

WARREN COUNTY RURAL ZONING BOARD OF ZONING APPEALS

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**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

June 10, 2015

David Rubin
700 Stubbs Mill Road
Lebanon, Ohio 45036

Re: Applicant: David Rubin
Conditional Use Request # 1002-2015 CU
Description of Conditional Use: Home Occupation Class 2
Property: 700 Stubbs Mill Road
Parcel No. 13-18-400-011-0

Dear Mr. Rubin:

As Chairman of the Warren County Board of Zoning Appeals (“BZA”), I am writing to notify you of the BZA’s decision in the above referenced matter. In accordance with Ohio Revised Code Sections 303.14 (C), et seq. and Warren County Rural Zoning Code (“Zoning Code”) Sections 1.306.3 (D) et seq., the BZA’s decision is as follows:

A. FINDINGS OF FACT.

The Conditional Use hearing was opened by the BZA on April 21, 2015. The hearing was called to order by the Chairman after the date, time and purpose of the hearing had been properly advertised in the Today’s Pulse Newspaper at least 10 days prior to the date of the hearing; written notice of the hearing had been sent to the Applicant and all owners of property within 500 feet from the above referenced Property (“Site”); and, the Site had been posted with signage stating the zoning was subject to public process and how one may obtain additional information. All persons who testified during the hearing were sworn or affirmed an oath prior to testifying, the hearing was tape recorded, and the BZA’s secretary kept minutes.

The BZA first heard testimony from the Warren County Zoning Inspector, Mike Yetter. Mr. Yetter described the filings and content of the zoning department’s file and presented a power point presentation, including without limitation a Staff Report and recommendations, all of which were accepted into evidence by the BZA.

During the hearing, Applicants were represented by legal counsel, William H. Kaufman, who presented Applicant, David Rubin as a witness to testify in support of the Application. Mr. Rubin testified that he is seeking approval for a conditional use as a Class 2 Home Occupation to run a machine-welding, build and repair shop. He described the scope of his work as fabricating large, heavy components that can take months to complete. He said there will be very little traffic in and out of the property and that the Site access is limited to a one-ton pickup truck with a gooseneck trailer. He acknowledges that the nature of his work can be very loud at times and admitted that in

the past his music has been very loud while his doors have been open. He has tried to be more considerate as of late. He explained he has only a single-phase 200-amp electrical service, thus, he can only run one machine at a time and will not be hiring only one helper but that the helper would not run any machines. Mr. Rubin described his loudest piece of equipment as a 7-inch grinder. He happened to be using that piece of equipment while Mr. Yetter conducted a Site visit and noted that Mr. Yetter did not indicate that the noise was unduly offensive. Additionally Mr. Rubin affirmed that he was an active member of a club that builds and fabricates cars, and that he builds and fabricates cars on this Site and no one would know the difference between the noise generated by his proposed home occupation and his hobby of building and fabricating cars.

The BZA next allowed proponents to testify. Applicant's attorney presented David Melon and Laura Melon who testified in support of the Application. These witnesses are the closest neighbor to the Site. Mr. Melon testified that Mr. Rubin's activities on the Site have not been offensive to him or his wife, and that Mr. Rubin has always been a good neighbor. He testified that adding trees along their common property line was unnecessary. In response to a question from BZA member, Lou Hornberger, Mr. Melon testified that he does not hear noise from the fabrication business, only occasionally from a car or tractor being started. Mrs. Melon confirmed the testimony of her husband, and that they have horses and none are spooked by any noise coming from the Site. Nor has she observed any accumulation of trash or other materials outside Mr. Rubin's shop.

The BZA next allowed opponents to testify.

Carl Summers testified as an Opponent to the Application. His property was within the 500 feet boundary of the Site. He owns two machine shops in commercial areas and opposes this use being in a residential neighborhood. He and his wife have heard noise including fabrication noise from their back patio. When he walks the dogs the noise startles them and they run back to the house but he admits they may be too sensitive. He submitted photographs from their common property line. The BZA accepted the photos into evidence. Mr. Summers testified the noises are intermittent and loud continuing all day from early morning until evening – welding and fabrication involves striking, grinding and pounding which creates significant noise. The noise does disturb him if he tries to take a nap. He is not against anyone running a business from his home but contends it should not disturb the neighbors – allowing a metal fabrication business will change the environment from rural residential to commercial. He further testified that the noise problem may be due to the large door on the back of Mr. Rubin's shop being open while fabricating is occurring, but he is unsure whether a berm, trees or vegetation will solve this problem. He also testified that outdoor lighting would disturb adjacent properties at night. The BZA Chairman, Mr. Koch, asked Mr. Summers what unique harm he would suffer if the Conditional Use Application was granted. Mr. Summers responded that he would suffer harm from being awakened from a nap, disturbing a party when he is entertaining, interruption while he is walking his dogs, as well as the general overall use of his property. Mr. Koch asked Mr. Summers if he was aware of any other business activity going on currently. Mr. Summers was unsure but that he does hear metal fabrication going on. Upon cross-examination, Mr. Summers indicated he was aware there was other businesses within 500 feet of his property, and that he was aware that Mr. Rubin's barn was legal and using the barn to rebuild hotrods and other old cars creates some of the same noises that the proposed welding and fabricating home occupation would create.

Shirley Sadler testified. She testified that her property was within the 500 feet boundary of the Site located across the road. She owned a machine shop for over 30 years. She

contends that such use belongs in an industrial park. She admittedly stated that Mr. Rubin's use might not be the same kind of shop she was thinking of. She attended the hearing to find out information about the scope of business planned. The BZA Chairman, Chris Koch asked Mrs. Sadler what unique harm she will suffer if the conditional use Application was approved, and she replied that she was here on a fact-finding mission only, and she does not claim she would suffer any specific harm.

Richard Miller testified as an Opponent. He testified that he was not within 500 feet from the property boundary. His main concern was a business use in a residential zone and the effect it may have on the surrounding properties. The BZA Chairman, Chris Koch asked Mr. Miller what unique harm he will face and he answered that there is no impact to him directly.

Donna Summers testified as an Opponent. Mrs. Summers testified that her property was within the 500 feet boundary of the applicants' property. She testified that due to health problems, she is home twenty-four hours a day and due to the same health problems, she walks the property two times a day. She explained it takes her about two hours to walk the property. She spends a great deal of time listening to the noise the Applicant is making fabricating metal. She is of the opinion that the Applicants' proposed home occupation fails to preserve the character of the neighborhood. Upon cross-examination, Mrs. Summers indicated Mr. Rubin is allowed to work on cars as a hobby and that creates noise, but she explained that does not occur all day, every day like the proposed home occupation would be.

Upon conclusion of the testimony of the opponents, Applicant was afforded the opportunity to offer rebuttal testimony and additional documentary evidence. No additional documentary evidence was proffered during the hearing. Mr. Rubin did testify on rebuttal that he lives on the Site and his family would endure any noise, and he wants to be a good neighbor. He indicated there are no lights outside the building, he does have the barn doors open six months out of the year due to the weather, but he will install air conditioning if he has too; and, he has no plans to expand the business. In response to a question from BZA member, Lou Hornberger, Mr. Rubin indicated he has not had complaints from any neighbors before this hearing. But, he admitted he plays his music loudly and he is making a conscious effort to turn it down.

The BZA did not refuse to accept any evidence or disallow any testimony. Applicant and his attorney had no objections for the record.

B. CONCLUSIONS OF LAW.

During deliberations, the BZA discussed the applicable law, including without limitation the review criteria in Zoning Code Section 1.306.5, and the use specifics standards in Zoning Code Section 3.203.4 (A) (3) (a) (11 & 19).

Based on the whole record, a part of which is described above and the entirety of which is incorporated by the reference herein, the BZA finds: 1) that the 5.332-acre property subject of the Conditional Use Home Occupation Class II Applicant is currently zoned R1B (1-acre density) and in accordance with Warren County Zoning Code Section 3.203.4 (A) (3) (a) (11) Machine and/or Mold Making Shop & (19) Welder Service Shop may be permitted as a Conditional Use by the BZA in an R1B Zoning District; 2) the Application satisfies the applicable standards set forth in Zoning Code Section 3.203.4 (A) (3) (a) (11 & 19); 3) that the Applicants have satisfied the procedural requirements in

Zoning Code Section 1.306; 4) that there was no substantial, reliable and probative evidence in the record that any harm that any opponent articulated unique to their property could not otherwise be mitigated with reasonable conditions; 5) that some of the complaints in opposition to the Conditional Use Application consisted of generalized fears as to what impact the welder and machine and/or mold making shop might cause and were potential harms to the area at large; and, 6) after weighing and balancing the Review Criteria in Zoning Code Section 1.306.5 the BZA finds a preponderance of substantial, reliable and probative evidence in the record supports the approval of the Conditional Use Application subject to conditions of approval.

C. DECISION.

After applying the applicable law to the facts, the BZA voted unanimously to grant the conditional use of the Subject Property as a Class 2 Home Occupation for the conditional use of a machine, welding, build and repair shop as Applicant testified it would be operated, subject to the following conditions:

1. Buffer D landscape plan must be constructed along the east property line adjacent to the Summers' property line and proceed for a distance of 200 feet.
2. the eastern door of the building must be closed during metal working operations.
3. Applicants must ensure that noise is properly regulated and not a nuisance to the surrounding neighbors.
4. If there are any changes in the nature of the operation, a new Conditional Use application must be filed with the Zoning Department.
5. There will be no commercial display of materials, goods or equipment visible from the road right of way and all surrounding properties, and all business activity must remain in the principle residence or accessory structure.

Please be advised that this is a final decision, therefore, any appeal must be brought within 30 days of this decision in the Warren County Court of Common Pleas in accordance with Chapters 2505 and 2506, Ohio Revised Code.

Sincerely,

Chris Koch,
Chairman

cc: Zoning Inspector
County Prosecutor