and unanimously approved.

MOTION: Motion was made by Mr. Roudybush to approve a variance to exceed the maximum size of each wall sign by 26.8 square feet. The motion was seconded by Ms. Schwartz and unanimously approved.

CASE # 1429 – REQUEST OF BASIC FOODS, LLC, 203 W. PULASKI HIGHWAY, ELKTON, MARYLAND FOR THE FOLLOWING: 1) A TWELVE (12) FOOT FRONT SETBACK VARIANCE AND 2) A THIRTY SEVEN FOOT, NINE INCH (37'9") REAR SETBACK VARIANCE. OWNER PROPOSES A CHANGE IN USE OF AN EXISTING BUILDING AND RENOVATION FROM A BUSINESS USE TO A CLINIC USE. THIS ACTION CONCERNS PROPERTY LOCATED AT 203 W. PULASKI HIGHWAY, ELKTON, MARYLAND, TAX MAP 314, PARCEL 312, ZONED C-2

Mr. Olewine read a statement prior to calling for this case to encourage participants or those wishing to make comment/testimony only relating to the subject matter of the request of setback variances for this property. He asked that comments be respectful and kept to five minutes in length.

Mr. Kenny Simmons was sworn in and stated he was representing the owner of the property. He informed the Board that he was hired by the owner and has been a business

man in this area for 35 years. He stated that he believes the easiest way to comply with the zoning is to get a variance. He understands that the Board is interested in proving hardship and he pointed out that this building has been at this location for 50 years, has been empty for the past five years and to make the building compliant with current zoning would cost the owner between \$400,000 and \$700,000 which is a great monetary hardship.

Mr. Simmons began by addressing the issue of the word ‘clinic’ and how that use changes the requirements of the Ordinance. Mr. Allison, legal counsel for the Town, advised Mr. Simmons to keep his remarks specific to the variance request. Mr. Simmons stated that his comments were relevant and asked if the Board has any questions they wished to ask.

Mr. Olewine asked the hours the business would operate. Mr. Simmons stated they would be open between 5:00 a.m. and 7:00 p.m. Mr. Olewine inquired about the number of patients who would be seen at one time. Mr. Simmons stated that 15-20 patients would be seen at any one time. Mr. Olewine asked the number of counselors who would be present during the operation of the business. Mr. Simmons stated he was unaware of the number of counselors. Mr. Olewine asked if the number of counselors determines the number of patients that could be seen. Mr. Simmons stated he was unaware of the requirements. Mr. Simmons stated that the owner of the property would not be the manager of this business but would be subletting the property to another entity. He added that they would provide the number of counselors or doctors that are required. Discussion ensued regarding the number of patients that might be seen each day.

Mr. Olewine asked the specific hardship that requires the variance request. Mr. Simmons stated that the cost of renovating the building to meet the setbacks (\$400,000 to \$700,000) is the reason. Mr. Olewine questioned whether the hardship was imposed by renovations which were done to the building approximately five (5) years ago. Mr. Simmons stated that he was not on the job at that time and is unsure why the renovations were approved.

Mr. Olewine asked what special conditions exist that requires this variance to be requested. Mr. Simmons stated that all other conditions are met except for the front setback.

Mr. Olewine asked Mr. Trostle the number of front setback variances given to properties along Route 40. Mr. Trostle stated that to his knowledge there have been no variances given for front setbacks along Route 40.

Ms. Schwartz asked if a traffic study had been done. Mr. Simmons stated that a traffic study was not required along Route 40. Ms. Schwartz asked how many parking spaces were available. Mr. Simmons stated that 35 parking spaces are required for a medical clinic.

Mr. Roudybush asked if they have considered any other locations. Mr. Simmons stated that this seemed to be an ideal location. Mr. Simmons mentioned a decision made in Cecil County regarding this issue and changes proposed to their Ordinance.

Ms. Schwartz asked if they believed Elkton was an ideal location. Mr. Simmons stated that it wasn't so much Elkton but it was this building in particular.

Mr. Olewine entertained comments from the audience. Due to the number of attendants who wished to speak to this issue Mr. Allison swore the entire group in at the same time.

Dave Fordyce of 115 Osage Street mentioned that he lives near the location where this business is being proposed and close to the existing one. He noted the article in the Cecil Whig which addressed the number of parking spaces, counselors and employees proposed for this location. He voiced his concern about the number of parking spaces for the number of employees and patients. He stated he believed a traffic impact study is necessary for this type of use. He had concerns regarding the additional vehicle and foot traffic in the area. He felt allowing these variances would set a precedent and he asked that the Board deny the requested variances.

Michele Dowdell of 2544 Oldfield Point Road spoke on behalf of her parents who live at 258 Mackall Street near the proposed clinic. She pointed out the size of the variances being requested at the front and rear of the building and the fact that the property opens to the highway with residential properties at the rear. She mentioned the number of parking spaces, counseling groups, bullet proof glass and addition proposed and wondered where the overflow parking would be provided. She shared that she had witnessed a pedestrian who had been struck and later died in this area along Route 40. She stated she lives about half a mile from the existing clinic and detailed traffic problems which have been created at that location. Mr. Trostle addressed the addition to the proposed clinic which was mentioned in the Whig. He stated that no plans have been submitted and he was not made aware of an addition being proposed to the existing building.

Taylor Cole of 103 East Main Street stated that she does not drive and is therefore aware of the areas in Elkton where it is safe for pedestrians to walk. She stated the proposed area for the clinic is not a safe place for pedestrians to walk. She mentioned that the medications that may be given could cause drowsiness and the distance from the building to the highway is too close. She asked that the Board consider this safety issue when making their decision.

Andrew Jodlbauer of 901 E. Pulaski Highway mentioned that he owns a business in Town. He pointed out that his main concerns were parking, curbing and ingress/egress for the proposed location. If you look at these variances from a number standpoint the 12' front setback is a 30% variance and the 37'9" rear setback is a 95% variance. He felt that these are significant variances. He shared pictures of the front of the property in question showing the ingress/egress from Route 40. He compared his business on Route 40 with this business with regard to parking spaces and number of clients seen each day.

He has 42 parking spaces and the proposed business only has 34 parking spaces. His business in November serviced 318 people in the month. The proposed business may see as many as 210 people per day. He also noted that there are no curbs and no deceleration lane.

Mr. Trostle addressed the fact that if the variance is approved they would need to contact State Highway Administration regarding these issues.

Mr. Jodlbauer added that there are no crosswalks or traffic lights for the volume of people to be seen at this location.

Candy D'Azevedo and Kristin Lewis addressed the public safety issue. Ms. D'Azevedo pointed out that part of the definition of a variance is 'a relaxation of a term of the Zoning Ordinance where such variance will not be contrary to the public interest'. She stated there is high pedestrian traffic along Route 40, specifically between the McDonald's at Route 213 and Landing Lane. She noted that there are approximately 2,000 people who live on the opposite side of Route 40 from the area in question and many of them do not have vehicles and therefore must cross Route 40 in order to get the services they need in Town. There are already many vacancies in the area in question, such as George's Restaurant, Basics, gas station across Route 40 and the Knights of Columbus which is not used very much. On that corner there are already numerous fatalities due to the frequency of people crossing in this area.

Ms. D'Azevedo asked if a traffic impact study had been done and she does not believe variances should be approved prior to protecting the population that preexists and she believes these variances would be contrary to the public interest. She showed pictures in this area of Route 40 where pedestrians had been killed and other pictures showing pedestrians trying to cross Route 40 in that area. These pictures were taken during her lunch time on one day in the month of January.

She asked that the Board think about the shear volume of people that would be seen at this business compared to other types of businesses and consider the public safety issue.

Charles Storke of 100 Lincoln Avenue addressed the Board and told them that they have the right to make decisions about setbacks. He referred to Mr. Jodlbauer's presentation about the fact that one of the variances was for a 90% reduction of the required setback. He stated that he is against the Board granting this variance because he does not feel it is good for the Town as a whole.

Tom Quinn stated he has done business in Town for many years and travels Route 40 substantially in the morning and evening. He said the main issue that should be looked at is the safety issue because that is one of the reasons the setbacks were put in place. He believes the Board needs to uphold the current requirements. He pointed out that

pedestrians abound in this area and asked that the Board not approve the variance requests.

Craig Reynolds does not feel the location is suitable for the occupancy requested. There is a safety issue that applies and with the possibility of up to 1680 patients per day, whether by foot or vehicle, and with the number of accidents at this location and the issues with ingress and egress he does not feel this is an appropriate location for this use.

Mr. Olewine entertained additional questions or comments. There were none.

MOTION: Motion was made by Mr. Roudybush to deny the front setback variance for 203 E. Pulaski Highway due to public safety. Motion was amended by Ms. Schwartz to add that the hardship has been self imposed due to enlargement of the building during a prior renovation which thereby created the hardship. The motion was seconded by Mr. Roudybush and unanimously approved.

MOTION: Motion was made by Ms. Schwartz to deny the rear setback variance for 203 E. Pulaski Highway due to the fact that the hardship had been self imposed by enlargement of the building during a prior renovation which thereby created the hardship. The motion was seconded by Mr. Roudybush and unanimously approved.

NEW BUSINESS: None

Mr. Olewine called for a brief recess prior to continuance of the meeting.

Mr. Allison reminded the Board to apply the variance/special exception to the facts presented for each case. The Board entered into deliberations and motions concerning the cases.

Upon completion of motions for the cases presented Mr. Olewine adjourned the meeting at 8:12 p.m.

Respectfully submitted,

Brenda Humphreys