

**BOARD OF ZONING APPEALS
MINUTES OF MEETING HELD AUGUST 13, 2012.**

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The Board of Zoning Appeals met in regular session on August 13, 2012 at 7:00 p.m. in the Municipal Building Council Chambers.

MEMBERS PRESENT:

The following members were present: Jonathan Greene, Mark Heistand, Pete Hutchinson and Jeff Jones.

MEMBERS ABSENT:

Scott Johnson was absent.

ALSO PRESENT:

Also present were Anna Sizemore, Municipal Manager; Brian Wafzig, Council Member; Kelli Novak, Zoning Officer and several visitors.

APPROVAL OF MINUTES:

The Board reviewed the June 11, 2012 meeting minutes.

Mr. Hutchinson moved to approve the June 11, 2012 minutes as presented.

ROLL CALL: Mr. Greene, yes; Mr. Heistand, yes; Mr. Hutchinson, yes; Mr. Jones, yes. 4-yes, 0-no. MOTION CARRIED

PUBLIC HEARING:

Mr. Heistand stated the Board would begin with Conditional Use Application #12-03, made by Michelle Jackson to allow a photography business on the property located at 31 Endress Street.

He went on by saying that he has been a customer of Nixon Photography in the past. Mrs. Novak spoke with the Law Director and the Law Director has stated that there would not be a conflict if he participates in this Public Hearing.

Applicants Presentation:

Michelle Jackson, 303 South Cherry Street, stated that in 2007 they remodeled the detached building at her parent's house into the Nixon Photography Studio. The studio is where they do meet with the clients that come to the house. The appearance of the outside of the house and structure has not been changed. Approximately 60-70% of the business is done off-site. The clients come to the studio by appointment only. On average there are only five customers a week at the studio. Generally the parking is not a problem. The customers will park in the street or in the driveway. They are not changing

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anything to the building that would interfere with the historical aspect of Germantown. There are no signs stating that Nixon Photography is located there.

Mr. Greene questioned if there was intent of putting up any signs on the property. Ms. Jackson replied that there are no intentions of any signage.

Mr. Hutchinson questioned if Ms. Jackson lived at 31 Endress Street. Ms. Jackson replied that she does not live there, that is her parent's home. She lives next door at 303 South Cherry Street.

Mr. Jones questioned if Ms. Jackson's runs the business that is located on her parent's property. Mr. Jackson replied yes. He went on by questioning if she has any employees. Ms. Jackson replied that she does not have any employees, but her parents do help her.

Mr. Heistand stated that he recalled that the business was originally started by Mr. Nixon. Ms. Jackson replied that it was originally her fathers and when she got involved they converted the garage to the studio.

Mr. Greene questioned if Ms. Jackson has intentions of the business growing and if so what would she do then. Ms. Jackson replied that she does have a space in Oakwood that they use for meeting with clients.

Staff Summary:

Mrs. Novak stated that this proposed Conditional Use is in compliance with the Planning and Zoning Code. According to the applicant most of the business is done off-site. The work that is done is done in the studio which is the detached structure that they have made sound proof. This would prevent any additional noise interfering with the neighbors or the surrounding area. According to a phone call with the applicant they do not intend to have any signage on the property. The clients visit the studio by appointment only and should not create any excess parking. The property has a driveway and street parking is available for their clients.

She stated that she received a call from a neighbor along with an email with photos attached. These photos and a copy of the email were shared with the Board for their review. The neighbor has concerns with the parking in the alley.

Open Public Hearing:

Mr. Heistand opened the Public Hearing at 7:12 p.m.

Proponents Recognized:

Jill Herbert, 264 South Main Street, stated she lives across the street from the Nixon property. She has been a client of Nixon Photography. There is no problem with the parking in her opinion. There is nothing that would distract to let people know there is a

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business on the property. The studio is very nice on the inside and Michelle does a good job. Her work has been shown at Starbucks. This would be a great opportunity for Michelle and for the City. Why the Board would not accept this business in this town, she would not understand.

Opponents Recognized:

Jenifer Shyrigh, 323 South Cherry Street, stated that she lives directly behind the Nixon's home and we share the alley way and our driveway is across from where they park. She has no problem with Michelle's business. Her problem is with the parking and not being able to access their property. There is street parking but 99% of the cars do not park on the street. The owners have a driveway and they drive two small cars. They could get a lot of small cars in their driveway. When the customers drive there SUV to the property, it becomes an issue. Her husband is on the Fire and rescue squad, there has been an issue. This past weekend there was an issue; it took him three times to try and get out-that adds up to seconds. She is not here to cause trouble with her neighbors, she enjoys them and they are great. She thinks there needs to be something done about the parking other than where it is.

Mr. Jones questioned Ms. Shyrigh if her home abuts an alley. Ms. Shyrigh replied that the back of her home backs up to an alley that then backs up to the driveway of the Nixon's home. He questioned if the vehicles in the alley were blocking her husband from getting to the street. Ms. Shyrigh replied yes.

Mr. Jones stated that if cars are parking in the right-of-way, that is a police issue not a zoning issue. He recommended to call the police if someone is blocking the alley way. He is saying that as a citizen not a Board member. The Zoning Board cannot control the right-of-way.

Ms. Shyrigh went on by saying that the normal driveway is oblong and the Nixon's driveway is triangular shaped. Up against their house is plenty of parking but at the end there is not due to the fact it comes to a point. She suggested that the Board drive down to the Nixon's property and look at the parking and the driveway for themselves.

Final Statement of Staff:

None.

Final Statement of Applicant:

Michelle Jackson stated that she does try to keep the alley clear from cars. There are cars that park on the side of the alley and if they are sticking out into the alley, they ask them to move. There have been times that a client will park in the alley way but we make a conscious effort to keep the alley clear by asking them to move their car or her father will. We do not want to obstruct from them getting to an emergency at all.

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Close Public Hearing:

Mr. Heistand closed the Public Hearing at 7:20 p.m.

Deliberation and Decision:

Mr. Jones stated that according to the new legislation Ms. Jackson would be the one employee since she does not live there. No one else except her and the family members that live at that location can engage in this Home Occupation. She would be that one extra employee since they have changed that Ordinance. She would be unable to have a friend or a family member that does not live at 31 Endress to help her; that is his interpretation of the new definition.

The Board discussed the new definitions and legislation.

Mr. Heistand stated that when he used Nixon Photography for his own use Mrs. Nixon was Ms. Jackson's assistant. He questioned if this is still how the process works. Ms. Jackson replied that her father assists her on wedding work and her mother helps her in the studio. She has an intern working with her on wedding work; she is not an employee. Mr. Heistand questioned if Ms. Jackson was compensating the intern in some way. Ms. Jackson replied yes.

Mr. Jones stated that he uses a different photography studio in town and he has observed that during the busy seasons they get busy which requires them to hire more part-time people. His major concern is that Ms. Jackson is the one extra person on site; he finds it difficult to say that especially during peak times that she would not need assistance-unless everyone helping her is family that lives at the address.

Mr. Greene questioned if the intern is not on site with her, is she allowed to continue having the intern.

The Board discussed the current legislation regarding Ms. Jackson's intern and if they would be permitted to work with her on-site and off-site.

Mr. Heistand stated that in the past we have put several restrictions on Home Occupations and now Council has included some of the Boards restrictions in the new legislation. He recommended that the Board review the restrictions that have been enforced in the past.

Mr. Jones moved to approve Conditional Use Application #12-03 for a Home Occupation for a photography studio located at 31 Endress Street with the Board's restrictions to include:

1. No one other than the immediate family members that live at 31 Endress Street and Ms. Jackson being the one employee that resides off site may be employed in the photography business.

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2. The use shall be limited to the property; meaning the principal building, the accessory building as permitted per Ordinance No. 12-23, passed on April 16, 2012.
3. Storage of equipment and inventory shall be in compliance with applicable Municipal Ordinances, including building, fire and property maintenance codes, with no outside storage of material, supplies, or equipment, including waste. Supplies must be contained inside the dwelling, the accessory building site or the vehicles.
4. The applicant must dispose of any waste in a legal and sanitary manner.
5. The applicant must comply with all other County, State and Federal regulations that pertain to a photography business.
6. Any advertisement, including internet and Yellow Pages, may not include the address 31 Endress Street. Business cards may contain the address of 31 Endress Street.

Mr. Heistand stated that the motion that has been made will exclude Ms. Jackson's intern or any other person other than her parents.

Mr. Jones replied that is correct. No one else paid or otherwise.

ROLL CALL: Mr. Greene, yes; Mr. Heistand, yes; Mr. Hutchinson, yes; Mr. Jones, yes.
4-yes, 0-no. MOTION CARRIED

OTHER BUSINESS:

Mr. Jones stated that he is concerned that if this legislation was passed in April, there should had been a written memorandum for the summary of the changes or the Law Director should have come in and had a special meeting to review these changes.

Mrs. Sizemore questioned if the Board would want the Law Director to do a summary of the changes to the legislation. Mr. Jones replied that he would like a written summary of the changes and maybe the Law Director should attend a meeting to review the changes.

Mr. Heistand stated that he has the same concerns as Mr. Jones. He had questions regarding Ordinance No. 12-23. His recommendation to Council is to consider if they intended to make a change to sub-paragraph (a) regarding the person not having to live on the property where the business would be located. He also has concern that several of the prohibited occupations that were in the old section 1129.14 have been removed. Several of the items are mentioned in the Zoning Code and address in general in the Code. Three are not addressed and Council may want to consider how they feel about these occupations such as appliance repair and small engine repair and lawn and garden repair. An application for small engine repair was presented to the Board and was denied for the reason that it was specifically not allowed by the Zoning Code. Warehousing of any type, welding or machine shop is not address under the new code and it is not addressed in the Zoning Code as a prohibited use. If Council still wished that these three

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occupations be addressed as prohibited uses in residential districts they may want to look at this closely.

Mr. Jones stated that the new legislation is using performance standards that would limit the environmental considerations instead of the actual uses. There may be case law that would prevent the legislation to prohibit specific uses. Maybe the Law Director would be able to clarify the reasoning.

Mr. Wafzig stated that section (g) of the new code was an attempt to cover appliance repair and small engine repair with offensive noise, smoke and odorous matter. He will ask the Law Director if the specific wording should be left out.

The Board briefly discussed the changes to the legislation made by Council.

ADJOURNMENT:

There being no further business to conduct, Mr. Jones motioned to adjourn the meeting.

VOICE VOTE ON MOTION. ALL IN FAVOR. MOTION CARRIED.

The meeting adjourned at 7:50 p.m.

Respectfully Submitted,

Kelli R. Sanders-Novak
Clerk of Council