

11010 E Washington Street

May 14, 2013

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Held ~~BZA-13-06v~~

APPLICATION:

BZA13-06v, a request for an area variance submitted by Weijie Li from 9.05(4)(a) "No Sexually Oriented Business may be established within 600 feet of a church. . ." for an existing Sexually Oriented Business located at 10160 Queens Way Unit #3 in an I-1 zoning district, Auburn Township, Ohio 44023.

BZA13-07c, a conditional use request submitted by Weijie Li, for an existing mail order store that is classified as a "Sexually Oriented Business" located at 10160 Queens Way Unit #3 in an I-1 zoning district, Auburn Township, Ohio 44023.

MEMBERS PRESENT: LAURA BELLAR, ROBERT FREEBAIRN, KEVIN GRAHAM, BRIAN STEWART, LEWIS TOMSIC, SCOTT BROCKMAN

MEMBER ABSENT: NONE

MEMBERS HEARING

THE CASE: Bellar, Freebairn, Graham, Stewart, Tomsic

DOCUMENTS

IN CASE FILE: See Case File

The meeting proceeded to the next cases. The opening statement was read by Brian Stewart:

Mr. Stewart explained that the BZA is a quasi-judicial body and as such its role is similar to a judge in a court case. The Ohio Revised Code Section 519.13 requires that any Township that has adopted a zoning resolution, appoint a 5 member Board of Zoning Appeals and 2 alternates. This Board is empowered to hear and decide appeals and to authorize variances from the terms of the zoning resolution where the variance will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the resolution will result in an unnecessary hardship. The BZA is also permitted to authorize variances where the spirit and intent of zoning is upheld and substantial justice will be done. The Board is also empowered to set conditions on conditional uses.

With this being stated the Boards proceedings are relatively informal; but, in order to conduct an orderly meeting and allow all parties of interest mainly contiguous property owners, or their legal representatives, the opportunity to present the evidence certain procedures need to be followed:

All interested parties will be sworn in. The applicant will be asked to present evidence to support the requested appeal, the Board will ask question, and then all interested parties (contiguous property owners) may present evidence concerning the appeal and ask questions regarding previously presented evidence.

In order to prepare appropriate meeting minutes, each person who speaks will need to state for the record his/her name and address.

The meeting may be continued by either the applicant or the Board. The Board must base their decisions upon facts and not on expressions of concerns or non-factual matters. The action of the BZA does not become final until 30 days after the date of the meeting that the minutes were approved.

The meeting continued to the next item on the agenda which was BZA 13-06v and BZA-13-07c.

It was noted that if BZA-13-06v was not granted and the next case would be a moot point.

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Mr. Stewart explained that a sexually oriented business (SOB) is a permitted business in the I-1 zoning district where it is located but the business cannot be located within 600 feet of a church. Ms. Li was asked to present her case.

Weijie Li explained that she has an on-line business and all her sales are done on-line. Her business is more a warehouse where she processes her on-line orders. The orders are picked up by carriers such as USPS or FedEx. She explained that she is not set up for outside sales to enter her business.

She further explained that she works during the day at another job and is there at the building either very early in the morning or in the evening after 5:00 PM to process her on-line orders. She also noted that there are no signs on the building advertising the business and no cars are at the business.

Again she commented that her packages are shipped either by USPS or Fed Ex so no customer ever picks up items at this location. She also testified that she sells clothing, tools and other items not related to the SOB business in question. She also noted that she has more of her other items listed on her website to sell rather than the SOB items.

It was explained that the fact that she does sell SOB items, based on the definition, classifies her business as an SOB business. It was also noted that even though she might have more it non SOB items listed, but it appears on the website that she sells more SOB items.

Gene Reardon, her landlord, testified that Ms. Li is a good tenant—he has no complaints, there is no on-site retail sales from the building, there is no signage advertising anything and, no cars or people traffic.

Mr. Tomsic explained that no one is trying to take away her rights to do business, but the fact is the business is in violation of Auburn's Zoning Resolution and we have an obligation to address the situation. Zoning does not allow this type of business to be within 600' of a church.

It was noted that the church was operating at its current location before Ms. Li rented the space for her business.

Pastor Mark Galumbos, 10205 Queens Way, introduced himself as the pastor of the church in question. Pastor Mark indicated that even though the church is not a contiguous property owner, this business is within the 600' of the church. He also felt that this is not a good situation and was concerned if this would open the door for another business. He indicated that it could be setting a precedent and as a pastor, he has a deep responsibility to his congregation, the children and above all to the Lord himself. He also felt that the variance was substantial.

Mr. Reardon indicated that he felt this was a very benign business and should be allowed. He indicated that her rent helped him pay his taxes.

Motion by Brian Stewart to grant BZA13-06v, a request for an area variance submitted by Weijie Li from 9.05(4)(a) "No Sexually Oriented Business may be established within 600 feet of a church. . ." for an existing Sexually Oriented Business located at 10160 Queens Way Unit #3 in an I-1 zoning district, Auburn Township, Ohio 44023.

The motion was seconded by Robert Freebairn. Vote: Bellar, No; Graham, No; Freebairn, yes; Tomsic, No; Stewart, Yes. The motion was denied.

Minutes of _____ Meeting
Auburn Township Administration Building
BARRETT BROTHERS, PUBLISHERS, SPRINGFIELD, OHIO Form 6101

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Since the variance was denied. The Board did not address BZA-13-07v for a conditional use permit.

The appeal process was explained to Ms. Li. The minutes from her hearing will be approved on June 11, 2013.

The next meeting will be May 21, 2013.

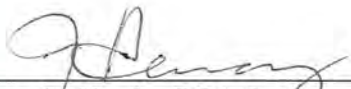
Packets were handed out for the next meeting.

Motion by Brian Stewart to adjourn the meeting. The motion was seconded by Kevin Graham. Vote: Bellar, yes; Freebairn, yes; Graham, yes; Stewart, yes; Tomsic, yes. The motion passed.

The meeting was adjourned.

Minutes submitted by

Minutes Approved on:



Jane G. Hardy, BZA Secretary

June 11, 2013

Brian Stewart, Chairman