

**CITY OF WILMINGTON  
BOARD OF ZONING APPEALS  
REGULAR MEETING  
MAY 6, 2024 7:00 PM**

ATTENDANCE

MEMBERS PRESENT: Robert Baylor, Mike Payne, Tim Wiederhold, Kelsey Swindler, Nick Eveland

MEMBERS ABSENT: None

ALSO PRESENT: Drew DeMarsh, Executive Director, Clinton County Regional Planning Commission; Shirley Orwick, Board of Zoning Appeals Clerk; Patrick Haley, Mayor of Wilmington; Mary Moyer, Peele Law Offices; Michael Crowe, J Schwartz Leasing LLC; Jonas Schwartz, J Schwartz Leasing LLC; Billy Arehart, Brown Funeral Home

The meeting was called to order by Robert Baylor.

Pledge of Allegiance

Roll Call

**M. Payne made a motion to approve the April 1, 2024 Board of Zoning Appeals minutes.**

**T. Wiederhold seconded the motion.**

**Roll call vote: Baylor – yea, Payne – yea, Wiederhold – abstain, Swindler – abstain, Eveland – yea. The motion carries.**

**Agenda Item #1 -**

1. Opening of Public Hearing regarding application
2. Identification of application and subject:  
Applicant: Jonas Schwartz, agent for J Schwartz Leasing LLC, 1285 Paint Rd, Winchester, OH 45697, 937-673-0861  
Request #1: Requesting Conditional Use of multi-family dwelling.  
Subject Parcel: 222 W Main St., Wilmington, OH 45177, Parcel ID# 290250209000300

D. DeMarsh read the CCRPC staff report.

R. Baylor swore in all those wishing to speak.

Michael Crowe introduced himself as the business partner of Jonas Schwartz and gave a general overview of their history in Wilmington and their application. The building is currently zoned Downtown Transitional. He explained they plan to use the facility as a Multi-Family building. It has approximately 3,700 square feet and has 13 rooms. Four rooms have been approved per egress window by the building inspector. They have received a certificate of occupancy for use as a Single Family Dwelling. The building is vacant at this time. Crowe explained that there is no intention to change the structure or layout of the building; but they do plan to add egress windows to the remaining 9 rooms. He also noted ample off-street parking, individual secure entrances for each room, a shared kitchen and laundry area, 3 full bathrooms, and 4 half bathrooms. He continued that rooms would be rented on a weekly basis with landlord tenant rights on a lease agreement written by their attorney, Mary Moyer, Peele Law Offices. He explained that their goal was to offer some relief to the housing shortage while providing the flexibility for renters to vacate on short notice. He also referenced several multi-family housing properties in the vicinity. He then presented a layout and photos of the facility to the board members. Crowe further explained that each bedroom has approximately 90-110 square feet while Ohio law requires 70 square feet minimum.

D. DeMarsh approached the board with additional comments. He stated that he was unsure of the Ohio Revised Code definition of multi-family dwelling but referenced the US Census Bureau definition. He stated the US Census Bureau does not consider hotels, motels, dormitories, or other transient forms of living as multi-family dwelling units. He continued that since the proposed facility would be rented on a weekly basis and share a kitchen it may fall more under the category of motel or dormitory. He stated that the Ohio Revised Code specifies that multi-family dwellings require a place to live, sleep, and eat.

Michael Crowe spoke again to reference other properties owned by J Schwartz Leasing LLC that are multi-family dwellings that operate the same way. He explained that this proposal is not comparable to a hotel or motel in that each tenant would have a lease agreement and require eviction if necessary.

Mary Moyer, Peele Law Offices, legal representative for J Schwartz Leasing LLC, approached the board. She further explained that the establishment of a lease for each tenant would require payment of rent and restrict the landlord's ability to enter a unit or remove a tenant without legal proceedings. She also referenced the Ohio Revised Code Section 5321.17 and stated that week to week rentals are considered tenancy and do not reflect a motel type stay. She reiterated that there are other multi-family dwellings in the area, the general character of the neighborhood would not be modified, city services would not be interrupted, and this facility could potentially provide some relief for the housing shortage. She also shared some benefits for both landlords and the community for this type of housing.

Billy Arehart approached the board and clarified that he was neither in favor nor against the proposed conditional use. He explained that as a business owner at an adjacent property (funeral home) he wanted to ask some questions. He explained that there had been a history of short-term rentals in the vicinity causing issues. He clarified that he agreed with the need for affordable housing but did not think this rate to be affordable. He also expressed frustration that the work had begun without permits from the city and continued that he felt the integrity of Main Street

had been compromised over time. Additionally, he expressed concern that the public as a whole had not been adequately notified.

R. Baylor added that Board of Zoning Appeals meetings are open to the public and everyone is welcome and encouraged to attend. The BZA meets the first Monday of the month at 7 p.m. and has live video feeds to try to keep everyone informed.

Matt Lambcke approached the board to ensure that his written correspondence was received.

Mayor Patrick Haley approached the board to express concerns for the agenda item at hand. He reiterated that the work began without permits being issued and there were tenants living in the facility while work was being done. He explained that he had received a large number of calls from concerned citizens regarding the proposed conditional use. He stated that many citizens are concerned for the potential for crime to increase due to the lifestyles of the typical tenant in these types of facilities. Mayor Haley stressed that this decision could greatly impact the trajectory of Wilmington's future. He referenced the zoning code and urged the board to consider the health, safety, morals, and general welfare of the City as a whole. He stated that the code was designed to ensure that development is harmonious with the best interests of the community. He asked that the board find a balanced approach in considering this request and protecting the community.

S. Orwick read a letter from Matt and Lori Lambcke.

S. Orwick stated that there is always a legal notice published in the Wilmington News Journal 30 days in advance of any Board of Zoning Appeals meetings.

Mary Moyer approached the board on behalf of the applicant to refute the comments made by opponents. She stated that the facility was operating prior to obtaining permits; but the owner believed they were operating within the guidelines of the code. When they were made aware of this non-compliance, the use stopped while corrective action was taken. She stated that surrounding property owners are not entitled to know or control who is living around them. She stated that it would be inappropriate for the board to consider or profile the types of individuals who may live at this type of property. She continued that attempting to profile these individuals is an attempt to stop them from bettering themselves. She mentioned that residents carrying certain criminal histories are required to register their addresses and this information is available online to the public. She told the board that it would be inaccurate to assume that any and all crime that occurred downtown could be related to the tenants of this specific property and that anyone, Wilmington resident or not, could commit crimes here.

R. Baylor asked for discussion by the board members.

K. Swindler stated that she rejected fear-mongering language that places undue or inappropriate concern on the types of people that rent in these types of living situations. She continued that she does not find it relevant to the application being considered. She stated that from her point of view the code was written to establish scrutiny for this type of use specifically and that this use does not maintain the intent of the code for this district or the district of surrounding properties.

T. Wiederhold questioned whether the shared amenities could accommodate this quantity of tenants.

Mary Moyer replied that the applicant is open to making whatever changes are necessary to satisfy the Board's requests.

D. DeMarsh considered that while sharing bathroom, kitchen, and laundry facilities with many other tenants while paying the proposed rent, the total would be above the average market rate. Additionally, he expressed his concern that it is unclear whether this can be considered a Multi-Family Dwelling by definition and noted that there are many items that require clarification.

M. Payne stated that based on his interpretation of the code, the description of short-term rental is more applicable than multi-family. Short-term rentals are more restricted as to the number of units that would be permitted. Also, this area is surrounded by Traditional Neighborhood Zoning District. A short-term rental in the Traditional Neighborhood would not be a conditional use.

N. Eveland noted that it appeared the applicant did not complete their due diligence prior to starting this project. His biggest concern is that the application does not meet the review criteria as described in section 1135.06(d)(2)(g); and remember that we are making an exception to a standard zoning ordinance that the City Council passed. Under certain circumstances this board can make exceptions to that and grant a conditional use; but one of the criteria for that is that the proposed use at the particular location shall be shown as necessary or desirable in providing a service or facility that will not be detrimental to the general well being of the surrounding area.

R. Baylor expressed concern that the nature of the short-term tenancy invites high turnover in renters, which does not seem like it will remedy the housing shortage and does not provide for the well being of a Traditional Neighborhood.

Seeing no other questions, comments, or concerns, R. Baylor called for a motion from the board.

**M. Payne made a motion to deny the conditional use of multi-family dwelling based on being substantially not in accordance with the purpose of the zoning code and not conforming to the general character of the neighborhood. K. Swindler seconded the motion.**

**Roll call vote: Baylor – yea, Payne – yea, Wiederhold – yea, Swindler – yea, Eveland – yea. The motion carries to deny the conditional use request.**

N. Eveland asked for clarification whether the applicant could apply for rezoning. R. Baylor confirmed this.

**T. Weiderhold made a motion to adjourn. K. Swindler seconded. Meeting is adjourned.**

*Robert J. Bayler*

Chairman

*Shirley Orwick*

Clerk