



**Board of Zoning Appeals & City Planning Commission Minutes
Tuesday, July 2, 2019
7 P.M.
Council Chambers**

Members Present: Rob Zimmerman, Council Member, Acting Chair
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 Mr. Zimmerman at 8:00 p.m.

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Approval of the June 4, 2019 Meeting Minutes

It was moved by Mr. Boyle and seconded by Dr. Ganning to approve the minutes.

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

Motion Carried

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#2022. GAGLIANO/SLATER RESIDENCE – 3161 HUNTINGTON ROAD:

A Public Hearing was held on the request of Keith Slater and Gregory Gagliano, 3161 Huntington Road, to the Board of Zoning Appeals for a variance to the fence location and height regulations on a corner lot. The applicant proposes to replace an existing wood picket fence with an aluminum ornamental fence on this corner lot at Huntington and Woodbury Roads. The fence is proposed to be located in the same place as the existing fence, which is 4 feet off the Woodbury Road sidewalk at its closest, behind the existing hedge. The fence is proposed at 5 feet tall. The existing fence was granted a variance in 1992 for two sections, one at 4 feet and one at 5 feet tall. Code requires that fences located in corner side yards not extend in front of the setback line of the principal building on the adjacent lot. The adjacent house is set back 50 feet from Woodbury Road. Code allows a fence height in a corner side yard of 3 feet tall. The fence is proposed to enclose the Woodbury Road yard and return to the house, as it does currently.

CITY OF SHAKER HEIGHTS

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Mr. Feinstein showed slides of the site. He stated this is a request for a variance to the fence location and height regulations on this corner lot at Huntington and Woodbury Roads. The applicant proposes to replace the existing wood picket fence with a new ornamental aluminum fence in the same location. The existing fence is 4 and 5 feet tall and was approved in 1992. The new fence is proposed to be 5 feet tall in its entirety. Existing bushes and landscaping screen the fence from view of Woodbury Road. Staff supports a 4 foot tall fence in the Woodbury Road front yard.

Mr. Slater said they purchased the house late last year. The current fence was installed in 1992, with a zoning variance from the city. They would like to replace that fence, in the same location, with a new ornamental aluminum metal fence. Currently, a portion of the fence is 4 feet tall and other portions are 5 feet tall. They would like to make the entirety of the new fence 5 feet tall as a barrier to people crossing their property. They live across the street from the high school. They would like the new fence to be uniform around the yard instead of at two different heights. The new fence will be completely buried in the landscaping that exists at the edge of the property, making it practically invisible. They do not want people tempted to jump the fence into their yard. They do not want their dogs, or other dogs, to be tempted to jump the fence either.

Mr. Zimmerman asked for clarification of the location of the various sizes of existing fence.

Mr. Slater showed the difference between the fence heights and locations on the property.

Mr. Gagliano indicated the existing fence is behind the bushes. You will not be able to see the new fence. The old zoning variance did allow an option to make the entire fence 5 feet tall if it was hidden by significant landscaping. They think that landscaping exists at this time.

Mr. Zimmerman opened the Public Hearing. No one was present to speak in regard to this application.

Mr. Zimmerman said there was a variance given in 1992. He sees the only real changes here is to whether the fence is raised to 5 feet tall in all locations.

Dr. Ganning said she certainly supports a 4 foot tall fence. Code allows a 3 foot tall fence. Precedent is skewed more toward allowing 4 foot tall fences in other corner side yards, especially this close to the street.

Mr. Boyle asked the reason to really want a 5 foot tall fence.

Mr. Gagliano said security on a very busy corner is the main reason. Their lot is pie-shaped. He believes that for function it would be best to have the entire fence at 5 feet tall. It is completely hidden by the landscaping currently in place, which is taller than 5 feet. This type of fencing is even less visually intrusive than the type of fencing currently installed. They think it is a better solution than the current fence.

Ms. Braverman indicated this is a very busy corner. There is some very mature landscaping. Those two elements differentiate this application from others in this neighborhood.

Mr. Feinstein explained that revised dimensions of the tenant space were submitted which calculated a reduced parking count of 25 required spaces. An additional 2 parking spaces are deducted for the on-street parking spaces in front of the business. This changes the 25 required parking spaces to 23 spaces.

Mr. Gibson indicated that he would like to start a restaurant business at 16704 Chagrin Boulevard. This space was originally a clothing store. He got permits in January in order to renovate this space for a restaurant/lounge/bar. In regard to parking, there are 108 parking spaces on Chagrin and many more within the rear parking lot, which are accessible directly behind the tenant space. The only other business open late is at the other end of this strip of businesses, which is Touch of Italy. That business is approximately 500 feet away. There are about 32 parking spaces in close proximity to the space he has leased.

Dr. Ganning asked why a permit was issued.

Mr. Feinstein responded that a permit was erroneously issued by the Building Department for interior renovation, without completing zoning review.

Mr. Boyle asked why the applicant had not applied for a Conditional Use Permit.

Mr. Gibson indicated he did not submit the required information. He submitted revised plans and got a permit and work has been done, with money spent. On April 24 there was a Stop Work Order issued. There was an obvious error by the City allowing his contractor to begin work. He finally made application to the City for the parking variance and the change of use. All he needs to do is cross off the box for Conditional Use Permit on the application. This application was not considered complete enough for a Conditional Use Permit.

Mr. Feinstein explained additional information was needed. The submitted application did not include anything about a Conditional Use Permit. There was no explanation of how the proposed use is similar to any allowable or conditional uses in this zoning district. There was no explanation of the standards of the Conditional Use Permit submitted.

Mr. Boyle indicated that the Conditional Use Permit is required along with the parking variance in order to open. Those two applications should be considered together at another meeting.

Mr. Gruber asked if the applicant had received the letter dated June 6, sent by Mr. Feinstein, to him, his architect, and his attorney regarding the parking variance. Had he received the subsequent letter dated June 14 that indicated the applicant needed to apply for a Conditional Use Permit as well?

Mr. Gibson said he had received the letters, but was not clear that he needed to apply for a Conditional Use Permit. He knew he needed to apply for a parking variance. He asked the difference between the parking variance and the Conditional Use Permit.

Mr. Feinstein explained the parking variance request is for the number of parking spaces required for a bar/lounge, which is the same required for a take-out restaurant. A Conditional Use Permit is about the type of use being proposed for a commercial space. In order to propose a bar/lounge use he would need to argue that it is similar to a brew pub or wine bar.

Mr. Zimmerman asked if the city-owned parking lot spaces are available for anyone to use. Is there any license agreement or requirements, or set-aside spaces for any particular uses in that parking lot?

Mr. Gruber answered that all of the spaces are public, open and free to use. There is no license required.

Mr. Zimmerman said the zoning variance is due to the lack of on-site parking, but there is a public parking lot behind and on-street parking in front.

Mr. Zimmerman opened the Public Hearing. No one was present to speak in regard to this application.

Dr. Ganning indicated that when considering the parking variance as presented, some information has been given but not as much as is needed. She would like to know a comparison of the proposed use and the types of peak hours. When will peak parking be needed? What other uses are nearby, and their hours of operation?

Mr. Gibson said the business will be open Monday through Thursday from 11:00 a.m. to 10:00 p.m. The kitchen will close at 9:00 p.m. On Friday and Saturday they will be open from 11:00 a.m. to 2:00 a.m. with the kitchen closing at 1:00 a.m. He expects peak hours to be between 2 and 5 p.m. with 25 parking spaces needed. He expects another peak from 5 to 9 p.m. with 26 parking spaces needed. Later in the evening, between 9:00 p.m. and 2:00 a.m. they will need 25 spaces in the rear and use much of the front parking spaces as most of the nearby tenants will be closed for business. He thinks the only other business open after 9:00 p.m. is Touch of Italy, which is 500 feet away on the east side of this shopping strip. He expected they might need up to 62 parking spaces all together after 9:00 p.m.

Mr. Gruber indicated the Board typically gets information about hours of operation and existing parking demand for other businesses that are nearby and therefore is able to assess any parking situation.

Mr. Boyle asked if there was a liquor permit for the business as of yet.

Mr. Gibson said there would be. He added there will be additional space for take-out orders.

Mr. Boyle said there appears to be approximately 40 seats with 22 seats at the bar.

Mr. Gibson indicated the number of seats in each area. He said there will be 6 tables in front, a jukebox for music, and some live music on weekend evenings.

Mr. Boyle said in general he does not have too much of an issue with the parking spaces that are available and the request for a parking variance, but it does not seem appropriate to be considering a portion of an application and not the entire request. He asked if staff would explain the reason for their suggestion of a continuance.

Mr. Feinstein said staff feels it is appropriate for the Board to address both a Conditional Use Permit request and the parking variance at the same time, in order to make an appropriate consideration of the application for the proposed use.

Mr. Zimmerman said it is the right of the City to require, and the applicant to provide, the required information in order for the Board to consider both applications regarding the same business at the same time. Substantive questions have been asked that need to be addressed by the applicant. He suggests that the request be continued until such time as an entire package of information is submitted for the Conditional Use Permit request and parking variance to allow review at the same time.

Dr. Ganning said there is more information needed regarding parking as well as documentation of the other nearby businesses hours of operation, as well as the current usage patterns of the existing parking lot. She agreed that the case should be continued.

Mr. Zimmerman said the applicant should reapply with additional information so that this can be reviewed at the next meeting for consideration of both the Conditional Use Permit and the parking variance.

The request was continued based on the following issues:

- The Board requested more information to support a parking variance in the available public parking lot.
 - Provide information on peak parking demand time frame, number of spaces, and a comparison to nearby business's hours and usage of the shared public parking.
- A revised floor and seating plan must be submitted because the floor plan does not match the partially constructed space, as the bar is larger than drawn on the plans.
 - In addition, the number of seats, now 55, has been revised but not indicated by removing some high top wall ledge seating. An updated seat count must be provided with the revised plans.
- The Zoning Administrator has previously advised the Applicant in writing that, based on the information presented by Applicant and available through review of the site and the plans, the proposed business would be a bar use similar to a wine bar. This means that the business may not open without zoning approval of both a parking variance and a Conditional Use Permit.
 - Applicant has not appealed to the Board of Zoning Appeals from this decision of the Zoning Administrator
 - The Conditional Use Permit and the parking variance should be considered at the same time.
 - In order to apply for a conditional use permit the applicant will be required to submit:
 1. Amended application to include the request for a conditional use permit;
 2. Letter of request and explanation of how the proposed use is similar to the listed wine bar or brewpub uses; and
 3. Letter addressing the standards for conditional use permits.

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CITY PLANNING COMMISSION

#2024. CLEVELAND SKATING CLUB – 2500 KEMPER ROAD:

A Public Hearing was held on the request of Matthew Wymer, WXZ Development Inc., representing the Cleveland Skating Club, 2500 Kemper Road, to the City Planning Commission for resubdivision of land in order to combine and resubdivide a parcel fronting on Fairhill Road. The parcel facing Fairhill Road (736-30-007) is proposed to be combined with a small portion of the main Skating Club parcels (736-30-009 and 736-30-008) and split off from the main parcel. The new parcel is slightly larger than a half-acre and has 100 feet of frontage on Fairhill Road. The new parcel meets the minimum size and frontage required in the A Apartment zoning district

Mr. Feinstein showed slides of the site. He stated this is a request for resubdivision of land in order to combine and resubdivide a parcel fronting Fairhill Road. The parcel (736-30-007) is proposed to be combined with a small portion of the combined parcel (736-30-008 and 009) and split off. The parcel is unused land that is behind the tennis courts and faces Fairhill Road. The new parcel meets the minimum size and frontage required in the A Apartment zoning district.

Mr. Wymer introduced the Skating Club Executive Director Alan Feuerman and indicated they have been working with the Skating Club on possible development of a portion of the Skating Club's property that faces Fairhill Road. They would like to develop a residential use, possibly for some Skating Club members. The project would be for-sale condominium style flats. There would be two buildings with three (3) units in the first building with parking underground and six (6) units, two per floor. He described the site plan and layout that was presented to the Board. This would include a small portion of rear yard that is part of the lot between the proposed buildings and the tennis courts of the Skating Club. The tennis courts would outline the edge of the property of the new residential development.

Mr. Feuerman indicated the small area in the rear is being added to this property in order to give a small portion of green space to the proposed development. That portion of property is not accessible to the Skating Club at all.

Mr. Zimmerman opened the Public Hearing.

Bob Zimmer, resident and realtor, said the Skating Club has wanted to develop the property facing Fairhill Road for some time. There is good precedent for this type of development being successful. Residents of Shaker Heights want to downsize into single floor living. They want a for-sale product rather than a full house or a rental apartment within the City. The subdivision of land would set the stage for that development to move forward.

Mr. Boyle said he supports the resubdivision of land. The development itself will be subject to City Planning Commission review for site plan review at a later date.

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 condition that the final plat is submitted to the City and filed with Cuyahoga County.

Mr. Zimmerman asked if any animal waste issues have arisen. There was quite a bit of discussion of that issue when the original application was reviewed.

Ms. Corr said no issues have arisen.

Dr. Ganning said it is encouraging that the noise complaint seems to be getting addressed.

Mr. Zimmerman opened the Public Hearing.

Donald Bailey, 3717 Sudbury Road, said he has moved back into a property he had occupied on and off for 40 years. He was not living here when Process Canine was reviewed and approved. He missed the opportunity to comment during that process. He was the one who complained about the noise first thing in the morning. It is very early, and very close to his house. He is concerned with the strip of property between Process Canine and the rear of his garage.

Mr. Zimmerman thanked him for his comments. He indicated that when the business was originally reviewed there was appropriate neighborhood comment. There was much discussion regarding the Conditional Use Permit for Process Canine. At this meeting they are considering only the dog training facility for a Conditional Use Permit and variance at 3700 Lee Road. It is good to see that there has been input from the neighbors and the neighborhood in the past, and currently. It is also good to have a successful growing business wanting to expand within the city.

Mr. Bailey indicated neighbors are being affected by the existing business of Process Canine. There is some barking. This is going to be part of training also. This does seem to already have been addressed. He would like to know how they care for their property, especially behind their fence. He asked why this facility was being planned at the corner space of this building that used to be the security door company. Why wouldn't they want it to be closer to the original business?

Ms. Corr indicated there is an existing tenant that has the space directly next to Process Canine. The open space at 3700 Lee Road was vacant and large enough for their needs. They will work to continually keep the barking to a minimum, especially early in the morning. She asked for the neighbor's cooperation if there are any more issues. They will be doing leash obedience and simple commands with these dogs inside the building only. There should be no exterior or parking issues due to this proposed use.

Mr. Gruber asked who maintains the parking lot.

Ms. Corr said she is not sure. The lease has not yet been finalized as to whether she would be required to maintain the parking lot.

Mr. Boyle asked about the other tenant in the building. Who is it? How much of the building will not be occupied by the dog training facility?

Ms. Corr said Barbara is a long-time hair stylist that works in the space directly north of Process Canine. The other end of the building has the open space they are discussing tonight. There is also another open space between the hair salon and the property before the Board. The salon uses the rear parking lot, but the dog training facility will not use the rear parking lot.

