

**PLAIN TOWNSHIP BOARD OF ZONING APPEALS
PLAIN TOWNSHIP HALL
2600 EASTON STREET NE, CANTON, OHIO 44721
MINUTES OF REGULAR MEETING
JULY 2, 2008**

The meeting was called to order by Chairman James McVay, with Bob Soles, Bob Stewart, Jeff Sutton, Steve Peroz and Stephanie Metzger present.

Motion was made by Mr. Stewart to approve the minutes of June 4, 2008. Mr. Sutton seconded the motion. All members were in favor.

Mr. McVay read the statement of duties.

There were no fire department comments to read into the record due to the fact this was an application to revoke an existing Conditional Use Permit.

The following Appeal was heard:

APPEAL #1196-08-A

Applicant/ Wagler Homes, 3656 Massillon Road, Uniontown, Ohio 44685 requests a hearing to revoke a Conditional Use Permit for a Home Occupation at the following address:

- Owners/ Jason & Chelsea Breda, 6459 St. Leger Avenue NE, Canton, Ohio 44721 (Parcel # 52-19443) Home Occupation - Conditional Use Permit – Hair Salon with 1 employee

Article VII, Section 702.2 B, Conditionally Permitted Uses.

The property is zoned R-1, Single Family Residential District and is located in the Southeast Quarter of Section 10.

There were two attendees for and one against the appeal.

Mr. McVay administered the oath.

Mr. Thomas Collier, 6885 Tidewater Street NW, stated that he is an employee of Wagler Homes, at 3656 Massillon Road. He is here tonight as a follow-up to the meeting back in November. First off, he would like to thank you for hearing this appeal back against the Conditional Permit. At the time of the meeting in November, he was not up to speed with all of the things that were going on with requests as well as we were doing some major restructuring with their corporation and the gentleman that oversaw Homeowner's Association, Covenants & Restrictions and those things had left, so he wasn't up to speed and he was out of the office too, so he apologizes that he wasn't able to more accurately address the concerns at that time with the Board. Start by saying, in that time since the November 7th meeting he was able to communicate and was able to dig in files and get a better handle of what was communicated to Mr. & Mrs. Breda prior to signing with Wagler Homes in their purchase agreement and moving forward with the purchase of their home. What he found was that it was clearly communicated with both individuals that a salon was not able to be managed in Lexington Farms based off of the Covenants and Restrictions that had been provided to them.

Mr. Collier (continued) He also knows that they did receive a copy of that Covenant and Restrictions as well as understood and acknowledged the receipt of those. That information was brought to his attention via an outside salesperson who currently works for them, who is not a Wagler Homes employee, as well as an employee that is no longer with the company also confirmed that that had been a communication all along. The Covenants and Restrictions did clearly, he found out since the November 7th meeting, did clearly state that there is no Home Occupation allowed, no business other than conducting sale of the lots or homes based off of the Covenants and Restrictions. So that was clearly defined prior to the purchase agreement with Wagler Homes as well as during and at that contract agreement and he has documentation of receipt and acknowledgement of. So within those development restrictions, those covenant restrictions there are two guidelines...

Mr. Soles said that he personally doesn't want to hear about them. Only to the extent that the restrictions are basically what effect the development as a whole that you can enforce against your homeowner, it doesn't bind the Board. He understands what he is saying, but what the Board needs to hear is why the Conditional Use Certificate should be revoked, why are they in violation of that certificate. The Board has issued it, he wants to hear why, what are they doing in violation of it. It doesn't mean that Wagler Homes can't separately go and do their own thing from Wagler Homes as the developer's standpoint, if they are in breach of those restrictions and do something, that is your call, but for us those aren't really impacted upon us. It's not up to the Board to enforce the restrictions, it's up to the Board to enforce the Zoning Resolution and from this standpoint the Zoning Resolution permits Home Occupations. The Breda's came to the Board to get a Home Occupation, they presented testimony and evidence and the Board granted that Home Occupation under a Conditional Use Certificate. That Conditional Use Certificate is good for a year, unless of course they violate it, then it's subject to review and revocation by this Board. That's what we need to look at, what in the conditions are they violating so the Board can review it. It's not to say that Wagler can't enforce their restrictions, or do whatever you need to do to send them a letter or if necessary file suit or whatever it is to enforce it. If they signed it, whatever happened between all of you is different, but for the Board's purposes, we can't enforce your restrictions. He knows what they say, he has read it and is aware of it, he just needs to hear what they are doing against zoning.

Mr. Collier said he understands better now. Within an R-1 district he feels although it legally can be granted or it can be granted by the Board of Zoning Appeals he understands that based upon how the resolution is. The R-1 District, as well as all residential districts, is set up promoting the public health, safety and moral of the area and so within that their home occupation with the salon in its current situation does violate the code resolution and isn't in the natural characteristic of a R-1 Development.

Mr. Soles said he wants to hear why the Board needs to revoke it. What are they doing wrong that they need to revoke this thing?

Mr. Collier said basically in this time period he has been able to asses what is going on. He has tried to look at this as if he was a homeowner in there based off of the Homeowners Association. With that in a residential district, there are people coming day and night at very unique times, he has seen that happen. That is not a characteristic of a residential district. The customers are coming to the home unassisted, they don't go through the front door, they don't knock at the front door, they go around the home, in between two homes. That area has a walk-out basement, it is not accessible from the main street, nobody can see them once they come around the house and they are away from the street, so the expectation of privacy and safety for those adjacent homeowners, they don't know who's coming thru there and who's not, that's a safety issue. The parking of the cars on the street is a safety issue. He knows that was addressed at the November 7th meeting. As for the safety issue going back to see how this played out with the traffic coming around the house, he went back and reviewed the information that was available to him from that meeting, and it was stated that the Breda's wanted an employee to be able to be there because of safety issues.

Mr. Collier (continued) If they are feeling unsafe in the home with the customers that they bring there, how are the adjacent homeowners supposed to feel with people that they don't know roaming through their yards. There is an expectation of privacy, there is an expectation of safety there in their home and there are people coming and going freely that aren't being recognized or greeted at the front door. Those are some issues. He does feel that it has affected the property values. They have had a hard time selling the home across the street. They have had people ask about the traffic coming in and out of there, so he does feel that that is an issue with the property values. This would be an issue for him personally and for them as a homeowners association or the builder and developer on 75 ft. wide lots. These are narrow lot properties, houses are close together. This makes this issue even greater of a safety concern for them. They are just asking, based off of concern of safety, based off of (although it may not affect this) their agreement and acknowledgement that that wasn't able to be done based on Covenants and Restrictions although that's not your decision to make, they feel that this is a public safety issue.

Mr. McVay administered the oath.

Mr. Richard Meeker, 6473 St. Leger Avenue NE, stated that he lives north, right next door. The actual clients that do come in next door walk in between the houses and this is when he first had any problem with the operation over there. Somebody stopped and was looking at his wife in the window and she said what's that guy looking at me for, and he walked over and he saw him continue down around the house and he was just disturbed by that and he doesn't want to have to raise children next to that. He wasn't fearing for his life or anything like that, but he just thought that could be an issue and do not want to have to live next to that. His second issue is this does affect the property value of his home and he wants to make sure that stays in tact. And if he has any chance to he wants to voice his opinion. Had he known this ahead of time, he would not have purchased the house, he didn't want the headache of having a business next door. He expected to have a residential area living next door. He even asked the realtor if anybody could ever have a business in that neighborhood, he is a realtor himself and he asked the other realtor and she said the rights and restrictions everything is in that. But as you pointed out it can be done. He probably would not have purchased the house at that time. So the two things he just wanted to make sure of is the safety of his family and the home value stays in tact.

Mr. McVay administered the oath.

Mrs. Jennifer Meeker, 6473 St. Leger Avenue NE, stated that this is by no means a personal attack against the neighbors, because their interactions with them have been pleasant and it isn't personal. It is just to protect their investment, a home is a very big investment and they do want to protect that and it's by no means personal.

Mr. McVay administered the oath.

Mr. Jason Breda, 6459 St. Leger Avenue NE, stated that he is a little disappointed and frustrated that they had to go to this level. They have had many interactions with Wagler and all of their neighbors and no one has ever told them that there has been a complaint. In fact, they actually had to get a call from Plain Township yesterday to let them know about the meeting, because they didn't receive the certified letter that they were supposed to for this. To say to what Wagler was saying about customers parking in the street, when they were here for approval of employee, which by the way they don't have an employee it's just been her. All customers have parked in the driveway and only friends and family have parked in the street. He doesn't know if they went around to telling everyone at the time, but his parents' house caught on fire in mid January and they stayed with them until mid April so their cars were parked on the street they were coming in, his dad works second shift and would get home at around 12- 12:30 at night. His mom was gone from 7am to 6pm – 6:30pm. Their cars were on the street, outside of weekends and when Chelsea did not work they would park in the driveway.

Mr. Breda (continued) He has a few salon brochures (exhibit #1) that state her business is a buy appointment only business. She verifies that they park in the driveway. When a customer shows up at the house, she does make sure they park in the driveway. There are also pictures (exhibit #2) of examples of when his parents were staying there how his parents would park on the street and they would park the same way every time and he has pictures of the pathway of the steps going down the side of the house. He also has a video, he brought a video camera of an example of a customer getting out of their car and going to the salon. It's about a 30 to 40 second walk down to the salon. It is on the side that the neighbors are residing. They are not here to cause any problems. When they talked to Wagler, when they talked to Tammy and the people that were working with Wagler at the time, they told them that this was the business that this was their intentions to put a salon in their home and you are saying that this is a problem in your agreement but this was the reason why we purchased this home. When they started a family, they did not have a baby at the that time, it would be great for her to work out of the house and be home with the baby so that she isn't working away from the home and had to hire a babysitter. They said that it was fine; in fact Joe the warranty specialist through Wagler who is still employed was giving them design ideas. He has been in the basement to check out their sum pump and he has seen the salon and has commented on how nice it was. He doesn't think this is an issue with Wagler having a problem, he thinks this is an issue with the neighbors maybe the neighbors not feeling like they have their privacy but the customers that Chelsea has have been customers for 5 years, they are people from church, school, friends and family. Now with the baby she is only working about 2 full days a week. This is their means of making sure that the bills get paid and if this is out of here especially with all of the money that they have put into this and going through all of the right ways to make this our way of living. He wishes that either Wagler or the neighbors would have come to them and talked about the issue. There have been plenty of interactions with both parties to say that this was an issue. They have 3 letters (exhibit #3) from their neighbors' one on the opposite side of them, one across the street from them and one across the street from the neighbors that have an issue with the privacy saying that there is no problem with it. Three of the people that are in the development actually go to Chelsea to get their hair done. And the house that Wagler is saying is hard to sell, her aunt put an offer in two days ago to purchase that house and she is not going to have a problem with Chelsea having a salon. Without the extra income that Chelsea is providing through this and with the money they have invested already, they are not going to be able to pay their mortgage and back taxes that they are paying on because it's a new lot and the bills that they have. They would probably have to put their house up for sale and move in with his parents. He knows that is nothing to try to make their decision, he just feels that there is a very big lack of communication between land owner and from the neighbors. If they had an issue, they could have talked about this through person to person instead of having a board of electors to decide the fate of what is going to happen. The neighbors across the street from the neighbors that have the complaint and next to the house that hasn't sold yet has a Child Day Care and she works 5 to 6 days a week and she has 5 to 6 kids every day. He doesn't see where there is an issue with that. It's a government issued and he doesn't see how the harassment is fair if that isn't a problem. Here on their behalf to make sure that they are providing for their family and we don't want any trouble with anybody and they just wish that they could have had the opportunity to talk to Wagler and talk to their neighbors. As soon as they moved in, they went over and introduced themselves and they were happy to have people, they were the first people in this development.

Mr. McVay asked Mr. Collier why he wasn't here complaining about the Day Care Center.

Mr. Collier said he did not know about it, he found out last night about it and it will be an issue that is addressed.

Mr. McVay said they have Conditionally Permitted Used for the R-1 Single Family District and these are the things that they issue a Conditional Permit on. Which item on there are they in violation of?

Mr. Collier said he doesn't have that sheet.

Mr. McVay said that he read it over, and maybe he's not seeing everything but he doesn't see anything on there that the Breda's aren't complying with and that is the basis of the permit being issued. He read into the minutes the letter from the Zoning Inspector and Zoning Secretary, it was dated June 18th. (Exhibit #4) "The Zoning Department received an anonymous complaint on 3/25/08 regarding "customers parking on the road". The Zoning Director immediately went out to this property – no vehicles were parked on the road. Again on 4/2/08 another anonymous complaint came in regarding "customers parking on the road"...again the Zoning Director went out and no vehicles were parked on the road. From March 25, 2008 to April 22, 2008 the Zoning Director and Zoning Assistant made numerous unannounced inspections during the weekday and weekend at all different hours.....no vehicles were ever seen parked on the road.

The Zoning Department has not found any violations from the conditions required for the Conditional Use Permit that was issued to Chelsea Breda at 6459 St. Leger Avenue NE regarding her Hair Salon."

Mr. Collier said that he feels like Wagler Homes has been betrayed as the Big Bad Wolf and that's not their intent at all. He has no personal agenda against the Breda's, he has never had a conversation with them. As well as by saying that, we have been unfair by not calling them, he found out two days before the meeting in November about the situation so there was no contact to Wagler Homes about a Conditional Use Permit. There is a lot of emotion being communicated there, and from his experiences with the Breda's and outside communications and hearing things he is of the opinion that it is a very manipulative thing here. The Board is free to do what they want, he understands that. If you don't feel like Wagler has done anything to demonstrate that it is against the Zoning Resolution. He thinks that there is a lot of manipulation going on her from his perspective of what he has seen. Had they come to Wagler and spoken to somebody that could communicate to them about what was and wasn't allowed after they already talked with (inaudible) an inside salesperson and Tammy (inaudible) an outside salesperson at the time they would have fully understood that again no is no. A Home Salon is not part of the Covenants and Restrictions.

Mr. McVay said that this is up to him or the Home Owner's Association to handle this. All we are saying is that we have issued a Conditional Permit and they are abiding by the Conditional Permit so legally we have no right to withdraw that permit in his opinion. We are going to have a vote here in a minute and find out how the rest of the Board members feel.

Mr. Collier said he understands. His question is that permit is good for one year, what happens at one year if the Board...

Mr. McVay said do exactly what he did. Come in and file an appeal. Just like this case.

Mr. Collier asked if they are required to submit another request for an extension.

Mr. McVay said no, as long as they have no objections and they are not violating their permit, their permit is good forever unless somebody comes in. It can be reviewed every year.

Mr. Collier said he still feels as though this is something that should be revoked and if the Board feels that they cannot do that, he will seek other remedies based off of what they have available to the Covenants and Restrictions but he wanted to start here first.

Mr. Breda said that he feels that the community would value from having the salon in there. It's a low maintenance salon, it's not a high volume place, there's not customers back to back going in and out every single day. He feels that it's wrong to accuse them of doing anything when Pat, Tammy, Andy and Joe all said it's fine, it's absolutely fine.

Motion by Mr. Soles,

WHEREAS, Applicant/ Wagler Homes, 3656 Massillon Road, Uniontown, Ohio 44685; Requests to revoke a Conditional Use Permit for a Home Occupation at the following address:

- **Owners/Jason & Chelsea Breda, 6459 St. Leger Avenue NE, Canton, Ohio 44721 (Parcel #52-19443) Home Occupation – Conditional Use Permit – Hair Salon with 1 employee.**

WHEREAS, the applicant or a representative has appeared in person before this Board at an adjudication hearing on said application and the Plain Township Board of Zoning Appeals has duly considered this application pursuant to Ohio Revised Code 519.14; and

NOW, THEREFORE, BE IT HEREBY RESOLVED, by the Plain Township Board of Zoning Appeals to:

 X revoke the following:

- **Owners/Jason & Chelsea Breda, 6459 St. Leger Avenue NE, Canton, Ohio 44721 (Parcel #52-19443) Home Occupation – Conditional Use Permit – Hair Salon with 1 employee.**

Seconded by Mr. Stewart,

DISCUSSION:

Mr. Soles said that he doesn't think that they have met the requirements to revoke the permit. He doesn't think they are being manipulative. He certainly understands their dilemma and where they are. On the other hand he wishes that someone from Wagler would have come, or the neighbors would have come at the initial meeting when we could have addressed that. Ultimately the Plain Township Zoning Resolution specifies you can have a Home Occupation, and as long as you meet those requirements that are specified for that Home Occupation, we can grant a Conditional Use Certificate. Now that doesn't impact or effect your restrictions in any way. Whatever we do, that means nothing, you guys have those recorded, signed, whatever they can enforce them however you want. From that standpoint we spent a significant amount of time with them at that time. We were significantly concerned about the off street parking and how that would impact and effect the neighbors and they assured us that would not be an issue. And if you read the minutes that was a lot of questions he asked and he certainly raised the issue that if it became a problem that the Board would revoke the permit. The Zoning Department has gone out numerous times to check it and found that there is no parking. Apparently Mr. Breda's family has parked on the street on occasion. He doesn't know if that's been what the people have viewed. So from a Zoning standpoint he can't be in favor of revoking the permit on the basis of what you have presented. He hasn't heard any testimony or evidence that has demonstrated otherwise and based upon the information that they have been provided, he thinks as it relates to a separate issue you are certainly free to enforce your restrictions they should obviously be uniformly enforced in the neighborhood and whether or not there are issues between the two of you and what they were told legally, certainly that becomes an issue between the Breda's and Wagler. That is a separate issue. From a Zoning standpoint that is his position. Personally, he doesn't think Wagler has met that burden to revoke the permit.

Mr. McVay said that he would have to agree with Mr. Soles.

Mr. Sutton said that he agrees also.

Mr. Stewart said that he made two trips out there over the last week during the day and there were no cars in the street when he was out there.

Mr. Soles said that he certainly understands where he is coming from. He represents developers and enforces restrictions all the time, we are not trying to shine a bad light on them, he tried the initial approach from this standpoint which is fine. You are probably doing what is right for the neighborhood, he understands that. And he understands their position, he feels for the situation they are in and the money they invested. And he understands the neighbors concerns how it impacts and affects them. Unfortunately it's not, at least in his opinion, and his vote will be that way.

Mr. Sutton said that one issue that has come to the floor this evening was concern about the people traffic going into the salon area, the same issue could be raised about anyone coming to visit any home owner in the allotment whether they are a relative or a friend.

Vote: Mr. Sutton, **NO**; Mr. Stewart, **NO**; Mr. Soles, **NO**; Mr. McVay, **NO**.

Appeal #1196-08-A is therefore DENIED.

No further business pending the meeting adjourned at 7:42 pm.

PLAIN TOWNSHIP BOARD OF ZONING APPEALS

STEPHANIE A. METZGER, SECRETARY