



CITY OF OLMSTED FALLS
PLANNING AND ZONING COMMISSION
MINUTES
JULY 1, 2020
7:30 PM
COUNCIL CHAMBERS/VIRTUAL

Commission Members Present: Gary Pehanic, Garry Thompson, Peter Carpenter, Cornel Munteanu, Dave Fenderbosch, and Michelle Hawkins. Brett Iafigliola was excused. Others Present: George Smerigan, City Planner. Audience: 8

After a power outage Vice Chairman Garry Thompson called the virtual public hearing to order at 7:50 p.m.

1. **Planning & Zoning Case # 16-2020** - A request made by Ernest Peto, owner of 25389 Tyndall Falls Drive, PP# 291-18-032, for riparian setback variances of 25 and 40 feet to Section 1470.10(b)(1) to permit the construction of a new single family residence 75 feet and an attached deck 60 from the watercourse in lieu of the required 100 feet.

Mr. Thompson administered the oath.

Mr. Peto stated that he lived three doors down from this parcel for 20 years and when the city put the parcel up for sale he purchased it to build a single floor home. He had the property surveyed. He never heard of a riparian setback before. He is building a small 1600 square foot one story ranch.

Mr. Thompson stated that the City Engineer Don Sheehy sent an email which reads “the variance setback if enforced would make this lot unbuildable I believe that the proposed home is modest in size and does not extent into the riparian zone more than what is necessary. They are also keeping the front of the house and deck on top of the slope. I would recommend approval conditional on keeping the remaining back yard and vegetation trees on the slope in place, undisturbed to further protect the riparian corridor.

Mr. Smerigan stated that this lot was established prior to the riparian setback requirements being adopted. As the riparian setback is written it would be virtually impossible to locate a house on the property which so some variance is reasonable and there is a practical difficulty. The question is what amount of variance makes sense. He would note that the house is basically setback the same distance from the watercourse as the adjacent house and far enough from the bank and he does not believe there will be any issue. The City Engineer has indicated that he does not see any drainage issues associated with this that would adversely impact the river. There is no question that legally there is a practical difficulty that would justify a variance. Obviously the board has to determine whether or not what is being requested is a reasonable amount.

Mr. Peto asked if this riparian setback was something that is recently new. Mr. Thompson stated that it has probably been in existence for about 10 years. Mr.

Smerigan stated that the original riparian setbacks were set up about 10 or 12 years ago and within the last couple of years the city modified and reduced them to the size of the current setbacks. Mr. Peto indicated that there are currently about 20 or 25 houses built there. Mr. Thompson responded that those were all built before any riparian setbacks were put into place. The reason for the riparian setback is to keep the river bank and vegetation for erosion and to maintain the natural appearance of the river bank so somebody cannot go down and bulldoze it off and put something in place that does not protect the environmental waterway and flow of the water which is the main purpose. The Commission recommended to this Council to reduce the setback as the original setback was 150 feet from the high-water mark. Mr. Smerigan replied it was actually 300 feet. Mr. Thompson stated that Council approved the change to 100 feet. The reason we modified the setback is because we have numerous waterway boundaries in the city and numerous residences, not just in this development but others throughout the city that were built before any riparian setback or protections were ever put into place. For anybody to make any modifications or build onto their home they have to come to the Commission and we tried to reduce some of the instances, like this one, where there might be construction or someone wanting to build a deck. It's not that these activities are not allowed but they need to come to this Commission with the proper engineer drawings showing how they will protect the embankment which also protects the homeowners on either side of the property.

Jason Fischbach stated that he is with Valore Builders and they are building a home for the Peto's. He visited the site today and took measurements using the topo that the city has. The house Peto's house will be the same as the one to the west; the back of the homes are going to line up and the deck that would be coming off the back of the Peto's really wouldn't extend any further than the deck that is coming off the house to the west. He believes that originally the Peto's deck was planned for 15 feet but they have reduced that to 12 feet so they have conceded that three feet once this riparian issue came up. He stated that from what he could see there he thinks this home fits the property; we are not going to be going down the embankment, although we will be somewhat close to it. The Peto's home will basically mimic the existing house that is to the west almost to a "t" and that is basically what we want to do for them.

Kirsten Yates Konzen, 25369 Tyndall Falls stated that Carol and Ernie were great neighbors before and we are glad they are coming back. She was curious if the home would be closer to the street or not. Mr. Smerigan replied that they are at the minimum required setback. Ms. Yates-Konzen stated that she just wants to support the Peto's.

Susan Starkey, 9544 Charney Circle stated that she wanted to welcome her parents back to the neighborhood. Mr. Peto is her father.

Mr. Fenderbosch stated that he stopped by the property yesterday and indicated that it was a nice piece of property. He asked if they would be saving the trees along the barrier because according to the plans it seems that the deck will be built right into one of them. Mr. Peto replied no. Mr. Fenderbosch stated that the reason those trees have to stay is to keep the soil in. Mr. Fischbach indicated that the deck is not going back into those trees.

Mr. Pehanic indicated that it sounds as if the potential home will fit the neighborhood just fine.

Mr. Thompson stated that when he was on City Council, we were told that this lot was unbuildable because we looked into disposing of this property and back then there were rumors that there were all kinds of stuff buried but nobody seemed to know. He knows that the city split the lots. The City was given these lots as green space but we were told that they weren't green space because there is green space at the end of Tyndall Falls and he is not concerned about green space. He asked if the 35-foot setback complies with the requirements. Mr. Smerigan stated that he understands that there have been a number of rumors about the lot but there were no deed restrictions that restricted these parcels as open space; they were signed over to the city as lots. There were rumors that there was something buried but he cannot find anything that indicates that or evidence of that. The city sold the lots "as is" and obviously if they run into something they will have to deal with it, but there is nothing on record that indicates that those lots are unbuildable.

Mr. Thompson stated that he did not go back and research the record. Mr. Peto stated that years ago the property was a greenhouse and he spoke to the gentleman who owned the green house and asked if there were any buried tanks or anything buried on the property and he indicated there was none. They removed the greenhouse sometime in the 70's so those are just rumors.

Ms. Peto asked why the riparian setback requirements were not attached to this lot so they were aware that there were things that had to be dealt with before they could start building. This has set back the building of her home approximately six weeks or more as we were going to start building in the middle of June and now, we are going to be in August. Mr. Thompson stated that he would assume the city would have made all that information available, but that is not part of this board's authority we just rule on the variance request. Mr. Peto stated that when the builder applied for the permit we found out about the riparian setback. Mr. Thompson asked if the only variance required is the riparian in front of us. Mr. Smerigan replied correct. Mr. Thompson replied that if this is approved the Peto's will have to wait 30 days before the building permit can be pulled. Mr. Smerigan stated that they have to wait 30 days for any appeals to the variance and once that 30 days is up they can get their permit as no other variances are required. Ms. Peto stated that her point is if we had known this, we could have gotten this all over with in April. Mr. Thompson replied no as the board was not meeting everything has been shut down for 3 months so we are just catching up with the previous agenda items; this is the third meeting we've had since the COVID shut down so she wouldn't have been able to build on the property.

Mr. Thompson moved to **approve** the request made by Ernest Peto, owner of 25389 Tyndall Falls Drive, PP #291-18-032, for a riparian setback variances of 25 and 40 feet to Section 1470.10(b)(1) to permit the construction of a new single family residence 75 feet and an attached deck 60 feet from the watercourse in lieu of the required 100 feet with the provision that the remaining back yard vegetation, the trees on the slope, stay

in place undisturbed to further protect the riparian corridor; Mr. Carpenter **seconded**.
Poll: 6 ayes; 0 nays. **Motion carried**.

COUNCIL LIAISON REPORT – *No Report*

OTHER BUSINESS – Ann Reichle stated that her business is at 8155 Columbia Road. A couple of weeks ago at a Council meeting she read to Council a letter that she drafted concerning some things that happen to concern Planning Commission too. She would like to read that letter tonight so the board understands where she is coming from. She had asked for answers to a lot of questions from whomever. This letter was actually addressed to the Mayor and all of Council and asked them if they don't have any answers that evening that they provide them in writing to her but she hasn't heard back from anyone at this point so she just thought she would clue the Commission in on what's been going on here.

"I received a temporary special permit for outdoor seating from the Mayor in the mail last week and that's in your handout here there are two packets and that's the first packet that's what was in that letter. Inside the envelope was a cover letter explaining the packet and document labeled building permit application and a grid page for site plans I don't think I understand why it says building permit the cover letter stated this was for temporary outdoor seating for 90 days the permit itself does not ask for what 90 days its applying for or any information on outdoor seating its just an Olmsted Falls building permit I understand the need to apply for a building permit if you are actually going to build a structure but I don't understand why this would apply to putting tables outside a restaurant. No one understands the plight of restaurants more than I do. I was an 18-year member of the Ohio Restaurant Association Board and am still an extremely active with restaurant friends all over the country.

I have been watching curiously what's been going on behind Gibb's for roughly 6 weeks now.

First, a metal canopy went up over top of the only paved handicapped spaces and anchored into the concrete. No additional handicapped spaces were provided at that time. The Health Department requires outdoor cooking needed to be under a roof. Ok, but what accommodation was made for the handicapped spaces lost? Does this Temporary Building Permit allow the ADA law to be ignored?

Next, tables were placed in part of the parking lot, however there was still some parking for guests.

Then, a second concrete pad was poured next to the handicapped parking. I don't know what for, but did this get building department approval? Concrete is not temporary.

Roughly 4 weeks ago, a nut vendor was across the entire entrance to the driveway, closing it off to all parking and playing loud music. Was there a permit pulled for this?

Over the last month more and more cooking equipment has come outside. The grill is no longer under the canopy as "required" by the CCBH. It now sits in the gravel.

Currently, picnic tables with umbrellas are scattered over the entire parking lot. This has displaced all cars to other parking lots. But what about the handicapped folks? We are all required by ADA to provide those type of spaces.

Currently most guests dining at Gibbs' park in our Mill River lot. This is not a public parking lot. Each tenant is assigned a portion of the repair, lighting and maintenance of that lot. The owners spent \$18,691 maintaining our lot last year. My share was almost \$1775.00

I do not feel the City should allow or promote any business to remove all parking spaces which were required by their occupancy permit. This displaces their guests and the expense into another lot without some kind of remuneration to the owner of the lot if it is private. We are all financially hurting, including the owners of Mill River Plaza.

The tenants in the Mill River shops chose those spots due to ample parking near their businesses. The landlord for Gibb's has multiple parking lots required by the City to service their businesses. Parking for all staff and guests from any business outside of Mill River Plaza should be in those lots. There will never be compliance if the guests are not made aware by management or signage. I see no effort to curtail this intrusion into our lot, which is of course, much closer.

A solution may possibly be City Administration contacting the Mill River Plaza owner with an agreement to help maintain a portion of his lot in order to share parking. All parties then share in the cost with everyone benefitting.

If the City is going to promote this type of outdoor dining expansion by other restaurants downtown, at the very least, the city should bear the cost of providing additional parking lot signage at the entrance to the Mill River lot denoting not to park there and where additional parking is for the other restaurants. But again, what about the handicapped folks?

Last week was the last straw for me. I watched a car with two older folks pull slowly into Gibb's driveway to the back corner of the building. When they saw there was no parking they sat for a minute until a staff member came up to the window. He apparently told them to leave the car there as she saw him pointing at the spot they were in. An elderly gentleman turned the car off, got out, unloaded a wheelchair from the trunk and got his female passenger into it. He pushed her through the gravel into the restaurant, parking the car in that very spot. Then a minute later a large food deliver truck pulled in behind them, and parked.

Gibbs' building is all wood. What would happen if there was a fire? There is no access to the back lot where all of the open flame cooking equipment is. Is the Fire Chief required to sign off on this permit? What about the safety of guests and other adjoining businesses? Does this permit require a safety review?

I have a number of other questions:

Did Jim Dixon apply under this Temporary Special Permit? I saw a building permit and a "special events permit" which are in your packet. The permits I saw listed only outdoor cooking; nothing else.

Why was there no input from Planning Commission or ABR before this letter was mailed? This additional metal structure is not per any code I can locate. If this is a Building Permit, is it required to go through the Board and Commissions if it does not meet current code?

What is the specific code that applies to this type of structure, meaning what Dixon put up, in our cherished Historic District?

What specific code gives the Administration the ability to allow or solicit this type of permit without council approval?

I am not quite sure I understand what would trigger an approval or rejection of temporary use.

Who or what Department specifically approves or disapproves these?

What happens while Council is on summer recess to approaching deadlines or businesses who may want to apply to take advantage of our short summer season? Seeing as how this letter was mailed out on June 11th.

I appreciate the effort of the Administration to try to find creative solutions to the horrible time we're in, however maybe a more logical, safe and mutually beneficial arrangement would have been to do as other cities have done and close off Mill Street on the City's property and erect a tent to do additional dining for all as has been done for many events.

This outdoor dining venue at Gibbs', now complete with outdoor musicians on the weekends, (staged over top of the new concrete pad) has done nothing but grown from the original permit request for only a structure for outdoor cooking.

Have there been additional temporary permits put in place? Is a business allowed to alter or request additional permits for additional items after the first request?

Is anyone from the City following up to be certain the permit description is being followed?

What are the penalties for not following the approved requests in the permit?

I am concerned this hastily put together program will not only set a precedent for future situations, but also create an "anything goes" attitude in our lovely Historic Downtown.

I again, appreciate the Administration's out-of-the-box thinking to help our restaurant community. I feel all restaurants should have the same opportunity to survive equally. We have already lost one restaurant. Let's work together to keep the remaining businesses profitable.

Respectfully, Ann Reichle.”

Ms. Reichle stated that at the Council meeting the only responses she got was from Law Director Bemmer who said the only thing that concerned him was the ADA parking. The Mayor and Fire Chief answered that they could lay a hose from Orchard through to the back of the building if there was a fire. Since last week’s Council meeting, she observed the Fire Chief on site the very next morning with several other firefighters measuring everything in the back of the building. Subsequently all tables were removed from the front patio and the beginning of this week the handicap parking was reinstalled on the newly poured pad. A customer was actually parking there as she noticed this. All picnic tables were moved to the back of the lot; tables were then replaced on the patio within several days and they are actually full tonight as people are dining there. She is truly beside herself as a member of our downtown business community is contributing to the potential shut down of our restaurant community again. She was on a webinar this morning with some very well known Ohio Restaurant Association members who stated that the county health department’s are now capable of exceeding the government’s recommendations and can shut down their own county if businesses are not abiding; individual restaurants liquor licenses can be taken from any establishment that is not complying repeatedly. She stated lets not be the leaders in either of these ways.

Mr. Carpenter stated that as this was not a part of our original agenda, he does not feel qualified to comment. Mr. Thompson indicated that this is under other business. Mr. Thompson stated that the biggest concern he has is the Commission does not have any authority on these things; that’s not our power but it is the building department’s and that is what they should be doing. If there are violations or there are things like the Peto’s coming before us tonight for the riparian setback variances that should be done by the building department. Mr. Carpenter stated that there are building department issues, health department issues, and issues with the owner of the building itself but all of this is outside of our jurisdiction. Mr. Thompson replied correct. If it comes to us, we have to rule on it but right now it hasn’t come before us with any violations. There were parking restrictions that were made when that application was made to use that as a restaurant which was quite a long time ago because that was before it was Gibbs. At that time, it was the junction and the parking restrictions were set up which is all in the minutes that could all be pulled out, it would note where the parking was going to be. As he remembers it the parking was off of Orchard in the gravel parking lots back there because Clint Williams brought that before the board and that’s where those were set up on Mill Street and the two parking lots behind Orchard. At that time there was no outdoor dining but he does know that the board did allow outdoor dining but we did not set the number of tables or anything like that. Again we would pass that but the building department is the one that would need to enforce that. So if we said that we would only allow 20 people or 20 chairs or five tables with four that would then be enforced by the building department to comply with what the board set up. He believes that the ADA would have to be set up and that would have been in the plans and they certainly have to comply with that. Anytime you take away a parking spot that is handicapped it has to be replaced that should have been done before they did the outdoor cooking arrangements. Again, he will fall back to the administration and building department that’s why we have a building department. Previously the building department was very active with this board but that’s not something that has been happening in the last

three, four or more years, the building official has only been at one of these meetings and prior to that the building department was here at every meeting. When he was on City Council and the Council liaison which is going back six years the building department official was here to represent the administration in issues as they came up or would say this is what the code says and ask what the board wanted to rule on. The board has discretion to interpret the code and that's the purpose; if you look back in the Charter the purpose of this Commission is to interpret that code so we can interpret the code and put down what we believe the interpretation is but it still goes back to the building department to enforce.

Ms. Reichle stated that she has sat through probably 180 hours of Planning Commission meetings and heard things come before you for issues outside of our code. What she does not understand here is erecting a structure in our historic district that she can find anywhere allowable in our code and why it was not sent back to Planning Commission for a variance, she does not understand. Mr. Thompson replied that he does not know. Ms. Reichle asked what recourse is there for this. Mr. Thompson replied that he does not have an answer. Ms. Reichle asked who would be responsible, would the building department be responsible for allowing a structure to go up. Mr. Thompson replied that the building department can issue citations this Commission does not have the authority to issue citations. Ms. Reichle replied that they are not issuing citations because they are on the other side of this so the building department is putting up a building that is not per code. Mr. Thompson replied right and believes the only recourse would be legal action against the city for not enforcing its own ordinances but that is not a course he would want anyone to take but does not see any other option. Ms. Reichle replied that she loves our historic district downtown and this isn't our business. She thanked everyone for their time.

APPROVAL OF MINUTES – Mr. Thompson moved to approve the minutes of June 3, 2020, as written; Mr. Fenderbosch seconded. Poll: 5 ayes; 0 nays; 1 abstain (Hawkins). Motion carried.

Mr. Thompson moved to **approve** the minutes of June 17, 2020, as written; Mr. Munteanu **seconded**. Poll: 5 ayes; 0 nays; 1 abstain (Fenderbosch). **Motion carried**.

ADJOURNMENT: Mr. Fenderbosch moved to **adjourn**; Mr. Munteanu **seconded**. Voice vote: 6 ayes; 0 nays. **Motion carried**. Meeting adjourned at 8:43 p.m.

Planning & Zoning Commission Clerk

Date

Planning & Zoning Chairman

Date