



CITY OF OLMSTED FALLS
PLANNING & ZONING COMMISSION
MINUTES
JUNE 7, 2017
7:30 PM
COUNCIL CHAMBERS

Commission Members Present : Brett Iafigliola (**arrived at 7:45 p.m.**), Bob Sculac, Michelle Hawkins, Gary Pehanic, Fran Migliorino, and Tony Budak.

Others Present: George Smerigan, Gregory M. Sponseller, Law Director. Audience: 9

Vice-Chairman Pehanic called meeting was called to order at 7:35 p.m. Mr. Pehanic administered the oath.

1. Planning & Zoning Case # 09-2017 - A request made by Craig Allenbaugh, owner of 8447 Columbia Road, PP# 281-31-008 for a variance to Section 1270.10(f) to permit a 24x24 gravel parking area off of the existing driveway in lieu of the required paved surface.

Mr. Allenbaugh indicated that he was attempting to put in a turn-around area so that he did not have to back out of his driveway onto Columbia Road, which he has already done. He was unaware that a permit would be needed because every house on Columbia has a turnaround. He moved into the property November of last year. Mr. Pehanic inquired as to how Mr. Allenbaugh was advised that a variance would be needed. Mr. Allenbaugh indicated that the city contacted him to inquire if a permit was issued.

Mr. Pehanic read into the record the City Engineer, Don Sheehy's email dated June 1, 2017 (see attached). Mr. Pehanic stated that there is some concern on the part of the city engineer as to what was built. There is also a statement in the application that the applicant is proposing in the future to put concrete in this area. Mr. Allenbaugh stated that the concrete will be expensive and received estimates in the amount of \$4,000, and at this point he is unable to pay for that expense. He does not see the gravel tracking out onto the roadway. He used a finer gravel on top so that the area would be packed down. The water will be no different if there was grass in this area. Mr. Pehanic indicated that he does agree that the water will seep through the gravel into the dirt. He asked when Mr. Allenbaugh decides to install concrete he will apply for a permit and follow the guidelines. Mr. Allenbaugh indicated he would and that he has already been approved to widen the driveway area.

Ms. Migliorino indicated that the application indicates that he would build a 20x20 foot area but in the skematic it states 24x24. Mr. Allenbaugh indicated that he explained that he would make the area smaller because only 33% is allowed. Ms. Migliorino asked if the applicant would be making the concrete area 24x24 or 20x20. Mr. Allenbaugh indicated that he would make the area the size he is permitted.

Mr. Smerigan stated that the code does not permit the applicant from having a turnaround but the code does require than any improvement has to be paved either concrete or asphalt. The applicant has indicated that the gravel was used because he did not have the funds for the pavement. The second issue is that there is a limitation as to how much of the front yard is permitted to be paved. He stated that if the Commission grants a variance for the gravel, you will either grant the variance for the area to be gravel forever, or, some sort of time limitation

needs to be placed on the approval. The need to make this paved area 20x20 is due to the percentage of area permitted, in a front yard, to be paved. Ms. Migliorino would like to know what sort of time limitation would be agreeable to the applicant. Mr. Allenbaugh indicated that six months would be fair. Ms. Migliorino asked what the Commission's position would be if the area was not paved within six months. Mr. Smerigan indicated that the applicant would then be in violation of the variance and the city would need to take action through the building department.

Mr. Pehanic moved to **approve** the request by Craig Allenbaugh at 8447 Columbia Road, PP#281-31-008 for a variance of Section 1270.10(f) to permit a 24x24 gravel parking area off the existing driveway in lieu of the required paved surface for a period of six months at which time the applicant will need to fulfill the requirements of the code and put in a 20x20 concrete or asphalt paved surface; Mr. Budak **seconded**.

Mr. Smerigan indicated that a date should be established so there are no questions. He suggested a date in the spring during months that are reasonable to lay concrete.

Mr. Pehanic **modified** his motion to state that April 1, 2018 will be the date at which time the applicant needs to put in the concrete surface; Mr. Budak **seconded**. Poll: 5 ayes; 0 nays. **Motion carried.**

2. **Planning & Zoning Case #06-2017** – A reconsideration of the Tree Preservation and Management Plan on behalf of "Busby Creek" 52 acres at 7820 Mapleway Drive made by Planning & Zoning Commission on May 3, 2017.

Kenneth Fisher indicated that he is the attorney for Olmsted Industrial Park, LLC the owner of the property located at 7820 Mapleway Drive.

Mr. Iafigliola indicated that he would like to state for the record the procedure that will be followed this evening in order to prevent any confusion. We will allow the applicant to speak, the Commission will do our best not to interrupt, if there is a clarification question but by in large we will permit Mr. Boyer and Mr. Fisher to speak. After, we will get comments from Mr. Sponseller. After all comments are received the chair will entertain a motion to reconsider the May 3, 2017 decision, if passed, the Commission will then consider further testimony. If no motion is made, the May 3, 2017 will stand and the record will be complete.

Mr. Fisher stated that the property itself is 52 plus or minus acres and was rezoned per ordinance 49-2016 on February 28th of this year to mixed use traditional neighborhood district also known as MUTND. In April of 2017 a tree preservation and management plan was submitted to Planning & Zoning Commission which fully complied with the letter and intent of recently amended Chapter 1218 per Ordinance 54-2016 adopted by City Council on February 28, 2017, including without limitation, the actual tree canopy tree preservation area of 25%, which in this instance calculates to 13 acres, as required in the property as zoned MUTND. At the Commission's meeting on May 3, 2017, which he client did not attend and was apparently advised not to attend, there was a change made to the plan as submitted and the area of the canopy preservation area was increased from the 25%, that is required in the ordinance, to 38%. In essence from 13 acres, plus or minus, to 19.7 acres, plus or minus, in violation of

Chapter 1218. The authority that the Planning & Zoning Commission exercises comes from the Charter, Section 10.06(a), as well as the Codified Ordinance adopted by Council 1206.03, which both detail the specific powers and duties of the Commission. The fact is that the Commission, with all respect and he knows each member takes their duty seriously, exceeded its authority based upon the Charter, based upon the ordinance, and specifically the interpretation of Chapter 1218 by expanding the canopy from the required 25% to 38% from in essence 13 acres canopy to 19.7 acres. There is nothing in 1218 that provides or gives the Commission the legal authority to unilaterally amend a fully conforming tree preservation and management plan which must be, in this instance, approved as submitted, since it complies fully with 1218. To quote 1218.05(a)(2) “canopy replacement – all new developments shall preserve, relocate, or plant trees on the site in order to create a future tree canopy cover in accordance with the following schedule ... (d) MUTND 25%.” The plan as submitted does comply it does not say 24% or 26%, it says 25%. The question then becomes does the ordinance establishing the authority of this Commission 1206.03 and/or 1218 give this Planning & Zoning Commission the authority to revise the plan as submitted when it fully complies with the 25% canopy cover. He believes as a matter of statutory construction is cited in his letter to Mr. Sponseller, he cites *Gray vs. Walgreen Company* decision when the meaning of a statute or in this case an ordinance is clear and unambiguous, the statute, or in this case the ordinance, must be applied as written. He stated that Mr. Smerigan mentioned earlier this evening that there was authority that was exceeded in what an applicant did, in essence, what applies to the public also applies to the municipality. Again, if it was the legislative intent of Council to grant this board and commission authority, in any specific instance, it either has to come from the Charter, 1206.03 or the ordinance itself, in this case 1218, which we believe has been violated by the revision that was made to the tree preservation and management as submitted by the applicant. At this point in my client’s career this is his focus, that this property, he has owned for several years be developed. The 6.7 acres of additional canopy coverage prevents him from developing the property. The point he is making is that the ordinance itself requires 25%, certainly not 38%. The tree preservation and management plan was lawfully, properly and in full compliance with 1218 and should have been approved on May 3, 2017, without the increase that his client objects and prevents him from the lawful use of his property.

Willis Boyer, 10 Farwood Drive, Moreland Hills, Ohio, asked the Commission to think back 17 years in their lives, this is how long he has been working to develop this property. He came in originally under the industrial zoning that was on the property when he acquired it with the intention of building a light industrial park. He submitted plans and was greeted with public hearings where residents, mostly from Cranage Road, loudly protested that they didn’t want to see that property developed and demanded a 100 foot buffer, one individual, David Gierer, who lived on Cranage stated that we demand consentions from this greedy developer. He stated that some of what the Commission hears from the Cranage Road residents is the residual of this gentleman. He came back to the city several years later with a plan for residential use on the property and would be more conforming to the residents on Cranage. We proposed a plan with D-3 zoning, which was identical to Cranage Road, and again we were greeted with an outcry from the residents. One individual from Evergreen Packaging was in attendance at the behest of the former Mayor to protest the development of the cite under any circumstance, because they did not want industrial and strongly objected to residential. Through the Board of Zoning Appeals he requested a D-4 zoning which provided for multi-

family housing, which was denied. He then appealed to City Council, which was also denied, he was then forced to file an action against the city, which he eventually won in 2014 after appeals, 14 years after he first approached the city. During this time he paid the taxes, completed necessary maintenance, and paid for sewer assessments. He stated that in May of 2016 City Council approved an ordinance based on his suggestion in December of 2014 that the city consider a different type of use for this area besides what was provided in the existing code and that concept is traditional neighborhood development. He did a presentation to the Planning Commission, Board of Zoning Appeals, Architectural Board of Review and City Council. He stated that Mr. Smerigan informed him in January after the December presentation that City Council would be willing to entertain a proposal for an MUTND, which he worked on with Mr. Smerigan. Mr. Smerigan submitted this proposal in July of 2015 along with Mr. Boyer's plan. He stated that the Commission decided to hold a public hearing on September 9, 2015. Unfortunately Mr. Iafigliola was not present but Mr. Klimchak had expressed enthusiasm for the concept and allowed the proponents to speak first. By the time he was able to present the plan during the public hearing he had run short on time and was not able to make a full presentation. He had heard nothing from the City until May of the following year when he had learned that a new revised MUTND ordinance was drafted and passed in May of 2016. On February 28, 2017 his property was rezoned pursuant to his request into the new MUTND. At the same time, the city passed a revision to the tree preservation and management chapter 1218, which provided that larger properties in the MUTND district must have at least 25% of the land area in tree canopy, as its defined. Again, working with Mr. Smerigan he developed a plan with his landscape engineers and submitted his plan to the city which was the subject of the May 3rd meeting. He stated that he spoke with Mr. Smerigan before the meeting and neither of them envisioned any controversy because his plan conformed to the code. He stated that there is no provision in Chapter 1218 for any variation on the 25% requirement. It is a black or white issue. If you submit a plan and it conforms to the code, we believe the Commission should approve it. If it does not conform then the Commission can state those reasons. In his view he has done everything he could to conform to the code. It has been 17 years; he had a buyer for the land last summer but was stopped from cutting the trees at the time. He has a state certified forest and has sold the trees, which he has a right to do. There is approximately \$800,000 to \$1 million dollars worth of equipment that goes onto the property to cut the timber. This cannot be completed in stages as the equipment is difficult and expensive to move and operate. If the Commission chooses not to reconsider this plan in his favor he would ask the Commission to state what factors solely pertinent to his property, not any neighboring property, and consistent with the law would prevent him from timbering the entire site, cite the legal authority to deny the plan, the legal authority for the 100 foot buffer, and what purpose the 100 foot serves as it pertains to his property. There may be residents along Cranage Road that have backyards that merge with his woods, but that is not justification to prevent him from proceeding with his development. He stated that the land has to get the land ready for development, grading needs to be done, perhaps provide drainage, planting in hay to dry it out and help hold the soil, he would like to get this completed as soon as possible this year. This project has been held up for one reason or another for all too long. He would ask the Commission to read Chapter 1218 carefully and reconsider the approval of his tree preservation plan.

Mr. Sponseller stated that the fundamental question of the Commission's authority is answered in this regard: very significantly in November the voters approved Charter changes. The

significant charter change related to the elimination of the Planning Commission, the Board of Zoning Appeals and the combination of these duties into one body. As a result, the Charter provision encompasses this new body. Nonetheless there are administrative provisions in the code that still need to be consolidated and updated for purposes of continuity and clarity. It is clear that the charter amendment combined the duties of the Planning Commission and Board of Zoning Appeals into one entity the Planning & Zoning Commission. One of the purposes of combining these boards is to allow a streamline process whereby an applicant can get relief relatively quickly rather than moving through numerous boards. His point is that the authority of the former Board of Zoning Appeals included granting an application, denying an application, or granting an application with modifications and conditions. The critical aspect of any modification is that it be rationally based so that any conditions that would be imposed upon an applicant, this would be true for any sort of variance of modification of an application, would have to be based on rational basis. The duties of Planning & Zoning include not only looking at the rights of the applicant and the privileges that an applicant has but it also encompasses a review of what the best interests of the city overall, the overall master plan, the impact on adjoining parties; all these factors come into play in the big picture. This is why the law department has concludes that this Commission does have the authority to make modifications, again, so long as they are rational and based upon facts in the record. His understanding is that the applicant does meet the requirements of the new tree preservation ordinance, per say, nonetheless the Planning & Zoning Commission, in his opinion, does have the authority to impose certain modifications.

Mr. Sponseller, indicated that if an appeal is submitted to Council, they have the authority to affirm the decision, reverse, or modify. He understands that this has been a difficult situation for the applicant over the years. He also understands the concerns of some of the neighbor's. This body does have an obligation to recognize the rights of a property owner, as well as a duty to recognize the impacts that the proposed plan has on abutting properties as well. Again, in his opinion, as long as there is a rational basis in the record to support a modification of the application as submitted, the Planning & Zoning Commission has the authority.

Mr. Iafigliola asked if the applicant was willing to negotiate any of the points made in the motion. Mr. Boyer stated that he has a problem. He would like to know what the purpose of the amendment is; who does it serve; does it serve the property owner or someone else. If he understood the purpose of what the motion was trying to do and assure ourselves of the legality he might be able to compromise in some way. As it stands, we have already stated that the choice of 100 foot buffer is not present in the code, that is something that came from the Commission, and reading Chapter 1218 he does not frankly understand how a 100 foot buffer or any buffer at all can be requested under 1218. He asked what problem was trying to be solved.

Mr. Iafigliola stated that the previous motion reads "the do not clear limits, which shall not be confused with the future buffer limits shall not encroach within 100 feet of the northern property line in the southern direction and the rest of the drawing remains as is." He stated that one of the issues he had with the drawing was there were no dimensions provided indicating where the do not clear limit would be. The area along the northern border is of a sensitive issue, the motion was written because of the concern of the irreversibility of the tree clearing, which should not be confused with a buffer or setback. When he asked earlier if there were any other

contentions other than the legality of it, and he is now speaking on behalf of himself, essentially what the applicant is asking the Commission is if the Commission views itself in error in a legal factor, which he is not qualified to answer. The reason he asked if the applicant was willing to negotiate is because when he previously walked the property Mr. Boyer had indicated that it was a non-negotiable issue. Mr. Boyer indicated that he is willing to negotiate but he wants to know what the purpose of the 100 foot buffer is and where it was derived from as it could not be located in the code. It seems to be capricious and arbitrary to just pick a 100 foot line. His plan was in fact too small to be read but he instructed the timbering company to stay at least 10 feet of the property lines which is why they were marked. He wanted to make sure that no cutting was done on anyone else's property but that has nothing to do with a buffer; the buffer would be created later when the development comes in. He would like to challenge the thought that cutting trees is irreversible, quite the contrary, cutting trees is quite reversible. He has planted hundreds of trees in his lifetime and working as a developer he avoids cutting trees and tries to preserve them. It is difficult, and what you end up doing is cutting the tree down later because it dies if you develop near it. It is better to cut the trees down and plant new trees according to a development and landscaping plan; create managed or planned buffers and the trees will grow; and if cared for properly they will be very healthy trees. So, in his opinion it is not irreversible when you cut trees. We don't see anything in the code that provides for a buffer like this or a 100 foot strip which is why he is mystified when asked if he would negotiate; what are we negotiating against and on behalf of whom are we negotiating. He asked if the city wanted the buffer for itself or do the residents demand it? We certainly do not want it and have explained why. We might negotiate if the city wants to extract some blood from us, well maybe there is some area we can negotiate on, if that is the city's goal. We have had 17 years extracted from our lives and pile on will we negotiate; we can't on this particular case because of the need we have on the property and what we have to do with the trees to clear. We have to have to get back in there and survey the property; grade it; put in some drainage for flood control; we need to plant grass in order to dry out the property. There is more than just trees involved.

Mr. Iafigliola stated that the applicant's presentation has been concluded and he would entertain a motion to reconsider the May 3, 2017 decision.

Mr. Sculac moved to **reconsider** the Planning & Zoning Commission's decision on May 3, 2017; Ms. Migliorino **seconded**. Poll: 3 ayes; 3 nays (Sculac, Pehanic, Iafigliola). **Motion failed**.

Mr. Sponseller stated that he would ask that the Commission consider a motion to confirm and ratify its decision of May 3, 2017, which will be a final order from this body dated today.

Mr. Iafigliola moved to **re-affirm** the decision of May 3, 2017 with respect to application #06-2017; Mr. Sculac **seconded**.

Mr. Fisher stated that the sections Mr. Sponseller quoted regarding the Commission's authority relies upon the Board of Zoning Appeals authority for area variances. He mentioned impact on surrounding properties which involves the Ohio Supreme Court case *Duncan v. Middlefield* and he acknowledged that this Commission does attain that authority as it relates to certain applications, but this is not a variance application. There is nothing in 1218 that allows for the

analysis that would include impact on surrounding properties or any other criteria that applies to area variances. He stated that Chapter 1218 is limited to a 25% canopy, which again, for the record, and if anyone disagrees he would like it stated. The application and the plan as submitted does provide for the 25% canopy and that is the issue we will wrestle with moving through this administrative process. If someone believes that the 25% canopy requirement was not met, he would ask that they state so publically.

Mr. lafigliola asked if the evidence to the Commission Mr. Fisher is referring to is his letter dated May 31, 2017. Mr. Fisher replied that was correct as well as the plan submitted. Mr. lafigliola indicated that there are no dimensions on the plan, and this letter states "the planted area will total 14.6 acres, this exceeds the code requirement of 25%; 13 acres or about 12% more than required by code." He asked if that was what Mr. Fisher was referring to? Mr. Fisher replied yes. Mr. lafigliola indicated that Mr. Fisher is asking for anyone to say its incorrect; but, how would the Commission have any basis to agree or disagree with that statement. Mr. Fisher stated that the fact that we pretty much know the property is 52 acres and its clear that the canopy is 13 plus acres; if you do the math it is clear that it is 25%. Mr. lafigliola stated that he will take Mr. Fisher's word on the calculations but Mr. Fisher is asking the Commission to state publically that we are incorrect and he believes that is an unfair question as the Commission does not have any way to defend or approve. Mr. Fisher stated that is the threshold issue, with respect to our position. He stated that Mr. Smerigan is an extremely skilled IACP Certified Planner representing a number of cities and he has known him for decades; he is an expert and if there was believe that we did not comply with the 25% canopy we have a right to know. Mr. lafigliola stated that he is not disagreeing with Mr. Fisher's point and putting the Commission on the spot is a little unfair and ask to prove it.

Ms. Migliorino stated that she has a copy of a letter from Lanigan Engineering, and it states in the letter that the canopy is 25%; 13 acres or about 12% more than required by code. So, do we believe the engineering company that Mr. Boyer contracted with to do the estimate or do we not and that would be the validation. Mr. Fisher stated that this indicates that there is no disagreement on the record; with the assertions made by the engineer with the submission. If Mr. Smerigan believes otherwise he would ask that he explain.

Mr. Boyer stated that the engineer made the calculations using his CAD system and was instructed by him to design a plan that would conform to the code or exceed it. He then wrote his report and represented that the plan did slightly exceed the requirements of Chapter 1218. He stated that in cases where the previous BZA made amendments or changes to plans it was in response to variance requests. He has not requested a variance and does not believe, for that reason, that amendments are appropriate. We are simply asking that the Commission, in its authority, to approve a tree preservation and management plan as required by the code, which is not the same as a variance request.

Poll: 6 ayes; 0 nays. **Motion carried.**

Steven Hoca, 26493 Cranage Road, stated that he lives dead center of the woods. The 100 foot buffer where does that extend and how does Mr. Boyer figure 13 acres. Is that what it adds up to when you do the math. Mr. lafigliola stated that as the motion reads whatever the southern property line the do not clear limit, which is not a buffer or setback, the do not clear

limit is 100 feet from Mr. Hoca's property marker south. Mr. Hoca asked what does he mean by 13 acres. Mr. lafigliola stated that he cannot answer that question as he does not agree. Mr. Hoca asked if Mr. Boyer can build on wetlands based on the soggy soil. Mr. lafigliola indicated that Mr. Boyer has identified the riparian and wetland areas in green, again, those are only speculations on his part as they are unlabeled.

Mr. lafigliola asked if Mr. Hoca if he understands what has transpired. Mr. Hoca replied yes, Mr. Boyer wants to get a possibility to build renege on what he proposed. Mr. lafigliola stated that was incorrect. He believes everyone is reading more than is necessary into what has transpired. He stated that once the trees are removed, you can pretend that they can be planted back, but not in his lifetime. Again, it is the applicant's right to do so, but, the Commission has established the 100 foot as the limit until such a time that a better plan comes forward, which has not happened as of yet. There is nothing that states he cannot clear the trees or that the 100 foot do not clear area is permanent, we are simply saying for his tree preservation and management plan as it stands today, he cannot clear that line. Mr. Hoca indicated that his concern, as well as a lot of residents on the south side, is that when you cut the big oaks down it will create a water problem because there will be water. Mr. lafigliola stated that it the applicant's right to cut down the trees as well as the residents right to keep his water off their property. But, essentially the trees do not suck up as much water as people think they do. Mr. Hoca stated but they do a good job of keeping the water level so it is not soaked. Ms. Migliorino indicated that the applicant will clear cut the property and put down several layers of hay, which are water barriers, along with installing drains.

COUNCIL LIAISON REPORT: Mr. Sculac stated that the roof replacement is almost complete on the administration building. The sewers are moving forward. The Board of Equalization met last week and heard the objections and Council is now awaiting their report. He stated that there were two issues that arose at a special Council meeting which are that a developer in Columbia Station is interested in annexing 84 acres from Columbia Station to the City of Olmsted Falls and from what he understands the developer will be filing a petition with Lorain County. The other issue is relative to the privately owned bridge on E. River Road. The bridge and road are privately owned and Mr. Sponseller has been working diligently to resolve the issue with residents covering the costs of replacement. There is an inability to get safety vehicles across the bridge and into the area in a timely fashion.

OTHER BUSINESS: Mr. lafigliola thanked everyone for attending tonight's meeting and understands that it is an important issue and believes that to the residents it feels as if this issue will never begin or equally never end. He would like to remind residents, whether they speak or do not, from his perspective it is well received and noticed.

Tom Shepka, 9058 Columbia Road, stated that he would ask that the Commission to keep in mind that Mr. Boyer's argument for 1218 and the basis for his argument is wrong. He is speaking on behalf of the Shade Tree Commission and they do not determine his do not clear area. When we received a copy of the plan it was scaled out to 25 feet and we protected the critical root zone of the trees on the adjoining property. The 100 foot area had nothing to do with 1218 and Mr. Boyer's basis for using 1218 is false. Shade Tree approved this plan in good faith to get him started and not hold him up. He did not use the tree canopy method but it was reasonable to get the program started. He counted things in his percentage that you can't use

and used the wrong formula to come up with his number but, in good faith we approved the plan and recommended it to the Commission. Mr. Iafigliola asked if Mr. Shepka supported the plan as submitted or the Commission's modification. Mr. Shepka replied that the Shade Tree Commission supported the plan as submitted because it protected the critical root zone of the property owners on Cranage Road. Mr. Iafigliola asked if he supported the modification by Planning and Zoning Commission. Mr. Shepka replied that he did not have a problem supporting the modification but restated that the modification is not part of the Chapter 1218 argument it is an after-thought. Chapter 1218 covers the critical root zone only which is 25 feet based on a 50 foot mature tree. Mr. Iafigliola stated that during the presentation Mr. Boyer did not state 25 feet and that he believes it was 10 feet. Mr. Shepka indicated that there was no measurements on the plan but was scaled out to approximately 25 feet which protects the Cranage Road property trees.

APPROVAL OF MINUTES: *None*

ADJOURNMENT

Mr. Iafigliola moved to **adjourn**; Mr. Budak **seconded**. Voice Vote: 6 ayes; 0 nays. **Motion carried.**

Meeting adjourned at 9:11 p.m.

Planning & Zoning Commission Clerk

Date

Planning & Zoning Chairman

Date