



CITY OF OLMSTED FALLS  
PLANNING AND ZONING COMMISSION  
MINUTES  
FEBRUARY 5, 2020  
7:30 PM  
COUNCIL CHAMBERS

Commission Members Present: Brett Iafigliola, Gary Pehanic, Garry Thompson, Peter Carpenter, and Cornel Munteanu. Dave Fenderbosch and Michelle Hawkins were excused. Audience: 6

Chairman Brett Iafigliola called the meeting to order at 7:30 p.m.

1. **Planning & Zoning Case #01-2020** - A request made by Robert Craft, owner of 25880 Cook Road, PP#281-02-002 for approval of a side yard setback variance of 5 feet to Section 1240.09(a)(1) to permit a side yard setback of 10 feet in lieu of the required 15 feet; a building area variance of 20 square feet to Section 1240.09(a)(3)(A) to permit a garage 900 square feet in area in lieu of the maximum permitted 880 square feet, and two height variances to Section 1240.07(b) of 3 feet in overall height and 3 feet in side wall height to permit the construction of 30 x 30 x 12 pole barn that is 18 feet in height in lieu of the permitted 15 feet and has side walls 12 feet in height in lieu of the permitted 9 feet.

Mr. Iafigliola administered the oath.

Mr. Craft stated that he would like to construct a pole barn to use to store personal items and utilize as garage space. He indicated that the Commission requested that he retrieve signatures from his neighbor's indicating that they had no concerns or issues with the structure. Mr. Iafigliola stated that Mr. Craft constructed a letter dated January 21, 2020 and reads "Dear Neighbor, my name is Robert Craft I live at 25880 Cook Road. I have plans on building a 30x30x18 pole barn on my property I need a variance to do this. City Council's meeting on February 5<sup>th</sup> and they are requesting signatures from my neighbors for any objections they may have to this project. I would like you to please sign this letter either with an objection or without one so I can submit this to City Council for my variance. Thank you, Robert Craft." He stated that there were two options, someone could either select "I object to this building" or "I do not object to this building." For the record we have no objections from the following addresses: 25755 Cook Road; 25940 Cook Road; 25929 Cook Road; 25851 Cook Road; 25885 Cook Road; 25800 Cook Road; and 25902 Cook Road. The letter from the German Club states that the Director of Operations 7370 Columbia Road does not object to this building.

Mr. Iafigliola moved to **approve** Planning and Zoning Case #01-2020 a request made by Mr. Robert Craft, owner of 25880 Cook Road, PPN #281-02-002, for a side yard setback variance of five feet; a 900 square foot in area in lieu of the maximum 880 square feet; 18 foot height variance in lieu of the permitted 15 feet; and to permit the

side wall height of 12 feet in lieu of the permitted 9 feet; Mr. Thompson **seconded**. Poll: 5 ayes; 0 nays. **Motion carried**.

**2. Planning & Zoning Case #03-2020** – A request made by Olmsted Falls BTS Retail, LLC, for a variance of 3 feet to Section 1274.03(a)(1)(A) to permit a fence in the front yard to be 6 feet in height in lieu of the maximum 3 feet.

Bruce Rinker, 1001 Lakeside Avenue, Suite 2114, he is present as land use counsel on behalf of Zaremba Group which is the developer for this project for Dollar General. He will note for the record that this is our 6<sup>th</sup> appearance between the P&Z, after preliminary plan approval which was back in September, and subsequent to that we had three successive meetings with the ABR addressing their role looking at the color, materials, elements of signage, parking and screening, and we returned here. He should also note for the record that after preliminary plan review it has been recognized that no area variances were required. When we returned at our last meeting before the P&Z for final site plan approval, as you are all well aware there was extensive discussion because of sensitivity dealing with the residential property to the south. Even though under the zoning code residences are non-conforming use and the Dollar General is a permitted use expressly under the code, we recognized the sensitivity of the issue collectively. We looked at a number of different alternatives. There were two issues that were remaining, the second one tonight will deal with the signage. He will state that the monument sign, based on a suggestion that came from the Commission remains internally illuminated but Mr. Zawadski, who cannot be present tonight as he is in Michigan, so we have his partner Mr. Potts present. We went back to review the wall sign and fundamentally we changed the internal illumination and went back to the gooseneck exterior lighting which is something that ABR focused upon. What remained was the question what to do with the fencing, per code, six feet of screening is sufficient coming up to the front of the building of the Dollar General. The setbacks of the buildings are different, the house to the south is closer. We suggested that there might be a way to solve the problem by extending the fence on the other property; the request of the city has been that the fence be extended on our property and that is something that Mr. Zawadski has agreed to as we went back to Dollar General. The application for the variance, ironically we do not need a variance, but this seemed to be the best mechanism for us to be able to extend that fence at a six foot height and will end parallel to the front of the house to the south. What we are asking for is something that will provide more screening for the residential property, with the reduction in lighting because it is exterior illumination only facing back into the sign on the wall there should be less light pollution and was consistent with the photometric that were provided so if anything it will be less intense than before. In all other respects we are code compliant and would ask for the Commission's approval. The practical difficulty is probably more with the neighbor than the applicant but this seemed to be the best solution.

Mr. Rinker stated that he took the previously submitted plan, we felt the best way to highlight it is with a notation "variance request to increase fence height by three feet to provide additional screening." So, three is the code, add another three and you get the six feet. If you note just to the left of the highlight it states six foot privacy fence permitted by ordinance. The yellow area is to cover the gap that he described verbally

so the space that runs between the front of the Dollar General building and the front of the house is filled with this six-foot fence. Mr. Iafigliola stated that Mr. Rinker is referring to a blow up of the engineering group's drawing, which reads proposed wood board on board fence per detail on sheet C-10 see for fence height.

**Martin Bielet, 2933 Edgehill Road, Cleveland Heights**, stated that he is the attorney that is representing to what he believes is being referred to as the home to the south, which is 9766 Columbia Road, the owner of the home is Jane Kohler. He stated that he would like to bring to the Commission's attention that we are currently in litigation with Parkview Development LLC, the entity that controls the lot that Dollar General is going to be built on. We are alleging in our complaint that through adverse possession we actually, my client had possession of 20 to 30 feet into this lot. This could, if we are successful, change the way that the Commission plans and zones its fence as they are seeking in their variance. He wanted to bring this to the Commission's attention that we have filed a temporary restraining order, we have not had a hearing on the matter yet, it is going to be stayed until we can get in proper contact with counsel for Parkview. He just wanted to bring to the Commission's attention that this boundary could change if we are successful with our claim. Mr. Bemer indicated that as law director he received a telephone call from the staff attorney for Hollie Gallagher on Monday regarding this litigation that was filed and captioned Jane E. Kohler v. Parkview Land Development, LLC. As he reviewed both the complaint and the motion, he did not see that it had any relevance to this proceeding, Parkview is not a party to this request, they are not the applicant, they are not a party to these Planning Commission proceedings. He stated that as a result the temporary restraining order and request for preliminary injunctive relief is not material to these proceedings. The city was not named as a party and neither is the applicant in this lawsuit so there is no reason not to move forward. Mr. Bielet replied that he was just bringing this to the Commission's attention.

**Janet Tomasch, 7522 River Road** would like to thank both the Commission and Dollar General for being sensitive to the southern neighbor. She stated that this will have an enormous impact on that house in protecting it from the lights and the confusion of traffic coming in and out. She is grateful that everyone found a practical solution. Mr. Iafigliola indicated that we are talking about the fence issue and Ms. Tomasch is the chair person of the ABR and asked if she was in favor of what they are requesting or not in favor. Ms. Tomasch replied that she is in favor.

Mr. Smerigan indicated that he would like to note for the record that the revised plan submitted shows the fence extending to the rear as the Commission requested as part of their site plan approval. He believes that this change in the fence height is consistent with what the Commission requested and would recommend granting approval.

Mr. Iafigliola asked for a clarification, the drawing shows 78 lineal feet, six-foot privacy fence and the termination point to the east is not readable and asked how far back from the sidewalk would the fence end. Mr. Rinker indicated that he could not answer that question. He would suggest that given the record that has been established the functionality of extending the fence in this fashion, we are working with the city and expect between the planner and the engineer or anyone that is inspecting to confirm

that it will go to that specific point. He believes that previously on the record we did indicate what the distance is but does not honestly know. Mr. lafigliola indicated that he believes it is 15 feet but the number is on the fold of his drawing and he cannot read the number. Mr. Smerigan confirmed that it was 15 feet. Mr. lafigliola indicated that the reason this number is important is because of site distance, we do not want the fence on the sidewalk nor to far back and the distance selected seems reasonable. Mr. Rinker stated that he suspects the purpose of the code is for those issues of site line visibility.

Mr. Rinker indicated that he is an officer of the court so Mr. Potts can be sworn in. Mr. lafigliola administered the oath to Mr. Potts. Greg Potts, 17421 Lake Avenue, Lakewood.

Mr. Bemer stated that since this is a unique proposition and based on Mr. Rinker's previous comments on the prior extended hearing that was held in January, this is an accommodation for the neighbor and based on that the Duncan Middlefield practical difficulty test are cogent to this but so are subsection (b) and (c) to 1232.08. Subsection (b) identifies cumulative effect, the board shall consider what the cumulative effect would be on all lots with the same situation as the applicant for the variance to be granted to the requested variance and (c) is no detrimental effects, the board must find that there will be no substantial detriment to any surrounding property and that the intent and purpose of the zoning code are not impaired. He would suggest that such a finding be made by this Planning and Zoning Commission. Mr. lafigliola asked if Mr. Bemer would like the Commission to take a specific action. Mr. Bemer replied that the Commission identify these findings are done as part of this proceeding and in the record.

Mr. lafigliola indicated to be clear this is only regarding the variance request and not the development itself. Mr. Bemer replied that this is for the front side yard fence extending three feet.

Mr. lafigliola **moved** that there be no finding that there is not a substantial detriment to any surrounding property by granting this variance and the cumulative effect would be on all lots in the same situation of the applicant is appropriate with the intent and purpose of the Zoning Code not impaired by such findings; Mr. Thompson **seconded**. Poll: 5 ayes; 0 nays. **Motion carried**.

Mr. lafigliola moved to **approve** the variance request for Planning and Zoning Case #03-2020 a request made by Olmsted Falls BTS Retail for a variance of three feet pursuant to Section 1274.03(A)(1)(a) to permit a fence in the front yard to be six feet in height in lieu of the maximum three feet, as presented on the drawing F-1 dated January 17, 2020; Mr. Thompson **seconded**. Poll: 5 ayes; 0 nays. **Motion carried**.

**3. Planning & Zoning Case #04-2020** – A request made by Olmsted Falls BTS Retail, LLC, for revised final site plan approval for the wall sign pursuant to Section 1232.06(p).

Mr. Iafigliola indicated that the sign mounted to the building will be externally illuminated with six gooseneck lights, black, and the monument sign, which is closer to the street and on the ground will be internally illuminated, as presented. Mr. Rinker replied correct. Mr. Iafigliola stated that to his knowledge both signs are code compliant. Mr. Smerigan replied correct.

Mr. Rinker stated that he summarized rather briefly and would defer to Ms. Tomasch, but through the course of discussions at ABR and we looked at a number of different frontages, combinations of treatments for the façade, but from the beginning ABR was concerned about the internal illumination. We tried to use a blend, initially, with the gooseneck lighting and the internal illumination, that was a really important point with Dollar General, but as everyone is aware over time this issue would not go away. Even though photometrics showed that the lighting pollution issue was resolved between the shut offs, cut offs and lower parking lot lights there was still, with this particular lighting, a concern. He believes that the combination of the fence screening and the internal illumination remained a sticking point and is what brought us back here again. The suggestion had been that the monument sign was not an issue it was really the raceway sign or the building sign, whatever characterization you make, over the front door that its height relationship to the adjacent property was problematic. Long story short is, Mr. Zawadski went back again, to Dollar General with the understanding that the monument sign could remain internally illuminated and Dollar General agreed. We had been advised by ABR that had we been able to use the goosenecks without the internal illumination that was fine, or words to that affect and he would defer to Ms. Tomasch. We believe we have provided what ABR had wished for, even though the code did not require it, again being aware of the adjacent residential property to the south.

Mr. Potts stated that due to the tenacity of the Commission and knowing what you wanted he believes you came up with a much nicer building than a lot of other communities. He believes this will be a great building.

Ms. Tomasch stated that she is pleased to have this compromise. This is an awkward situation because it is a neighborhood in transition, there are many residents there and it is historic in character and yet it is not a historic district. She feels that between the boards and the company we have come up with a reasonable solution. This wall mounted sign will really affect the neighbor's across the street and this is a very sensitive take on it to do external illumination and she is grateful. She thinks this is as good as we could expect.

Mr. Smerigan stated that he believes the ABR did a good job at arriving at a compromise that made sense. He believes the applicant should be congratulated for being cooperative. He would strongly recommend that the board approve the change to the wall sign and that it be externally illuminated.

Mr. Iafigliola asked if Mr. Rinker has any comments regarding the hours of operation of either the building or the signage. Mr. Rinker replies he does not. Mr. Iafigliola asked if this was a concern for anyone present. This is a commercial building and you would expect the sign to be on all the time. Mr. Smerigan indicated that there are other commercial

operations in the same area with varying hours and does not know if it makes sense to limit the hours in this particular situation. Mr. Thompson indicated that he has no issues.

Mr. Potts replied that the hours would be typical Dollar General store hours. Mr. Iafigliola asked if he anticipated turning off the sign at any time. Mr. Bemer stated that he believes that during a conversation with Mr. Zawadski he indicated that the store would be open until 10:00 p.m. but the sign turns off an hour after the store closes. He stated that there is a big difference between a 24 hour operation and a period of time after the store closes. Mr. Potts indicated that he will verify but cannot imagine a company like Dollar General who is very conscious of saving money would leave their lights on all night, but will verify. Mr. Rinker stated that turning the lights off an hour before opening is a different issue because he is unaware of what the opening times would be because you will have people coming into the store and that could be a safety or operational issue. He would suggest that if they are turned off an hour after closing, whatever a logical time would be before opening up, is going to be more operational and in the winter time there maybe a period of darkness.

Mr. Iafigliola asked if Mr. Rinker or Mr. Potts had any significant objections to turning the lights off an hour after the store closes. Mr. Potts replied that he cannot make operational decisions. Mr. Rinker stated that we will make sure to coordinate through Mr. Smerigan who he believes would be the appropriate official to make sure that we are compliant with the code. Mr. Thompson stated that he does not have issues with the hours for the sign out the front but the sign on the building he would because of the setback of the building. Mr. Potts confirmed that the lights are turned off one hour after closing.

Mr. Iafigliola moved to **approve** the request made by Olmsted Falls BTS Retail, LLC for a revised site plan approval for the wall sign pursuant to Section 1232.06(p) for Planning and Zoning Case #04-2020; the wall sign being approved is shown on the drawing dated January 17, 2020, A02 produced by FABO Architecture, specifically this is for six appropriately sized gooseneck lights, color to match the rest of the building, presumably black, and the lighting be turned off on the building a hour after the typical store closes, which may vary from day to day; Mr. Munteanu **seconded**. Poll: 5 ayes; 0 nays. **Motion carried**.

Mr. Iafigliola would like to thank the applicant for their patience.

**COUNCIL LIAISON REPORT** – Mr. Munteanu indicated that there are three new members of Council who are fitting in very well.

**OTHER BUSINESS** – *None*

**APPROVAL OF MINUTES** – The Clerk indicated that the minutes were emailed to the Commission members. Mr. Iafigliola indicated that he would like to hold on approval of minutes to review.

**ADJOURNMENT:** Mr. Iafigliola moved to **adjourn**; Mr. Pehanic **seconded**. Voice vote: 5 ayes; 0 nays. **Motion carried**. Meeting adjourned at 8:14 p.m.

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Planning & Zoning Commission Clerk

\_\_\_\_\_  
Date

\_\_\_\_\_  
Planning & Zoning Chairman

\_\_\_\_\_  
Date