



CICERO / JACKSON TOWNSHIP BZA MEETING

BZA Meeting Minutes

May 18, 2017

7:00 p.m.

Roll Call of Members

Present:

- ☐ Tom Warner-
- ☐ Steve Zell-
- ☐ Scott Bockoski-
- ☐ Mike Berry
- ☐ C.J. Taylor-C/JT Plan Director
- ☐ Dan Strong-present as Interim Plan Director
- ☐ Aaron Culp - Legal Counsel-present by phone for questions
- ☐ Terri Strong - Recorder

Absent:

David Martin

1. Declaration of Quorum-Chairman Warner declared a quorum.
2. Approval of Minutes-. **Motion was made by Mr. Zell to accept with previous corrections as presented to Mr. Strong. Mr. Bockoski second. All present in favor.**
3. Public Comment- Chairman asked if any public comment outside of agenda dockets. No comments.
4. Old Business-

Docket#: BZA-0317-016-R3

Petitioner: James Fishman

**Address: 1300 Lighthouse Point
Cicero, IN 46034**

Land Use Variance: To allow a home office (required) to apply for a Federal Firearms License and to maintain records on premise in a "R3" Residential District whereas this is not a Permitted or Special Exception Use in the "R3" Residential District. No retail sales will be conducted from the home office.

Dan Strong stated the petitioner will be withdrawing this petition and submitting a new one under new business. This petition was on the agenda and tabled from last meeting.

5. New Business:

Docket#: BZA-0417-017-R3

Petitioner: James Fishman

**Property Address: 1300 Lighthouse Point
Cicero, IN 46034**

Land Use Variance: To allow a home office (required) to apply for a Federal Firearms License, retail sales, and to maintain records on premise in a "R3" Residential District whereas this is not a Permitted or Special Exception Use in the "R3" Residential District.



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(Requires public hearing)

Petitioner welcomed to present. James Fishman 1300 Lighthouse Point Cicero attempting to have a home office to hold a Federal firearms License.

Mr. Strong suggested to Chairman Warner that the petitioner should know that three of the four votes would be required and the petitioner has right to postpone until all five members are present. Chairman Warner advised petitioner of options, Mr. Fishman decided to continue tonight.

Mr. Fishman stated while the petition has retail sales, he has no intention of turning his home into a store and selling from his home. The license requires a street address, and while he doesn't have a commercial building and does not lease one, an address is needed to get the first step in acquiring a license. It is his intent in the future to operate at a brick and mortar store. The change is due to the requirements of the license and the need in the future for records and video to always be at his home office. Mr. Fishman stated he was asked how long the process is and he explained 60-90 days for them to do a review, they will contact the president of the board to verify approval for home office. Mr. Fishman also stated he understood from Mr. Culp that home sales are not always required to have a variance, however Mr. Fishman shared his concern for the nature of his business and his desire to be open about his business and bring before the board.

Mr. Berry asked if firearms on premise. Mr. Fishman stated personal firearms but not for sale firearms. Mr. Berry asked why the retail sales is listed. Mr. Bockoski explained the federal license is requiring the retail sales. Mr. Fishman stated sales records will be there, which is a requirement. Mr. Zell questioned the Federal Firearms License application is assuming you will be selling from the site. Mr. Fishman they may assume that, many individuals do when they get the license, it is allowed by the license but not his intent. Mr. Fishman stated it is not his intent at all. Mr. Fishman also explained in a 10 mile radius the number of licenses. Discussion ensued on records versus actual selling, transferring of property. Mr. Warner asked where selling, Mr. Fishman stated in a brick and mortar building yet to be determine. Mr. Bockoski clarified the situation that Mr. Fishman would not be selling until had a license and after receiving the license would then pursue the brick and mortar building to open a retail store. Mr. Fishman stated that was correct.

Mr. Strong asked Chairman Warner for the latitude to ask a question for the board to ask Mr. Fishman. That question is, does Mr. Fishman intend to sell via internet prior to the brick and mortar store. Mr. Fishman answered no, not his intent even though he knows that is how the industry is moving. He does not want to have a store at his home. He may do ordering, etc. but not to sell from his home. Mr. Bockoski asked if intent would be to have records at brick and mortar store. Mr. Fishman stated he would want to have his back-ups at his home, understanding how important the records are. Mr. Zell questioned the language in the variance request. Chairman Warner stated a question for Mr. Culp is regarding the limits that could be placed on variance, the restrictions. Another question for Mr. Culp is could there be a restriction on personal firearms only on premise. Mr. Zell stated if Mr. Culp isn't available perhaps tabling would be necessary.

A pause in questions and comments was taken to try to reach Mr. Culp via phone.

Mr. Culp is on speaker phone to address the questions. Mr. Zell explained the petition and recapped what had been stated. Mr. Zell expressed his concern for the listing of retail sales. Mr. Culp asked what the requirement was on listing retail sales, not only that have an office but does it have to be properly zoned. Mr. Fishman answered properly zoned. Mr. Culp asked if zoning had to state retail sales, or commercial office. Mr. Fishman stated he was not sure since that is what the approval is for. Mr. Culp stated he understands and would think that conditions could be reviewed by the licensing board negatively. One option could be to put a sunset on it, where has to come back for board review. Mr. Berry taking a what if position, if brick and mortar



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store was in Noblesville could the license still work then. Mr. Fishman stated can sell from multiple locations but have to have the license attached to an address. Mr. Culp expressed his understanding about allowing a business selling anything, in a residential area. Mr. Zell stated if only had internet sales, how would that be reviewed. Mr. Culp answered, that type of use would be more in line with residential area. Mr. Taylor stated while he is not an expert, he spoke to Mr. Comer who has a license. Mr. Taylor is aware that if you are selling a firearm it would have to be shipped to the office for the necessary paperwork to be done, then transferred to the purchaser. Also Mr. Taylor stated that when a home is moved, it had to be reported for the license to be adjusted by address. The example was used that Mr. Comer is licensed to sell at his home and at a sanctioned sell, but not on another location at will. So if you received the license for home address would have to report for address change when moving to a brick and mortar store. Mr. Fishman stated he was not aware of that. Mr. Culp stated this information brings back around to if store front should be first and whether the board wants to approve in a residential hour. Chairman Warner asked if limitations/conditions could be placed, example hours, days, number of firearms. Mr. Culp stated yes could attach conditions as the board would with any other business. Regarding the ATF, Mr. Culp is not an expert on how they operate. Mr. Strong clarified with Mr. Culp, if the petitioner wanted to agree with conditions on own free will, and could be made as conditions of motion depending upon what the BZA wanted to do. Mr. Culp stated one thought would be by appointment only. Chairman Warner asked if a sunset on approval was added, could changes be made at that time. Mr. Culp stated yes, if a sunset time such as 12 months, then review of the board, the board could cancel, modify, or continue at that time the variance. However it is something I am reluctant to do. Mr. Culp's concern would be in the ability to modify in 12 months. There is no question if approved and a violation occurs. Mr. Fishman expressed concern for limitations of hours and what happens at the retail locations. Mr. Culp stated it would be listed as condition of the current location. Mr. Fishman concern is that the license would state those items and ultimately prevent him from having a store. Mr. Culp stated that question would have to be answered by ATF. Mr. Fishman asked if the other licensed individuals have similar restrictions. Mr. Culp stated we would have to determine where their sales take place and details around their license. Mr. Culp stated this is the first he has reviewed. Mr. Fishman questioned previous statements regarding need for variance at last month's meeting. Mr. Culp stated the home office versus selling out of home with traffic, etc. Mr. Fishman questioned if the board, or person contacted by ATF would back him up that he doesn't want to falsify information.

Mr. Culp stated the petition could be withdrawn and agreed if questioned he would have no issue explaining to ATF that Mr. Fishman came before the board, and determined to be a home office and no zoning variances were required. Chairman Warner questioned if didn't get satisfaction with the ATF with regards to the license, would he have to start over with the board. Mr. Strong deferred to Mr. Taylor since he would be dealing with the matter most likely. Mr. Taylor stated he would allow to come before the board without additional fees, but would have to do legal notice and notification. Mr. Fishman explained all he was wanting to do is be up front with the board and with the ATF application. There was further discussion regarding the wording and the removal of retail sales from the variance. Discussion about options for Mr. Fishman due to the questions that are around the wording and requirements by the ATF. Suggestion for Mr. Fishman to reach out to find answers about the retail sales wording versus only home office.

Chairman Warner asked for motion for tabling.

Mr. Zell made motion to table BZA-0417-17-R3. Mr. Berry second. All present in favor.



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5. Plan Director's Report: Mr. Strong stated Mr. Taylor is quickly getting up to speed. There have been many permits issued as well as dealing with a few violations. Also, MI Homes continuing forward with engineers meeting with Town engineers, Keith Bryant on infrastructure requirements. There is the potential of another subdivision near Anthony Road in the near future, an 11 lot subdivision with 2 acre lots. Mr. Strong asked if any questions. Mr. Zell did comment that MI Homes land was planted today. Mr. Strong stated MI Homes expected work to begin before the end of the year if approval was received in the next month or two, giving time for harvest.

6. Chairman's Report: no report

7. Legal Counsel's Report: no report

8. Board Member Comments: Mr. Berry asked if obligated to keep hand outs and such for records. Mr. Strong stated the office is required to keep records. The only item needed is the findings of fact from each member. Mr. Bockoski questioned Mr. Strong on the chairman position. Mr. Martin is vice-chair, Mr. Warner is secretary. Mr. Strong answered they are ok to continue as they have been and he expected to be back on that side of the table in July. Mr. Taylor stated he is still learning but should be ready for those changes. Discussion ensued. Mr. Strong answered to Mr. Bockoski question that the continued interaction was not an issue with the office should Mr. Taylor had questions. Mr. Taylor stated the board has a right to come into office for questions, but also wants to make sure everyone knows they are welcome to. Questions are welcome.

9. Next Planned BZA Meeting:
June 22, 2017 at 7:00 p.m.

10. Adjournment: **Motion made by Mr. Zell to adjourn. Second by Mr. Bockoski. All present in favor.**

Signatures:

Chairman

Secretary

Date: _____

Location:

Cicero Town Hall
70 N Byron Street
Cicero, IN 46034