

Board of Zoning Appeals Meeting
August 12, 2010
ZA-03-10

Members/Attendance: X Hank Grover
 X Jim Burgham
 N/A Al Franceschelli
 N/A Bill Custer
 X Holly Grant
 N/A William Hegarty
 X Michael Johnston

Also in attendance: X Bob Monus, Zoning Inspector
 X Michele Richards, Recording Secretary

Hank Grover called the meeting to order at 7:00 p.m.

1st Order of Business:

Hank Grover stated that the first order of business is to approve the minutes from the meeting held on June 24, 2010. Jim Burgham made a motion to accept the minutes from the June 24, 2010 meeting. All members were in favor - motion carried.

2nd Order of Business:

Case #ZA-03-10 – A request by Michael Fasline, representing Joseph Veneroso, who is appealing the decision of the Zoning Inspector, with regard to allowable use to hold auctions at property located at 3131 Center Road. This property is known as parcel #35-022-0-037.00-0, Great Lot 16. Parcel is located in Poland Township, Poland, Ohio, in a (TC) Town Center District.

Items included in packet submitted:

1. Application Appealing Zoning Inspector’s Decision
2. Zoning Permit Denial Form
3. Letter of Intent
4. Warranty Deed
5. Property Description

The Board requested to hear the Zoning Inspector’s interpretation of denial before the Appellant presents his case.

Bob Monus stated that this hearing falls under Section 11.05 Powers and Duties, (1) Administrative Review of the zoning resolution. Monus stated that the building, located at 3131 Center Road, is in a (TC) Town Center District. Monus referred to Section 4.11 Town Center District, (1) Purpose, the last sentence, that reads “*the Town Center District should be protected to ensure its continuation as a principal retail shopping and service areas in close proximity for persons residing in adjacent residential areas.*” Monus also referred to Section 2.02 Definitions, Retail, that reads “*is an individual business establishment selling goods or services to customers*

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over the counter.” Monus stated that with these definitions and the permitted uses, what Mr. Fasline was looking to do in terms of business does not fit into the retail district. Monus stated that his position is that the code, as written today, does not allow for this type of business in a (TC) Town Center District.

Michael Fasline
186 Renhill Drive
Hubbard, Ohio

Fasline stated that when they first looked into this area for this business he purchased a Zoning Resolution book. He stated that there has been an auction house in Poland Township for over 50 years. He stated he thought there would be a misunderstanding of the intended use, i.e. flea market. Fasline stated it will be a retail operation and taxes will be charged. They will be using an auction house as a marketing tool. There will be new and used merchandise. They will have a licensed auctioneer and have a specific time and date for an auction. They are not looking to do the flea market type of business; there will be no merchandise outside. Fasline stated that it does not state in the zoning resolution book that auctions cannot be held and that is why they are appealing the decision. He stated that they had planned to hold police auctions. He spoke to a few township police officers and they were in favor. He stated they are trying to run a fair and legitimitate business using an auction as a way to market and sell products. He stated everything is inside; no business will be conducted outside of the building.

Holly Grant asked Fasline what his relationship is in this business. Fasline stated he is a partner with Joseph Veneroso.

Jim Burgham asked what the hours of business will be. Fasline stated auctions will be held on Saturdays at 5:00 p.m. for a maximum of four hours. They will be open during the week for drop off merchandise. They purchase surplus items, obtain merchandise from estate sales and liquidating companies.

Holly Grant asked if any sales would be held outside the building. Fasline stated no, everything will be sold inside the building. He stated he believes that is a violation of zoning, to hold sales outside the building.

Jim Burgham asked Fasline if they operate their business at another location. Fasline stated they have been using other auction houses (Poland Auction, Basinger) to get rid of their inventory.

Mike Johnston asked if someone can come in off the street and purchase an item or if they have to wait for the auction. Fasline stated initially they will market the merchandise by taking pictures and advertising on the internet and then hold the auction. Eventually they would like to be open during business hours for people to come in to see what merchandise they have prior to the auction.

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Hank asked if anyone would like to speak in favor of the request. No one responds. Hank asked if anyone would like to speak against the request or has questions.

Steve Platz
4021 Via Cassia

Platz stated his understanding is that the town center district is for retail businesses that are open during regular hours and other retail businesses are attracted to be located to those businesses because they hold regular hours. Fasline's business is once per week, which is not a typical retail business. There are consignment and second hand stores that are open during regular business hours, which would meet the zoning code for retail businesses. He stated that the Poland Auction House is not in a town center district, which is not a retail area. Paranzino in North Lima and Roman Auction on Western Reserve Road in Boardman are not in retail districts. He does not feel an auction house is appropriate in a town center district, when it is truly not a retail business. He stated he agrees with the decision of the Zoning Inspector, that it is not appropriate for the town center retail district.

Linda Tofaro
6617 Katahdin Drive

Tofaro stated that she is concerned about the hours of the auction. She feels the hours of 12:00 to 5:00 p.m. would be more appropriate.

Fasline stated that the parking lot is lighted and that people are busy on Saturday mornings and that is why they feel the 5:00 to 9:00 p.m. would be more convenient.

Holly Grant asked Fasline if they are planning to use the building for other purposes. Fasline stated they plan to be open during the week to take in merchandise and then hold the auction on Saturdays.

Hank asked if there are any other comments. No one responds. Hank asked Monus if he would like to add any other comments.

Monus stated to reinforce his position; he feels that the retail district does not support the auction house. He stated he does respect Mr. Fasline and his business. He stated that Fasline mentioned he does have an alternate site on Route 224 to market some of his items. The retail district here is to serve the residents of the community.

Fasline stated he is not affiliated with any of the auction houses. He uses them to liquidate his merchandise but he does not have any business interest with them.

Hank asked if there are any other comments.

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Holly Grant asked Monus if an auction is not permitted in a town center district, what district would it be permitted in. Monus stated in the current ordinance auctions are not permitted. The reason the Poland Auction is permitted is because it is a non-conforming use and the business was there prior to the zone change.

Hank Grover referred to Section 4.11 Town Center District, (2) Permitted Uses, (a.) which reads, “*Any business whose principal activity is the sale of merchandise in an enclosed building.*” Grover stated this is a gray area and encompasses pretty much any business. It does not specifically mean auctions. However, auctions are not stated under the conditional use permits. He also referred to Article XI, Section 11.05 Powers and Duties, (3) Conditional Zoning Certificates, which reads, “*to grant conditional zoning certificates for the use of land, buildings or other structures within a zoning district if such conditional zoning certificates for specific uses are not provided for in this Resolution.*” Grover stated they cannot grant a conditional use in this case because it is not a permitted use under conditional use.

Hank asked if there are any other comments. No comments. The Board discussed the case further.

Jim Burgham reiterated Hank’s referral to Section 4.11.

Mike Johnston stated if the business was open a few days per week with normal business hours and then auction day on Saturday this would be more supported.

Hank stated that the Board needs to determine if an auction is a permitted use under Section 2, (a). Holly stated that an auction house cannot be interpreted as described in Section 2, (a) and she agrees with Monus’ decision.

The Board made the following motion:

Motion

Jim Burgham made a motion in Case ZA-03-10 to uphold the decision of the Zoning Inspector, with regard to the permitted use, regarding the property located at 3131 Center Road, Poland. Holly Grant seconded the motion.

Voting:

Yes Holly Grant
Yes Jim Burgham
Yes Michael Johnston
Yes Hank Grover

Motion carried.

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Meeting adjourned at 8:01 p.m.

Submitted by:
Michele Richards/Recording Secretary

cc: Trustees (3)
Board of Zoning Appeals (7)
Zoning Commission (7)
J. Granitto (1)
File (1)