



**Board of Zoning Appeals & City Planning Commission Minutes
Tuesday, June 4, 2019
7 P.M.
Council Chambers**

Members Present: David Weiss, Mayor
Rob Zimmerman, Council Member
John J. Boyle III, Member
Joanna Ganning, Member

Others Present: Joyce Braverman, Director of Planning
William M. Ondrey Gruber, Director of Law
Daniel Feinstein, Senior Planner

The meeting was called to order by Mayor Weiss at 7 P.M.

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Approval of the May 7, 2019 Meeting Minutes

It was moved by Mr. Zimmerman and seconded by Dr. Ganning to approve the minutes with corrections.

Roll Call: Ayes: Weiss, Zimmerman, Boyle, Ganning
Nays: None
Abstain: None

Motion Carried

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BOARD OF ZONING APPEALS

#2015. SHAW RESIDENCE – 14206 SOUTH WOODLAND ROAD:

A Continuation of a Public Hearing was held on the request of Trevor Shaw, 14206 South Woodland Road, to the Board of Zoning Appeals for a variance to the height and setback requirements for front yard fences. The Shaw property extends from South Woodland Road through to Van Aken Boulevard. The request was continued at the March 5, 2019 meeting. The applicant has installed a 6-foot tall wood board-on-board fence. The fence is set back 15 feet from the Van Aken Boulevard property line. The maximum permitted height for a front yard fence is 3 feet. A 33 foot setback is required for a fence in the front yard of Van Aken Boulevard. The

CITY OF SHAKER HEIGHTS

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applicant now proposes 15 arborvitae bushes, staining the fence dark brown, and retaining the existing landscaping of bushes and trees to soften the view of the fence from Van Aken Boulevard.

Mr. Feinstein showed slides of the site. He stated this is a continuation of a request for variances to the fence location and height regulations. This request was continued at the March 5, 2019 meeting in order to consider several options. The applicant erected a 6 foot tall fence, 15 feet from the Van Aken Boulevard sidewalk. Code allows a 3 foot tall fence, set back 33 feet in this front yard. The Shaw property extends from South Woodland Road, through to Van Aken Boulevard. The applicant now proposes 15, 3 foot tall evergreen bushes and to maintain the existing landscaping. The fence is proposed to be stained a dark brown. Staff supports this request.

Dr. Ganning asked what if the property is subdivided, owned separately, or developed.

Mr. Gruber said that the fence would be considered to be in a front yard, not in the back of a through lot. Any development would require normal development standards and required reviews, which would allow re-review of the fence.

Callie Merry, 14206 South Woodland Road, said they proposed the new landscaping around the fence in order to hide it. The natural landscaping will remain.

Mr. Zimmerman said there is some precedent for fences on through lots in other locations within the city.

Mr. Boyle asked what if there are two separate owners for the two lots.

Mr. Gruber said any variance remains in effect until there is a change. The Board could prevent that from happening by making a condition that would void a potential variance for this fence if the lots are sold separately.

Mayor Weiss said he believes this is an appropriate condition. He also favors a condition added that the landscaping is maintained. It is evident from the photos that this fence is hidden during the summer.

Mayor Weiss opened the Public Hearing. No one was present to speak in regard to this application.

Mr. Boyle said the landscape plan now presented has been modified. It is a much better solution than what was previously presented. A condition should be added that if the second lot is sold separately that would void any variance, and that the proposed landscape plan must be installed and existing landscaping maintained.

It was moved by Mr. Boyle and seconded by Dr. Ganning to approve the request based on the findings of fact and conclusions of law as set forth in the Action Sheet with the following conditions:

1. Both the Van Aken Boulevard and South Woodland Road lots remain in the same ownership, and if it ever sold as separate lots, the fence must be removed;
2. The landscape plan is implemented including the new evergreen bushes and maintaining the existing trees, and that this plan should be maintained over time.

Roll Call: Ayes: Weiss, Zimmerman, Boyle, Ganning
Nays: None

Motion Carried

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#2019. CLEVELAND RESTORATION SOCIETY PROPERTY – 18520 WINSLOW ROAD:

A Public Hearing was held on the request of Margaret Lann, Cleveland Restoration Society, 18520 Winslow Road, to the Board of Zoning Appeals for a variance to the garage regulations in order to construct a two car garage at a two-family house. The applicant proposes to construct a new two car garage and a parking pad in the rear yard at this two-family house. The existing two car garage is required to be demolished. Code requires a three car garage for a two-family house. The new garage is proposed to measure 22 feet wide by 22 feet in depth. The garage will be located in the rear corner of the lot facing the street, which is a code conforming location.

Mr. Feinstein showed slides of the site. He stated this is a request for a variance to the garage regulations in order to build a 2 car garage at this two-family property. The applicant proposes a 22 by 22 foot , 2 car garage facing the street at the rear of the yard. They also propose a 1 car parking pad. A two family house requires a 3 car garage. The existing 2 car garage must be demolished. The Architectural Board of Review approved the design of the new garage at their May 2, 2019 meeting. The Landmark Commission will review the design of the new garage at their June 11, 2019 meeting. Staff supports this request.

John D’Amico, Great Garage Company, 8550 Wallings Road, said he will be representing this case. The two-car garage proposed for this lot is the largest garage that will actually fit on the lot and allow cars to enter. A third bay would not be feasible. They are very close to the rear of the house and the turning radius is too tight. He suggested that a one car parking pad be added to the side of the garage instead. This parking pad is 10 feet wide, allowing a car to swing out over the pad as it enters or exits the 2 car garage. This makes more sense than an 8 foot wide door in a third bay.

Mayor Weiss asked for an explanation of the exact location of the parking pad.

Mr. D’Amico explained where the parking pad will go and how it could also double as a patio when not in use.

Mayor Weiss opened the Public Hearing. No one was present to speak in regard to this application.

Ms. Braverman asked what screens the parking pad area.

Mr. D’Amico said there will be a solid fence around the perimeter of the yard.

Mr. Feinstein said a solid fence meets the screening requirements for a parking pad.

It was moved by Mr. Zimmerman and seconded by Dr. Ganning to approve the request based on the findings of fact and conclusions of law as set forth in the Action Sheet.

Roll Call: Ayes: Weiss, Zimmerman, Boyle, Ganning
Nays: None

Motion Carried

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Mayor Weiss stated that the next case, #2020 – Lee Residence, was withdrawn by the applicant.

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CITY PLANNING COMMISSION

#2021. VAN AKEN BC, LLC – 3386 TUTTLE ROAD:

A Public Hearing was held on the request of Mackenzie Makepeace, RMS Investment Corporation on behalf of Van Aken BC, LLC, 3386 Tuttle Road, to the City Planning Commission for a Conditional Use Permit for a wine bar. The applicant proposes to establish a wine bar on the upper floor of the B-1 building in the Van Aken District. The space is located on the second floor and rooftop of the building over the Sawyer restaurant. The roof top bar space will accommodate approximately 150 patrons, both inside and out. They propose to serve wine, both by the bottle and glass, beer, cocktails, and non-alcoholic soft drinks, but will not include food service. A wine bar requires a Conditional Use Permit in the CM Commercial Mixed Use zoning district. Council confirmation of a Conditional Use Permit is required.

Mr. Feinstein showed slides of the site. He stated this is a request for a Conditional Use Permit for a use similar to a wine bar. The applicant proposes the wine bar on the second floor of the east wing of the B-1 building in the Van Aken District, over the Sawyer restaurant. They propose to serve wine by the bottle and glass, along with beer, cocktails, and non-alcoholic soft drinks. A Conditional Use Permit is required for a use similar to a wine bar in the CM Commercial Mixed Use zoning district. Council confirmation is required. Staff supports the request with conditions as listed in the Staff Report.

Jason Russell, General Manager of the Van Aken District, said they are here to create a use similar to a wine bar on the second floor above a restaurant in the B-1 building. It will be a wine bar that also serves cocktails and soft drinks. It will be a rooftop indoor-outdoor space, and have a symbiotic relationship with the restaurant downstairs. There should be a limited bar menu and it may act as waiting space for the restaurant patrons.

Mr. Zimmerman asked if food preparation will take place on the second floor. Will it be used for private events? If so, how many?

Mr. Russell indicated there will not be food preparation on the second floor. There would be some private events in this space, be it corporate or private, but it would be open to the public most of the time.

Mr. Boyle stated he understands that the intent is not to have a party room, but to have a full-service bar.

Mr. Russell agreed. It will be a full service public establishment with an occasional event that also acts as waiting space for the downstairs restaurant. This use was conceived and designed for this building in the district design phase. The first floor restaurant did not want to take over leasing and management of the second floor.

Mr. Zimmerman said the second floor tenant would then be separate ownership and separate management from the restaurant downstairs.

Mr. Russell said yes, it would certainly be separate management and a separate operator. The operator is Forward Entertainment Group. They run Forward nightclub and Magnolia Bar, Three Palms restaurant, Flip Side Burgers and probably the most similar use is the Red Door, next to the burger location in Chagrin Falls.

Mayor Weiss asked if this upstairs use was part of the restaurant, how would it be classified by zoning. This is certainly a separate use with substantially different operation than the first floor. It is not substantially different than what would have been on the second floor use if the restaurant leased the entire wing of the building.

Ms. Braverman said yes, the upstairs inside-outside area would just be an accessory use to the principal use of the first floor restaurant as it is a much larger space on the first floor. There would be no need for a Conditional Use Permit.

Mayor Weiss opened the Public Hearing. No one was present to speak in regard to this application.

Mr. Zimmerman said there is a list of conditions which staff has proposed for this use. He asked if the applicant was aware of the conditions. Will they be able to meet all of the conditions?

Mr. Russell said yes, they are aware and are able to meet all of the conditions as proposed in the staff report.

It was moved by Mr. Zimmerman and seconded by Mr. Boyle to approve the request based on the findings of fact and conclusions of law as set forth in the Action Sheet with the following conditions:

1. Hours of operation do not exceed Monday through Thursday 11:00 a.m. to 1:00 a.m., Friday and Saturday 11:00 a.m. to 2:00 a.m., and Sunday 12:00 p.m. to 11:00 p.m.;
2. Subject to a continuing obligation to comply with the City's noise ordinance;
3. To remain in full compliance with state liquor permit requirements;
4. To provide to the City and comply with their own patron policies;
5. To provide to the City for approval and comply with the security plan;
6. Remain free from a pattern of criminal activity, including but not limited to charges under the Criminal Activity Ordinance Chapter 109;
7. Subject to a review after six months of operation.

Roll Call: Ayes: Weiss, Zimmerman, Boyle, Ganning
Nays: None

Motion Carried

Council confirmation is required.

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CITY OF SHAKER HEIGHTS – ZONING TEXT AMENDMENT:

Discussion regarding the referral by City Council to the City Planning Commission for further study of the request of the City of Shaker Heights, 3400 Lee Road, to the City Planning Commission for amendments to the zoning ordinance text. Revisions are proposed to the regulations for Child Day Care Homes, Type A and B. Child Day Care Homes are permanent residences in which child day care is provided. Revisions are proposed to Accessory Use Section 1262.03 and Conditional Use Section 1263.09 for Child Day Care Homes. The City Planning Commission reviews and makes recommendations to City Council on all zoning ordinance amendments.

Mayor Weiss said City Council requested that the City Planning Commission review a specific issue of the child day care home text amendments to the Zoning Code that were proposed. These text amendments have already been recommended to Council by the City Planning Commission and reviewed by Council. After the Public Hearing at their last meeting City Council asked for the City Planning Commission to have a more substantive discussion of the question of whether a Type A day care home should be limited to only owner-occupants. This would restrict a renter from operating a Type A day care home.

Mr. Zimmerman indicated there were good resident comments at Council's Public Hearing including Councilperson Nancy Moore, who raised the question of ownership of a Type A day care home. There was some discussion at Council and they then referred further discussion to the City Planning Commission for this one item. This is not opening up the discussion of all the proposed text amendments, only this particular item.

Mr. Boyle said quite a few upgrades to a home are needed in order to have a Type a day care home. It may be worth it for an owner to invest in this work, but may be more difficult for a renter. Why only allow a homeowner to operate a Type A day care? It does not make sense from a zoning perspective. He is not sure from a public policy standpoint.

Dr. Ganning asked if it is legal to prohibit renters from operating a Type A day care home.

Mr. Gruber said the City can make requirements on Type A day care homes. It would be an allowable restriction.

Mayor Weiss indicated this is not a Public Hearing as the City Planning Commission already held a hearing regarding this topic. He will take the Chair's prerogative and allow public comment. Comments should be on this specific portion of the zoning text change, not on the rest of the proposed changes.

Allysa Breckering, 3573 Pennington Road, said she is speaking on behalf of Almar Price who owns a day care home on Aberdeen Road. She does not see the difference between an owner and a renter. If the renter has permission from the owner, landlord, why shouldn't they be allowed to be a day care provider? The city needs this type of day care. She uses home day care exclusively. She is a working mother. This is a very important part of her living in the community. She does not understand why renters should not be allowed to offer this option, if they are willing to make the improvements to their tenant space needed to run a Type A daycare.

Vanessa Ball, 17406 Scottsdale Boulevard, asked how neighbors of a day care home get to have their say in this discussion. There is no balance between a day care provider and how that use affects the neighbors. She would like to have a quiet neighborhood without traffic. If allowed for renters, then more renters could come to Shaker Heights specifically to have a Type A day care. She does not think this benefits the neighborhood or the neighbors. She is in favor of requiring home ownership to operate a Type A day care home.

Angela Watson, 17410 Scottsdale Boulevard, said she is a day care provider of a Type B daycare. She has no intention of running a Type A day care. She is a renter. If she wanted to run a Type A day care she thinks she should be allowed. She asked what it says about the city if renters are second class citizens compared to an owner occupant. There are many renters in the city that are long-time residents who are invested in the community. She is a long-time renter who went to Shaker Heights schools. It should be acceptable for renters to use their residences like anyone else in the city. She thinks it is not good for the city to discriminate against renters in this situation.

Celeste Terry, 17414 Scottsdale Boulevard, said the city has proposed some regulations. She thinks that there are eight Type B day care homes in her neighborhood. It is good to have strict regulations on Type A day cares as they are even larger. She supports the idea of home ownership being a requirement for a Type A day care.

Barbara Franzen, 3303 Aberdeen Road, said she would support restricting Type A day care homes to people who live in and own their own residences. She is concerned that an owner may buy homes, find renters who can propose Type A day cares and then make enough money to make rent. This would then be a money making venture. She does not support that.

Almar Price, 3293 Aberdeen Road, said she has been a homeowner and a day care provider for 15 years. She is not doing it better than a renter could. She supports a renter being able to run a Type A day care. If a renter is not allowed to run a Type A day care, what is next? Will a renter be allowed on the street? Why shouldn't a renter have as good a standing with the city as a homeowner? She does not support this idea.

Max Saxon, 17410 Scottsdale Boulevard, said he is not in favor of the proposed amendment to only allow Type A day care homes to homeowners. As long as a renter has appropriate insurance and approvals by the city, why should there be a difference. He thinks it is discrimination to not allow a renter. A renter probably already pays more in rent than a mortgage. It is good to have equal regulations for all residents of the city.

Nancy Moore, said she is a 16 year member of City Council and 37 year resident of the city. There are many good conditions that have been added to the new regulations for day care homes. She does believe in protecting the quality of life of neighbors of day care homes. She believes there needs to

be a balance between people that could run Type A day cares and rental properties that make money for an absentee owner, versus a homeowner providing Type A day care in their home. In her opinion there is a difference in those two types of operations.

Mr. Gruber said he would like to clarify that if a renter or a homeowner is running a Type A day care home, they have to live in the unit where the day care is operating. You cannot have an entity own a home and send an employee in to run a day care out of a home. The day care operator needs to reside in the dwelling unit where the day care is being operated. He wanted to clarify this is a requirement for both Type B and Type A day care homes. The city is very limited by the State of Ohio in how it can regulate Type B day care homes. The city can impose conditions on Type A day care homes.

Mayor Weiss said the City Planning Commission can take action this evening or make comment and leave it up to Council to act on their previous recommendations regarding amendments to the Zoning Ordinance.

Mr. Zimmerman said he would like to thank the residents who are here expressing their comments. He will report back to City Council.

Ms. Braverman indicated Council will again consider this issue at the June 24, 2019 meeting. This item will be on third reading.

Dr. Ganning said there are already many rules that regulate day care homes. She feels it is discrimination to not allow renters to operate a Type A day care. She does not favor the amendment. She is in favor of leaving the recommendation the City Planning Commission forwarded to Council as it stands.

Mr. Boyle said he agrees. He is not sure about public policy, but certainly from a zoning perspective the amendment to restrict Type A day care homes to owner operators is not appropriate. There is an economic discrimination issue here. A Type A day care should be allowed to be run by either a renter or homeowner.

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There being no further business, the meeting was adjourned at 8:30 p.m. The next meeting will be July 2, 2019.



David E. Weiss, Chair
Board of Zoning Appeals
City Planning Commission



Daniel Feinstein, Secretary
Board of Zoning Appeals
City Planning Commission