

**Planning & Zoning Commission
Workshop Meeting Minutes
Mayfield Village
May 17, 2012**

The Planning and Zoning Commission met in workshop session on Thurs, May 17, 2012 at 7:30 p.m. at the Mayfield Village Civic Center, Main Conference Room for a meeting of the Planning and Zoning Commission. Chairman Farmer presided.

ROLL CALL

<u>Present:</u>	Mr. Jim Farmer	Chairman
	Mr. Bill Marquardt	
	Dr. Sue McGrath	
	Mr. Casey Kucharson	
	Mr. Paul Fikaris	
<u>Absent:</u>	Mr. Garry Regan	Chairman Pro Tem
	Mayor Rinker	
	Mr. Tom Marrie	Council Alternate
	Mr. David Hartt	Planning Director
<u>Also Present:</u>	Ms. Diane Calta	Law Dept
	Mr. Tom Cappello	Village Engineer
	Mr. John Marrelli	Building Commissioner
	Ms. Deborah Garbo	Secretary

PROPOSAL

1. Conditional Use Permit Best Buy Pools & Spas
Ted Dellas, President
731 Beta Drive, Unit B
Panzica Development

OPEN PORTION

Chairman Farmer called the meeting to order. This is a workshop meeting for discussion. We won't be taking an official vote tonight. We have one item on the agenda. I'll ask John to catch us up to speed on the materials we've received.

Mr. Marrelli asked Mr. Dellas to give a brief history. We met on a response to a fire alarm call in his space. If you can tell the Board what led up to that and what you'd like to accomplish.

Introduction by Ted Dellas

Ted Dellas, President Best Buy Pools & Spas begins. My business is hot tubs & swimming pools, has been for 22 years. I was originally based in Eastlake, a company that did pretty well. I re-established myself for distribution in a building on Beta Dr. next to the space we're talking about tonight and I subleased space from Ed Weiskopf. I moved in merchandising, some from overseas from three US suppliers. I have nine wholesale accounts and shipped out of that location, kind of underneath the radar. No one knew I was there. I was there for one year.

In February, Ed came to me and said we have to get out, he lost the lease. That was rough because I had already received some merchandise from overseas and other inventory. We started to look around. I saw a sign in front of 731 Beta, I called. The realtor showed us the building. That was Feb/March. I met with Julia Dudash who is the representative of the owner Panzica. I told Julia what I wanted to do, which was I'm basically a wholesaler of merchandise to other retailers. Now, some of those other retailers are myself. You might ask what that means. Example; this weekend we were at Crocker Park Mall. We had an event there with four manufacturers that ship the merchandise. We set up a retail organization for 3 - 10 days. We were there, we sell the product, we ship the product, we install the product, we service the product and it ends up being serviced or administered out of this building here, so there's no customer walking in here. But, I am a retailer and a wholesaler. My retail basis is outside the perimeter of Mayfield Village. I would do very little if any retail if you will. I wouldn't have a sign out in front of the building other than a sign on the door. No flashing lights, no balloons.

I had extensive conversations with Panzica about what I do and what goes on. They knew exactly what I was doing. I never asked if I needed a Conditional Use Permit because believe it or not, I've done business consulting on marketing with other people on the street and I know they retail. So I never even thought about asking about a Conditional Use Permit. I was told they plan on doing a Starbucks and other things on the street. We signed a lease for 3 years. It's reasonably priced. I'm sharing the space with Ed Weiskopf who is now a business associate and has become a friend. He's a great guy. His business is based on wholesale rags & cleaning supplies to local industry. Actually, not so local, he goes to Illinois, Indiana & Kentucky. Ed was setting up a piece of scaffolding in the building one day, he snipped the fire alarm and next thing I know, I was meeting John.

Mr. Marrelli takes it from here. I get an e-mail saying someone's selling pools and spas out of 731 Beta, that he's got a whole showroom set up, walk in traffic and a neon sign in the window. We're expecting hot tubs and trucks in the yard. I let Ted know he's not in a retail district and the only way you can do retail where you have walk in customers buying hot tubs, pools or supplies is to get a Conditional Use Permit. He understood and applied for the CUP. In the meantime while we were waiting to have the meeting, he agreed to use that spot as a distributor which means no walk-in traffic and no signs outside. Everything's coming through the back and going out the back as far as orders. Any orders happening are by computer or mail. If you drove by the building today, you wouldn't know it's an office not being used as an office. It's being used as a distribution center. My question is, how do you want to handle this? Do you want to leave this space as distribution and no retail or do you want to try and get a Conditional Use for the retail?

Distribution vs Retail

Ted Dellas replied I'd like to get the Conditional Use. Nothing would change from what we're looking at right now. I don't need to change the building. I don't need signage or anything. But, I do get a customer that would walk in the front door by appointment and I'd meet them there. I had one the other day. I'm building an in-ground pool for him, a \$35,000 project in Oberlin.

Mr. Marrelli said there's a big difference between that and what I passed today on Mayfield Rd; Ohio Pools & Spas 'Pool Filters \$69.95' & 'Get your Ladders' & 'Get your Bromine' plastered through the windows. But they're a retail area. Are you doing that?

Ted Dellas replied absolutely not. You will never see a change. The storefront won't change. Give me a 90-day Conditional Use Permit. If I break the rules, throw me out. I'm just looking to be able to not be in violation of what you designate as a non-retail area when I have a customer walk in the building and ends up doing business there. My business is so destination and so obscure in terms of, when a consumer's going to spend anywhere over \$500, their research from what it was 5 or 10 years ago is so thorough, they know more about the product than I do. It's an encumbering task to sell something that's big ticket now. They'll drive a bus from New York to buy a hot tub to save \$3.00. When they call me, they've contacted me through e-mail, the internet, or social media. I'm very well versed with social medias. I have a lot of contacts through social medias. At some point they say "We'd like to stop by and take a look". I'd like to be able to make the appointment and have them walk through the front door.

Mr. Marquardt asked for definitions of retail & distribution.

Mr. Marrelli said it gets tricky. Code section says products that'll be to the end use of the customer. If you go there to look at a hot tub and you see chlorine and floaters that you need, Mr. Dellas would ring you up, that's retail. In other words, if you can walk in, pick something up, pay & leave, that's the retail. Right around the corner is Sherwin Williams who has distribution and paint mixing. Before my time somehow they got a Conditional Use Permit and they have full blown retail in there. It's not just the painting companies going in there. It's anybody that knows about it.

Ms. Calta refers to **Section 1165.03 Permitted Uses under Local Business**

District:

(a) (1): Retail Sales

- A. The sale of baked goods, confectionary, groceries, meats, fruits, vegetables, dairy products, packaged beverages.
- B. The sale, serving and consumption of food, soft drinks, juices and ice cream in such places as restaurants, excluding places providing dancing or entertainment.
- C. The sale of drugs, gifts, antique and art goods, flowers,
- D. The sale of wearing apparel, shoes,
- E. The sale of hardware, tools, paint,

Section 1173.03 Permitted Uses under Production-Distribution Districts:

(c) (1) D: Distribution operations

- 1. The storage, distribution or display of goods for sale, other than goods offered for sale at retail to the ultimate consumer.....

Mr. Marrelli said the distribution means you can sell it to somebody else that sells it to the customer. That takes the retail walk-in buyer out of the picture.

Ms. Calta concurs. If you're selling to the ultimate customer, that's considered retail. If you're distributing to another entity that sells to the end user, that's distribution.

Mr. Marrelli asked Ted if he has two companies, wholesale & retail.

Ted Dellas replied I have a multitude of companies. I have a retail company on the west side of town who has a showroom. I'm not advertising here as a retail store. I'm not trying to direct retail in here, but for the three people that walk in and want to buy something, I'd like the retail.

Mr. Marrelli states that's why I'm going through the definitions. The Board has to act on the way the law is written.

Ted Dellas asked how you classify this; after I leave this event, I'm going to Lake County Fairgrounds. Then I have Erie PA, Pittsburg & Columbus for the National Pool & Spa Show.

Mr. Marrelli asked, under which company, wholesale or retail?

Ted Dellas replied wholesale.

Mr. Marrelli said so you're selling to a distributor who is selling to the customer.

Ted Dellas said exactly. But that pay & flow comes through 731 Beta office.

Mr. Marquardt said as long as you're not selling something out of that office directly to an end user.

Ted Dellas asked, what if you live in Mayfield and e-mail me and say you don't want to stop by but you ask me to ship you something UPS.

Mr. Marquardt said send it through your retail organization.

Mr. Marrelli said I believe the intent of the code is to keep traffic from being driven to a location and having in & out foot traffic.

Ted Dellas said there will be no marketing, no advertising to drive any traffic at all to that location. It will be other locations, internet, or e-commerce type transactions. Especially the product I sell, which is a consumable. If you buy a hot tub and need chemicals, you're not buying that chemical every day, week or month. You might buy a pale that'll last 6 months. They're not going to drive for that.

Chairman Farmer states I'm o.k. going the route of a Conditional Use Permit so that he's covered.

Mr. Marrelli said I'm o.k. with that as long as he doesn't put signs up all over the place and drive in retail traffic.

Ted Dellas reassures, I will not do anything that'll have you sitting here in a month or year saying "He said he wasn't going to do that". That's not going to happen. That's not my format.

Dr. McGrath suggested attaching those conditions on the permit.

Mr. Marrelli said I think the landlord only allows a sign in the glass door anyway.

Ted Dellas said the landlord was so happy to see me show up and thrilled to have me move into that space. Now someone is supposed to be moving in next door. He's a chimney guy. He sells retail product.

Mr. Marrelli said I know nothing about that.

Ted Dellas said he sells off his truck.

Dr. McGrath said in my opinion I'd rather see you have the Conditional Use Permit so we all know what you're doing and that we can put conditions on it that you're aware of. I think we'd all feel more comfortable if it's all written out and you agree to it and we agree to it and we know what you're doing and you know we know what you're doing and you're free to do it for the next 2 years (renewals come up every 2 years for CUP), rather than try and squeeze you through and say "Well, maybe it's really distribution". We're not trying to kick you out, just want to make it above board.

Ted Dellas said I want it above board too. Whatever you tell me to do or not to do, I have no problem. You won't see a change in the look of the building or drive by and see 300 cars.

Advertising

Mr. Kucharson asked what kind of advertising is done with respect to the retail operation. Do you advertise as a retail operation? How do consumers know it's a retail operation that they can call for an appt and come in.

Ted Dellas replied I market under Best Buy Pools and Spas. I market under National Pool and Spa Brokers. I market under National Pool and Spa Show. I still market under Leisure Time. Those are all retail.

Mr. Marquardt as stated earlier, if he's selling from his wholesale to his retail outlet, he's not violating the distribution part. If he's selling from his wholesale operation to the end user is where the problem is.

Ms. Calta asked Ted for his website.

www.bestbuypoolsandspas.com & www.nationalpoolspabrokers.com

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Mr. Marrelli said you did a recent TV spot.

Ted Dellas said it's running now under National Pool & Spa Show. It doesn't mention Beta Dr. or any retail on Beta Dr.

Mr. Kucharson states that's where I was going with the advertising. If you're advertising as retail on Beta Dr, that would increase the traffic flow.

Ted Dellas said I'm not going to do that because of this situation. If I could, I might have. Everything I do is all tied to an event. There's no image advertising. It's if you want the price that can ship quickly. For instance, my spa manufacturer is Master Spas through Fort Wayne Indiana. They're 230 miles away. They'll call me that they have 46 units available right now and they'll take 16% off wholesale price if I take them all. That's how I buy them. I run to Erie, I give great retail prices and everybody comes and that's how they ship.

Mr. Marquardt asked, Best Buy Pools is your wholesale operation?

Ted Dellas replied yes, that's one of them. The other is National Pool & Spa Show. Paragon Marketing is the LLC, the umbrella I run everybody under so there's one tax return. They're all registered with the State of Ohio. They're under registered dba's. There's nothing flim flam about this. This is all very well thought out with great manufacturers.

Mr. Marquardt suggests Diane draft conditions that take this all into account, if conditions exist. If you're not selling directly to the end user and you only have something of a showroom, I don't see where it's in violation of zoning.

Mr. Marrelli said it's not.

Ted Dellas said I'm still trying to get the Conditional Use and stay within the guidelines that are set before me.

Mr. Marrelli said if somebody walks in and wants to buy a ladder, you don't want to have to turn him away.

Ted Dellas replied I would not. They'd be nuts with me. I don't want that conflict with him or you guys either.

Dr. McGrath said and that's why I'd feel more comfortable with the CUP. Then you don't have to feel like you can't ever sell a ladder. You know you're good to go.

Mr. Marrelli said the Dance Studios sell tights, slippers, etc and nobody's going crazy about that.

Ms. Calta pulls up the websites and notes the 800 number.

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Ted Dellas said there's no address there and the 800 number goes to my cell. We have five (5) 800 numbers which go to each of the guys I work with. I work off an iPad & cell phone. The other company I built did \$12 mil / year. I see this growing very quickly. The problem is the margins aren't what they used to be because of the internet. Here's what I get; "I just bought a liner from an internet company and want your guy to install it". I say "It's \$400 for the liner and \$400 for the install so we'll charge you \$800 for the install because I can't be accountable for that kind of liner." They don't want to hear that.

Mr. Marquardt said we'll need conditions that restrict signage and advertising.

Dr. McGrath asked Ted if he's paying someone to be there set hours.

Ted Dellas said no.

Dr. McGrath said when it's by appointment, it's much more controlled. You don't have people coming in every 15 minutes to buy things. I remember Leisure Time on the Lakeland Marginal, the ads said "Open Sunday". That was fine, but that's not what Beta allows.

Ted Dellas said the retail environment I planned to create there which would not have changed the look with signage is not going to happen there. I missed the window. My season ends on the 4th of July. I missed April & May. I had a terrible terrible meeting with Tony Panzica. I can't believe how lousy it was. So I'm going to do my retail store someplace else. But I want to stay there and use it as my distribution point. But if someone should walk in, I want to be able to take care of them.

Fire Sprinkler System

Mr. Marrelli brings fire protection to Ted's attention. There may need to be some modifications to the sprinkler system because of the amount of stuff you have in there. That fire load is way more than these sprinklers could handle. I don't know how your landlord will deal with that.

Ted Dellas said he's not. He'll tell me to remove the inventory. That's not a problem because if you come in and inspect in 45 days, ½ that stuff will be gone.

Mr. Marrelli said Weiskopf has more cardboard in there than General Mills. That's highly flammable and will overpower the sprinkler system in two seconds. I just want to go on the record that we're trying to work with you as a group, but if something doesn't happen with this inventory or they don't do something with the sprinkler system, this is never getting off the ground. You can't have this condition. Ted said the Fire Marshall said 12'. John said we also said to the landlord to have the sprinkler system checked for capacity. They might have to add heads and/or change locations. Ted said they're not going to do that. John said I don't know if they are or not but if they don't that puts you in a bad spot. That means you have to reduce this stack of inventory to a level that this system can handle. Ted said I don't know anything about sprinkler systems. John said this was designed for office space. I know the systems are designed for what they're supposed to put out. We don't know if this system in place can handle what you put under it. Why I bring it up now is because 2 weeks or a month from now you and I will have a discussion and you're going to say "I thought you guys were o.k. having

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me here” and I’ll say “We are”. Then you’ll say ‘Now I have to leave because the fire system’s not right.” I want you to know that we’re asking for the landlord to have a Fire Suppression Company go out, look at the system and say yes or no if it will handle what you have in there.

Ted Dellas said the truth be known is that for me at this point, in 60 days that cardboard that I own will be gone. If we’re at the point where you’re creating the issue with the landlord where he doesn’t want to spend the money, then I’ll leave.

Mr. Marrelli said we have to give him the report on the inspection. I know, you’re caught in the middle. That’s why I want to talk about it, so you’re not blindsided.

Ted Dellas said it’s your game and your rules. There’s nothing I can say about it. I’m not spending money on the building.

Mr. Marrelli said maybe there’s an alternative where you can spread stuff out. Maybe they’ll give you more space where you can keep it low.

Ted Dellas said I’m not looking for an angle. This is the most complicated uncomfortable I’ve ever been in 30 years of doing business. I appreciate the opportunity, I’d love the Conditional Use and I’d play by your rules. But if we have another issue, we’ll take it up with Panzica and deal with it the best we can.

Mr. Marrelli said the reason I’m handling it this way is that you’re caught in the middle and you shouldn’t have been put in that position.

Ted Dellas said I appreciate that. As much as I am a little compromised, I have to tell you the truth, Panzica went out of his way with new carpet, etc, he spent a bunch of money. They’re trying to do the right thing too. When you walk in, it looks clean.

Mr. Marrelli said it’s o.k.

Chairman Farmer asked who’ll make the determination if the fire system is adequate.

Mr. Marrelli said our Fire Inspector’s opinion is that the fire load’s too much for that system, but you have to have that confirmed by a Suppression Designer. They’ll go in and check pipe sizes and flow rates, spacing, volume, all kinds of calculations on the rate cardboard burns vs. wood palates, how stacked layers react vs. stuff piled on the floor. There’s a whole science to it.

Occupancy Permit

Mr. Marquardt asked if there’s something on the Occupancy Permit Application that checks the fire load prior to the tenant moving in.

Mr. Marrelli said yes. This is how it should have gone with Ted. In Jan/Feb when you knew you were looking to rent that space, your landlord should have notified me to say they have a space with an interested tenant and this is what they’re going to do. We would have known. We

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would have said he can do this, he can't do that. It's all in the code section and all this could have been worked out. But they just moved him in.

Mr. Marquardt asked who is responsible.

Mr. Marrelli replied Panzica and their Realty Agent.

Ms. Calta asked if he has an Occupancy Permit.

Mr. Marrelli said not yet. We just made the inspection.

Ted Dellas said I asked if we could occupy the space. They said "If we had asked permission to put you in this space, they would never have allowed you to go in this space". She said I'd never get in there.

Mr. Marrelli asked what that means; put you in without us knowing about it, because it's harder to get you out.

Ted Dellas replied, I guess. In 60 days, my stuff will be sold and if I'm forced out, I'm forced out, I'll move.

Mr. Marquardt suggests maybe we ought to start citing the landlord.

Mr. Marrelli said I can speak with our Prosecutor. I thought somebody from Panzica's was going to be here. I told Julia Dudash, Vice President Panzica Realty that somebody needed to be here to represent the owner. She said either she or Tony would be here.

Ted Dellas said Julia told me to make sure I was at the inspection meeting on time. I told her trust me I'll be there, and she was 40 minutes late.

Mr. Marrelli said and that was after you called her. Correct me if I'm wrong, she said "We have to be on these inspections when you guys are going through our buildings". She didn't come and we called her.

Ted Dellas said I'm between a rock and a hard place. I have to pay my rent which I have, and I have to adhere to the rules of the Village.

Mr. Kucharson asked about the lease. There's some onus on the landlord. The operation that you run there has to be permissible under the city ordinances. The landlord also has certain obligations.

Ted Dellas said at this point because of the seasonality of my product, I missed that window. It doesn't matter to me anymore. I'd like to go forward with the Conditional Use Permit. I missed the retail, it's off the table.

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Mr. Kucharson said retail aside, the fire issue is with your distribution operation. That may not be permissible either.

Mr. Marrelli said we don't know yet. If it isn't, it should be on the owner to upgrade it.

Dr. McGrath commented, or to not lease the space.

Ms. Calta said it may be in the lease. Typically a tenant has the obligation not to use a premise in a way that would increase a hazard for fire. The situation we have before us is not the usual order. The Fire Inspector has been in there and made a request.

Mr. Marrelli said the request has been forwarded to the landlord. Between the tenant and the landlord, somebody has to get a fire company in there to say it is or it isn't capable of taking care of this. He has no occupancy permit as we sit here today.

Ms. Calta said often times leases are contingent upon those permits.

Ted Dellas said I don't want to leave, but if you force me out, I'll have to go someplace else.

Mr. Marrelli said your business model seems to be doable. The situation with the boxes worries me.

Ted Dellas said the boxes won't be a problem for me in 60 days.

Mr. Marquardt said if there's a fire in 30 days and the thing isn't protected properly and somebody gets killed or hurt, that's the issue.

Ted Dellas states I don't want that to happen.

Mr. Marrelli said we'll do everything we can to help you because you're a victim in this situation and we understand that.

Ted Dellas said I appreciate that. I'll be a good neighbor. I'm sorry I'm here under these circumstances. I've always worked with municipalities. I was close with Dan DiLiberto in Eastlake for years and years. We did some good work together. Let's see if we can get through this and move forward. I thank you for your time. Applicant leaves.

Open Discussion following applicant's departure

Mr. Marquardt states this occupancy stuff is out of control. Do we have anything spelled out who is responsible for an occupancy permit?

Mr. Marrelli replied the owner is always responsible for people moving in and out of their buildings. I don't know what the penalty is. I'd have to check our enforcement provisions. I spoke with Tony Panzica when this all came to a head. He said he'd talk to Julia and it will

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never happen again. I told him this is the 2nd or 3rd time that we know about. You heard Mr. Dellas tonight say they're signing with a chimney guy that sells caps, etc out of his truck. I saw Julia Tuesday and asked "Do you have anyone else moving in here?" She said "No, we're looking". When I walked in this space, they were setting up hot tubs and displays. I asked what he was doing. He said he's doing retail. He said he was told he could put a sign in the window and on the building, park his trucks in the parking lot that have the spas & hot tubs on them. I said, do you have that in writing? He said yes, I have all the e-mails.

Mr. Marquardt suggested getting copies of the e-mails.

Ms. Calta reads Section 1309.20 Occupancy Certificate For Change Of Use:

(a) "No occupant, operator, lessor or owner of any dwelling, building or structure shall convey, lease, rent or otherwise change the use of occupancy and no person shall commence the changed use or occupancy of any dwelling, building or structure, except changes in ownership or occupancy of residential homes where no change of use will result, until an occupancy certificate therefore has been obtained from the Building Commissioner/Service Director".

Mr. Kucharson states even if he doesn't run a retail operation, he's still not going to get his occupancy permit most likely because of the fire issue.

Dr. McGrath said but what if he delays the inspection and everything is gone in 60 days?

Mr. Marrelli said I can't leave him sitting there with no occupancy permit for 60 days.

Mr. Cappello asked about chlorine chemicals being stored and possible reaction.

Mr. Marrelli said that'll be something for the sprinkler experts.

Chairman Farmer said sounds like somebody needs to have a discussion with Panzica's.

Mr. Marrelli will sit down with our Prosecutor and arrange a meeting with the landlord to come up with some sort of agreement.

Mr. Kucharson suggested having the e-mails in hand from Julia.

Mr. Marrelli said remember he said he was @ Caputo's building on Beta for 1 year. We didn't know about that.

Ms. Calta asked the fee for an occupancy permit.

Mr. Marrelli replied \$10.00.

Chairman Farmer said we've been pretty liberal on giving out Conditional Use Permits. Look how long we've been talking about building on Beta Dr., a long time.

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Mr. Marrelli said there was a company MRC in there that was doing work for the government. They had that whole building. They moved out, now the landlord's hustling to fill it with anybody.

NEXT STEP

- Mr. Marrelli to discuss issue with Prosecutor with follow-up letter to Julia Dudash.
- Ms. Calta to draft language for Conditional Use Permit for June 4th vote meeting.
- Next meeting Mon, June 4th @ 7:30 p.m.

There being no further business, the meeting adjourned at 8:40 p.m.

Respectfully Submitted,

Deborah Garbo

Executive Assistant

Building Department

A handwritten signature in black ink, appearing to read "Deborah Garbo", is written over the typed name and title. The signature is cursive and somewhat stylized.