

MINUTES OF THE REGULAR MEETING OF THE TOWN OF ELLICOTT ZONING BOARD OF APPEALS/ PLANNING BOARD WAS HELD AT THE ELLICOTT ADMINISTRATION BUILDING, 215 SOUTH WORK ST., FALCONER, NY 14733 ON FEBRUARY 21, 2019 AT 6:00 P.M.

PRESENT: Chairman Dan Evans, Jean Holton, Patricia Martonis, Paul Volpe, Phyllis Belin, Attorney William Duncanson Code Enforcement Officer David Rowe and Secretary Valerie Pierce
ABSENT: Ken Lyon

Chairman Evans opened the meeting at 6:00 PM and led in the Pledge of Allegiance.

Motion made by Jean Holton, seconded by Pat Martonis to approve the minutes of the November 15, 2018 meeting.

Carried. Ayes – 5 Noes – 0 Absent – 1

Chairman Evans reported to the Board that **The Krog Group** had asked that they be moved to next month's agenda due to a conflict.

Chairman Evans opened the public hearing for Nicholas Lombardo, 2812 Bentley Ave., Jamestown, NY for a special use permit for a home occupation.

Notice of the public hearing had been published and notices to neighboring properties had been sent.

Attorney Duncanson swore in Mr. Nicholas Lombardo and Mr. Brian Gustafson.

Mr. Lombardo told the Board that he was applying for a special use permit for a small business to sell guns out of his home.

- he will not be stocking firearms in his home
- sales will be by order only - customers would order, put some money down and Mr. Lobardo would call them when they came in – the customer would come and pick up the gun
- he would sell long guns, hand guns, ammunition and re-loading supplies
- the guns would be in his home only until the buyer came to pick them up
- he would keep them in a gun safe

Attorney Duncanson asked if he had applied for a Class 3 Federal Firearms License which is for retail sales. He asked Mr. Lombardo if he had to submit a plan of his premises for that permit. Mr. Lombardo said that he did submit that with an application. He has not been granted his license yet because the federal agent told him he had to get the variance from the Town of Ellicott Zoning Board first and then contact him again.

There was discussion on what requirements they would impose before issuing the license. Mr. Lombardo said they require a locked safe. Dan asked if it had to be a certain size. Mr. Lombardo stated that the ammunition would also have to be locked up. He said that 10-12 gun safe would be enough to hold the one or two guns he would order and any other supplies needed.

Mr. Brian Gustafson addressed the Board.

- he stated that Mr. Lombardo had been running a gun business for his father-in-law, who recently passed, for about three years– the business was Chautauqua Shooters Supply
- he said that Mr. Lombardo is very familiar with all the controls and legalities that are involved with the paper work and the securing of the weapons– it is not a new venture for him
- he was going to take over Chautauqua Shooters Supply but there was a change in plans – he had submitted the paper work using that store front – the business is now being left to the owner’s son who is not going to pursue it as a gun business – he had to contact ATF and they have put everything on hold because there was a change in the location for the business
- there will not be large quantities of guns or ammunition at the location – it will be strictly an order only business
- there will be no signs

Dan asked if the ATF required any security systems in the home. Mr. Lombardo said he would ask when he meets with them.

Attorney Duncanson swore in Gary Lynn.

Mr. Lynn told the Board that because of his history on the Town of Carroll Board he thought they might want to set limits on the quantities and how big this business would become.

Pat Martonis asked why he was doing this out of his home instead of an independent place. Mr. Lombardo said he is starting out of his home for now but would look for a store front in the future. Mr. Lombardo is employed elsewhere.

This is a residential neighborhood. Mr. Lombardo does have enough off street parking for two vehicles. Paul asked if there was any chance that he could purchase Chautauqua Shooters Supply but Mr. Lombardo stated that his brother-in-law is pursuing selling the business off.

Jean asked if he would have had expenses had he got the business. Mr. Lombardo stated he would have had to pay taxes on the building. Jean said if he were going to have to pay taxes could he not find a small store front to keep it out of the residential area.

Jean said she personally feels that for the neighbors it would be more comfortable not to have it in a residential area. Mr. Lombardo said he does not have the funds to do that right now.

Attorney Duncanson told the Board that legally a person could own 50 rifles and pistols with ammunition in their homes in the same neighborhood. The nexus is that he will be selling them and advertise on the internet. Mr. Lombardo said that it has been mostly word of mouth and most of his customers will be people that he dealt with at Chautauqua Shooters Supply.

Attorney Duncanson shared with the Board what the law states in the Zoning Code on home occupations. It states that the Board shall not issue a special use permit for a home occupation unless it first determines that the home occupation is customary and will be conducted exclusively by persons residing in the dwelling unit. It lists examples of customary uses. No home occupation may occupy more than 25% of the total dwelling space or 500 SF whichever is less. Jean stated that she feels this is almost a retail business. Mr. Duncanson does not feel this is a legal question but a factual question for the Board, as residents of the Town, to determine what is customary in the Town of Ellicott.

Dan asked what Mr. Lombardo's maximum number of guns would be. Mr. Lombardo stated that the gun safe size was a 10-12 gun safe and that he would have no more than two guns on site at any one time. He would not add any more gun safes. If he starts doing well he would move to a store front. Mr. Lombardo stated that he sells approximately four rifles or revolvers during a month depending on the season. It is harder to say about pistols.

Pat said that they have had break-ins in her neighborhood (which is rural). She wanted to know how his house is going to be secured.

Mr. Lynn, as the former owner of Allied Alarm Services, said that Mr. Lombardo could get a home security system under \$1000. Pat said that some people do not have the \$1000 for a security system. Her concern is that this is a gun business in the middle of a residential neighborhood.

Dan asked if there was anyone that would like to comment. There were no neighbors present.

Dave Rowe asked about what he would be selling. Mr. Lombardo stated it would be ammunition and reloading supplies as well as firearms.

Jean asked if they could be shipped to the customer. Attorney Duncanson stated that could not be done because the person needs a background check. Mr. Lombardo is vetted by the federal government to the extreme in order to qualify for a federal firearms license.

Jean said that she does not have a problem with Mr. Lombardo wanting to run a business but she is concerned with the product and the fact it is in a residential neighborhood. She told him that she is his neighbor and about 11 years ago they did have a van stolen from their front yard.

Dan Evans told the Board that he had a letter but it was not signed. They had concerns about:

- more traffic in the area
- the pride in the neighborhood
- young children and pets – it would jeopardize the safety of the entire neighborhood
- the houses are relatively close
- the Lombardo's have young children
- people may be tempted to burglarize the home
- this may make it more difficult to sell houses
- it may lower the value of the neighboring homes
- there are commercial rentals available for this type of business
- neighborhood is opposed

There was a letter that was e-mailed to Mr. Rowe from Caleb Waite, a resident of Bentley Ave., that listed his concerns:

- small children in the neighborhood including the Lombardo's
- if this gets approved they would not want their children playing outside
- fear of a rise in break-ins in the neighborhood
- it would negatively affect the value of the homes
- there are commercial pieces of real estate available

There were no neighbors present at this public hearing.

Attorney Duncanson asked if the Board remembers any home occupation for a gun shop issued in the Town.

John Merchant, Gerry Levant Rd., was sworn in by Attorney Duncanson. He told the Board that when he sat on the Zoning Board that a permit was issued for a gunsmith business in a residential area.

Mr. Evans said that he knows of one business of selling guns in the Town of Ellicott that has been in a residential area for 42 years. That was before the zoning changed so it did not require a permit. He knows the owner and he has never had an issue.

Pat said that she does appreciate that Mr. Lombardo came forward.

Dan said the Board does have to think about what Attorney Duncanson said and decide if this is a customary use in the Town of Ellicott.

Attorney Duncanson did say that one advantage of being in a commercial area would be that the Ellicott Police Department would do location checks. They will not do that in residential areas such as Bentley Ave.

Attorney Duncanson stated the Board cannot impose parking rules because the code states they are not supposed to have extra parking. Dan asked if they could impose expansion of the business. Mr. Duncanson said they can also make it for a finite period of time. They can limit what Mr. Lombardo has already stated, which is no than two guns at a time, they will be in a safe and no signs. He has to comply with all the rules and regulations that ATF imposes as part of his firearms license.

Attorney Duncanson said this might be uncommon in the Town of Ellicott but a home occupation for gun sales and archery equipment is common in the more rural Towns. Town of Gerry and Town of Charlotte have issued them. They have listed them as a home occupation in their zoning but he understands that they do not have the density of population that they have on Bentley Ave.

Dan asked if there is any visibility of the showing of the guns outside. Mr. Lombardo said it is all inside. They are delivered in plain boxes by UPS or Fed Ex.

Mr. Gustafson told the Board there would be no business hours. It is strictly order only. As far as introducing guns into the neighborhood there are already guns in the neighborhood. Mr. Lombardo already has guns because he is a hunter and shooter and other neighbors already have guns if they are hunters or shooters. There has to be background checks by Mr. Lombardo as well.

Jean does have a problem that he is advertising and people will know the address.

Pat asked if this were approved would it set precedence. Attorney Duncanson said that each Zoning Board decision is unique on its facts. It is unique to the neighborhood where it was granted.

Pat stated that she does not think this a customary use. She could maybe see it in a more rural area. She as well as the other Board members were disappointed that the neighbors did not show up.

Phyllis said that if approved she would like to see a one year permit. Mr. Rowe asked if they issued the permit for one year and there were complaints could the permit be revoked. Attorney Duncanson stated that it could be worded that upon notice, Mr. Lombardo would have to reappear before the Board.

Motion made by Pat Martonis, seconded by Jean Holton that the application for Nicholas Lombardo, 2812 Bentley Ave., Jamestown, NY for a home occupation to sell guns is denied because it is not a customary use on Bentley Avenue.

Motion failed. Ayes – 2 Noes – 3 (Volpe, Belin and Evans) Absent - 1

Paul Volpe made a motion, seconded by Jean Holton to approve the application for Nicholas Lombardo, 2812 Bentley Ave., Jamestown, NY for a home occupation for a business to sell guns with the following conditions:

- the permit be for one year
- permit is subject to revocation upon hearing and notice to Mr. Lombardo given an opportunity to respond
- one gun safe not exceeding 10-12 rifles in capacity
- sales will be strictly by appointment – single pick-ups
- no signage
- subject to all the rules and requirements imposed under ATF’s federal firearms license – Town must receive a copy
- sales are limited to hand guns, long guns, ammunition and re-loading components, scopes, lasers, sights and other accessories

Carried. Ayes – 5 Noes – 0 Absent – 1

Mr. Lombardo told the Board he will contact his federal agent and then he will have a reply within two weeks to a month.

Chairman Evans opened the public hearing for Mirlyn Productions LLC for a special use permit for a boarding house at 504 Fairmount Ave., Jamestown, NY.

Notice of the public hearing had been published and notices to neighboring properties had been sent.

Mr. Lynn apologized for not getting a special use permit.

Mr. Lynn told the Board that the reason he purchased the house was for the Jamestown Jackals basketball team.

- they will be staying in the house for free
- he did some repairs and furnished the house with some help from other businesses with donations of appliances and furniture
- there is no sign yet
- his goal is to donate the house to the Jamestown Jackals
- it is really a boarding house for free – Mr. Rowe verified that Mr. Lynn was not charging rent
- it has 12 bedrooms and 13 beds – Attorney Duncanson said that he and Mr. Rowe discussed if it even constituted a lodging because there is no definition of what a “family” is – Mr. Lynn said he felt that he should get a special use permit
- neighbors are glad they are there
- the Church lets him use the facility and garden shed for free
- he has a guy that lives there that does the upkeep on the property
- he did remove the elevators – it does have fire escapes in the back

Pat asked if this would constitute a group home. Mr. Duncanson told the Board they are paid for those homes and Mr. Lynn would not be charging

Dan asked if there was ample parking for all of the players. Mr. Rowe stated that there was.

Dan said that the Board would have to specify that this will be used for the Jamestown Jackals. It could not be used for any other use unless Mr. Lynn came back to the Board. It could not be used as a shelter or for monetary purposes. The parking would be limited to the bituminous area. He would require a sign permit. The sign will be 3' x 5' and be on the existing pole.

Motion made by Pat Martonis, seconded by Phyllis Belin to approve the special use permit for Mirlyn Productions LLC at 504 Fairmount Ave., Jamestown, NY with the following conditions:

- **the purpose of the housing is for the Jamestown Jackals basketball team**
- **permit will be for the length of time that the Jamestown Jackals reside there**
- **building will not be used for monetary purposes or for rentals**
- **building will not be used as a shelter**
- **parking will be limited to existing asphalt**
- **the sign will require a permit**

Carried.

Ayes – 5

Noes – 0

Absent – 1

Chairman Evans opened the public hearing for an area variance for William and Shelley (White) Germonto for a second 30' x 40' garage/storage shed at 120 S Alleghany Ave., Jamestown, NY.

Notice of the public hearing had been published and notices to neighboring properties had been sent.

Mr. Germonto addressed the Board:

- he had sketches for the Board
- he needs this garage to park a second vehicle and for storage
- Mr. Rowe said that there used to be a small house on this property
- the garage will match the house colors – the roof will be beige with red on the sides – it will be metal – there will be windows in the back and one side
- he is not sure about the driveway yet – it might be gravel – up to the garage it will be cement – from the road to the garage might be the gravel or possibly cement or blacktop
- he needs to dig the property up first because when they tore the house down they buried a lot of stuff and he needs to get that out of there
- the floor will be concrete
- there will be electric to the building and possibly sewer – no gas
- the set-backs are within code

- fence is within code
- this will be a pole barn

Motion made by Pat Martonis, seconded by Paul Volpe to approve the variance for a second garage for William and Shelley Germonto at 120 S. Alleghany Ave., Jamestown, NY (they reside at 114 S. Alleghany Ave.) with the following conditions:

- the garage will match the house
- the garage will be 30' x 40'
- all the set-backs will be compliant
- it will have two doors and two sconces
- it will have electric and possibly sewer to the building – no gas
- floor will be concrete
- it will be a pole barn
- separate utilities at the building site
- Mr. Germonto will have to combine the two lots
- the building will be built in accordance with the plans presented to the Zoning Board

Carried. Ayes – 5 Noes – 0 Absent – 1

Motion made by Pat Martonis, seconded by Phyllis Belin to adjourn the meeting at 7:20 PM.

Carried. Ayes – 5 Noes – 0 Absent - 1

Valerie Pierce, Secretary