

## **BOARD OF APPEALS**

July 28, 2008

7:00 PM

**ATTENDANCE:** Board Members: Chairman William Malesh, Amy Chetelat, Bob Matthews, Susan TerBorg, Town Attorney Keith Baynes, Court Reporter Carol Beresh, and Planning and Zoning Coordinator Dianna Battaglia.

Meeting was called to order at 7:00 PM.

### **APPROVAL OF MINUTES**

**Motion** was made by Susan TerBorg and seconded by Amy Chetelat to approve the May 5, 2008 meeting minutes as corrected--3 approved, 2 opposed. **All in Favor; Motion Carried.**

### **NEW BUSINESS**

**File No. SE2008-02 – Special Exception Request for a Home-Based Business dba Sue’s Country Flower Shop at 728 Broad Street. PROPERTY OWNER & APPLICANT: Susan Hornbarger; LOCATION: 728 Broad Street, Perryville, MD; Tax Map 801, Parcel 553, Zoned TM.**

Mr. Malesh asked if there was anyone to speak in favor of this proposal and asked the applicant to come forward for testimony.

Carol Beresh, Court Reporter, swore in Susan Hornbarger.

Ms. Hornbarger stated that she had written a letter to the Town in reference to putting in a home based business and was told to write a letter of intent because we were considered Town Center and she did that. After a long time, it seemed like six (6) months, she was told to come before the Board of Appeals.

Mr. Malesh asked if she has been operating her business.

Ms. Hornbarger replied that she has.

Mr. Malesh asked for how long.

Ms. Hornbarger said for six (6) months.

Mr. Malesh asked if she has obtained a business license.

Ms. Hornbarger stated that she has a business license and just transferred from Harford County to Cecil County.

Mr. Malesh asked if she has moved to Cecil County and how long has she had her business.

Ms. Hornbarger replied that she has been in business for seven years plus and had purchased an existing business within the Cecil County area and then absorbed another business in the Harford County area and combined the two together.

Mr. Malesh asked if she had recently brought the businesses to her home.

Ms. Hornbarger replied that is correct.

Mr. Malesh asked if the other businesses are no longer still operating.

Ms. Hornbarger stated that only one is operating now in her home.

Ms. Chetelat asked where she was operating before.

Ms. Hornbarger stated in Havre de Grace.

Ms. Chetelat asked if it was a store front or a house.

Ms. Hornbarger stated it was a store front. She had purchased another business within the Town and it was decided towards the end of December not to be at that location any longer. There were a lot of issues, and if you know the background, there was a lot of background behind it. It was a real lengthy background why I had to leave there.

Mr. Malesh asked where was that business in Havre de Grace.

Ms. Hornbarger replied 500 N. Union Avenue, where Richard Tome used to have his flower shop. It's a long story, a long drawn out thing. Richard decided to retire and someone else purchased the building when he retired, and under other circumstances he had said that I would have one location in the building, and when they purchased it they had other plans, and kind of stuck me back in the corner where you weren't allowed to do what you needed to do to survive in the area.

Mr. Matthews asked if she had also had a business in Town on 222.

Ms. Hornbarger said that we moved it down to 304 Aiken, after the problems with Havre de Grace, to combine the two.

Mr. Malesh asked if they were previously established commercial locations.

Ms. Hornbarger replied it was considered commercial here on the corner, and they had to do renovations and get whatever you get to start a business, because it hadn't been in business for awhile, and the building had been vacant for quite some time. And then you had to get a letter to the Town, and so on and so forth, to open that location.

Mr. Malesh asked Ms. Hornbarger to come up to the front desk. He showed pictures of her property and asked if they were of her business.

Ms. Hornbarger stated that they were of her front yard, and that is where she operates her business. She says there is trash piled up because they can't take them to the curb.

Mr. Malesh asked where is the four (4) car parking.

Ms. Hornbarger replied that she has room, and proceeded to show where on the pictures.

Mr. Malesh asked if it is a double wide driveway.

Ms. Hornbarger replied no, but she has space for cars to pull up in her front yard.

Mr. Malesh asked if there were plants out here for sale.

Ms. Hornbarger replied yes, these are all plants for sale.

Mr. Malesh asked if customers wanted to purchase something they would pull in her driveway and then walk to the front display.

Ms. Hornbarger replied yes, they can do that if they like, but the majority of her business, at least eighty-five percent (85%) is telephone orders.

Mr. Malesh stated that home-based business is in the home, not out front on the street.

Ms. Hornbarger responded that it is her yard, how is that on the street.

Mr. Malesh replied that her yard is about 30 feet from the street and it is a very small area there and is considered residential and appears to be in considerable disarray, and I realize that it is a working area for plants but it is very close to the street.

Ms. Hornbarger replied that is where she does her business.

Mr. Malesh asked how wide is her lot.

Ms. Hornbarger replied that she isn't sure.

Mr. Malesh asked when her home was built.

Ms. Hornbarger stated 1978.

Mr. Malesh and Ms. Hornbarger spoke about the approximate size of her property and the back is bigger than the front.

Ms. Chetelat stated that she doesn't know if this is the right time for her question or not, but the Code, under permitted uses, states that outdoor activities must be in a completely enclosed structure. So you basically can't just sit in your front yard and do flowers and run your business, and the exterior storage or display of goods or equipment is prohibited.

Mr. Baynes interrupted to guide the members to look at the last two sentences under Section 192, where they deal with Home-Based Businesses:

*“The standards in this section ensure that the home-based business remains subordinate to the residential use, and that the residential character of the dwelling unit is maintained. The standards recognize that many types of jobs can be done in a home with little or no effects on the surrounding neighborhood.”*

Basically, that is the intent, that these businesses shall remain subordinate to the residential use, and its main purpose is to still have a residence but maybe you had one small room that you're using for some type of office, that the residential character of the dwelling is maintained and that these types of jobs or businesses in the home would have little or no effects on the surrounding neighborhood. It's the type of thing, that but for maybe a small sign out front and driving by you wouldn't know anything was there. That's the intent of some type of a home-based occupation where you have very little traffic in and out, the house still looks like a house, it doesn't look like a business and it doesn't have any adverse effect on the surrounding residential properties, with either outdoor things that are prohibited or traffic or whatever.

Mr. Malesh stated it kind of looks like you took your business from a commercial location and just set it in your front yard and said well I'm going to do this right here.

Ms. Hornbarger replied that there is a lot more involved than what you see right there in reference to the business. A lot of my stuff has been stored; I have a lot in storage. I mean, if it's a case of moving it from the front to the back, then that's a doable thing, that's not a big deal.

Mr. Baynes stated that the Ordinance doesn't allow any outside activity.

Mr. Malesh stated that it has to be indoor activity.

Ms. Hornbarger stated that it must be inside.

Mr. Malesh said it has to be in a completely enclosed structure.

Ms. TerBorg stated in your house, or in a garage, or in a shed, it has to be inside.

Mr. Baynes asked if your business deals with items that are not made on your premises.

Ms. Hornbarger replied that they are made on the premises, they are flower arrangements.

Mr. Baynes asked if the flowers are shipped in.

Ms. Hornbarger replied yes.

Mr. Malesh said that it looks like there are some potted plants on the premises and do you receive deliveries of those.

Ms. Hornbarger stated that she receives some deliveries, and others she picks up and sells them in her display.

Mr. Malesh stated that is not allowed under the Zoning Ordinance. If you get something, then resell it as is, it is a violation of the Zoning.

Ms. Hornbarger asked how that is in violation.

Mr. Malesh stated it must be manufactured in the house.

Ms. TerBorg replied that it has to be something that was made, a flower arrangement created by her.

Ms. Hornbarger asked so in other words, if I just buy the plants then make them in my house, then that is permissible.

Mr. Malesh replied and don't display anything outside.

Ms. TerBorg reiterated that nothing can be displayed outside.

Ms. Hornbarger said ok.

Mr. Malesh asked if there were any comments from the public.

Ms. Beresh, Court Reporter, swore in Edna Lidums, of 814 Broad Street.

Ms. Lidums addressed Ms. Hornbarger and stated that this is nothing personal but she doesn't agree with the proposal, and I want to be upfront with you. The reason I came and I don't want to sound like it's not in my backyard, but our property has been there since 1928 and I would like it to remain a residential area, because I think you are setting a precedent if you start operating businesses. The other thing that I don't think is appropriate due to safety issues with traffic coming in and out and people coming in the driveway and backing out of the driveway. I know when I go to work in the morning, I can hardly get out of the driveway and I think it is a safety concern, even with a delivery truck pulling up and traffic coming up the road. The other thing that I looked up, and I'm trying to be fair about this, but I looked at the Perryville Code and it says that a home-based business requires there is to be no exterior storage or display of materials, and I don't think that is a likelihood based on previous history of what you do have out there. The case in point is what I see are storage boxes, delivery boxes on the side of the house. I think that is inappropriate. I went around Town yesterday driving around looking at businesses, my son's being one of them, but other businesses in Town and they have to have clean areas, and dumpsters, and none of that is displayed on the property. So, in conclusion I request denial of the special exception.

Mr. Malesh asked if there were any other comments.

Ms. Beresh, Court Reporter, swore in Charles Cunningham.

Mr. Cunningham stated that he lives at 726 Broad Street which is right next door to Ms. Hornbarger's property, and I feel the same way as Ms. Lidums does. It's nothing personal. I have concerns about the parking, I have concerns about the deliveries, I have seen the deliveries being made, curbside deliveries, and the traffic coming west or north along Route 7, because it's right on the top of that hill. I also have a concern about the facilities, the storage racks and stuff in the front yard. My real concern which has already been answered was what type of operation she had planned on putting in there. Another concern I have is that nobody approached me whatsoever in suggesting that they were interested in having a zoning change open for this and I would have objected to that and that's all I have to say.

Mr. Malesh asked for more comments.

Ms. Beresh, Court Reporter, swore in Dotty Saponaro.

Ms. Saponaro of Cecil Avenue stated that she goes by there every day and I actually thought they were moving. I think the disarray is what I'm not in favor of, I don't agree with rezoning either, and I agree with everything both speakers said previously.

Mr. Malesh asked if there were additional comments.

Ms. Hornbarger stated that it sounds like everything has been said.

Ms. TerBorg stated that I believe, as the business stands now we can't approve it, however I would say that if you could conduct your business totally inside your home, or a garage, or a shed and have no business paraphernalia, no storage, no boxes outside and just the only thing would be that little small sign that would say that this is not just your home, no trash, nothing, then I feel that you might qualify as a home-based business, but as you are conducting your business now, I don't see how we could possibly approve it.

Ms. Hornbarger asked that everything has to be contained inside.

Ms. TerBorg replied that everything has to be in contained inside the building, no structures and then I don't know how much of a safety hazard is an issue with deliveries.

Ms. Malesh stated that is still an issue because it is a busy road, there is no leeway. What you probably need to do is to find some location in the Town where you can get set up like you had previously. It looks like you're trying to get to where you can display some stuff so people can drive by and stop to buy.

Ms. Hornbarger stated that today's economics now are not what they used to be, there is nothing available here in this area.

Mr. Malesh stated that with your internet business, that could be done inside. You could rent a space inexpensively, display some things, and getting your deliveries there might be just the ticket for you.

Ms. Hornbarger replied there is no lot here available in the Perryville area.

Mr. Malesh said that some businesses have gone bankrupt in the last few years and you could find something. This proposal doesn't appear to be something that falls under the Town zoning laws and really can't qualify as a home-based business the way it is operating.

**Motion** made by Mr. Matthews and seconded by Ms. Chetelat that special exception request File No. SE2008-02 be denied that it does not meet code requirements of Section 192. **All in Favor; Motion Passed.**

**Motion** was made by Amy Chetelat and seconded by Susan TerBorg to adjourn the meeting at 7:25pm. **All in Favor; Motion Carried.**

Respectfully Submitted,

Dianna Battaglia  
Planning & Zoning Coordinator