

Chairman Joe Weinstein convened the Board of Zoning Appeals meeting at 6:00 p.m. Present were Lee Kleinbeck, Dave Robinson, Bill Daniel, Bob Juve and Joe Weinstein. Chris Esker and Russ Hose were absent. Kim Ferencz, Zoning Inspector and Sue Schultz, Assistant Zoning Inspector were present. Weinstein welcomed Kim Ferencz as the newly appointed zoning inspector.

NEW BUSINESS:

PUBLIC HEARING * 6:00 PM
APPLICANT: PETER PAJEVIC
LANDOWNER: PETER PAJEVIC
LOCATION: 195 S MEDINA LINE RD
VARIANCE: ART. IV, SEC. 416-3 B. MINIMUM LOT WIDTH AT THE MINIMUM
SETBACK LINE
ZONING DISTRICT: R-3A

Weinstein opened the public hearing.

Weinstein swore in all person who wished to speak.

Weinstein swore in Ferencz for the evening.

Ferencz stated that the applicant was proposing a lot split but cannot meet the requirement of the property being 150 feet wide at the minimum building setback line. The applicant is proposing the lot to be 60 feet wide for a distance of 406 feet before the property opens to 274 feet wide.

Question #12 from the Variance application: Please explain the practical difficulties or unnecessary hardship which justify this application for a variance: "This will permit the owner of all beneficial use of the land".

Ferencz entered into the permanent record the complete file, the Zoning Resolution & Map and the Comprehensive Land Use Plan.

Mr. Pajevic stated that they would like to split the property so they could build a home in the rear.

Weinstein asked that when the property was purchased if they knew that it was a single-family lot? Mr. Pajevic stated that it was five acres and he knew that it was a single-family lot.

Mr. Pajevic stated that they have children and they would like to build a home in the back for themselves.

Juve asked what use do you expect from the lot split? Mr. Pajevic stated that they wanted to build another home.

Robinson asked for clarification on their response to question #12 on the application. Please explain the practical difficulties or unnecessary hardship which justify this application for a variance. "This will permit the owner of all beneficial use of the land." Mr. Pajevic stated that the way the property is set up, the parcel is large and it is wooded in the rear and we would like to build another home.

The adjacent lots have single-family homes on them.

Weinstein stated that the adjacent landowners could request the same lot split.

Mr. Pajevic stated that he didn't quite understand the zoning requirements when he purchased his home. If the lot split was approved he would have a 2-acre lot and a 3-acre lot. The septic has been approved.

Robinson asked if the lot could be split and still meet the zoning requirements? Mr. Pajevic stated that he would only have 274 feet of frontage so it can not be split without a variance.

Mr. Pajevic stated that his neighbors do not have a problem with this request. The Swan Lake subdivision is to the south of his property and they have small lots.

Weinstein stated that the landowner knew that this was a single-family lot when the property was purchased. There was a single-family home on the lot and we only allow one single-family home per lot. Weinstein stated that when you purchased this lot, it contained one single-family home and met Zoning. You then come to the Board of Zoning Appeals for a variance to split the property so that you can build another home. Now you come to the Board of Zoning Appeals and say that you have a problem because you want to split the property. Weinstein stated that the Board is bound to a legal system as to whether there are practical difficulties. Weinstein stated that the landowner is creating his own problem. This is different because the landowner already has beneficial use of the property. The landowner wants to maximize the beneficial use.

Mr. Pajevic stated that he was not changing the area. It is still residential.

Mrs. Pajevic went before the Board and was sworn in. Mrs. Pajevic stated that when their children were older they would split the property so another home could be built.

STANDARDS FOR CONSIDERATION OF PRACTICAL DIFFICULTY FOR AN AREA VARIANCE:

1) Whether the property in question will yield a reasonable return or whether there can be beneficial use of the property without the variance: Mr. Pajevic stated that the land would not be used and the Township would not receive the taxes. The back of the property is wooded and there would be no use of it. Weinstein stated that the property is currently not split and there is use of the property.

- 2) Whether the variance is substantial: Mr. Pajevic stated that it is a minor change. Weinstein stated that given the fact that there is a buildable lot there that meets zoning and now you are requesting a variance to build another home, it is substantial.
- 3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance: Mr. Pajevic stated no.
- 4) Whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage): Mr. Pajevic stated no.
- 5) Whether the applicant purchased the property with knowledge of the zoning restriction: Mr. Pajevic stated no, not the way it was stated.
- 6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance: Mr. Pajevic stated no. Weinstein stated that to the extent that there is a predicament, the predicament arises from the fact that you want to do the lot split.
- 7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: Mr. Pajevic stated that justice would be done by granting the variance. The neighbors don't have a problem with this.

Weinstein asked for additional comments from the floor. None were offered.

The Zoning Department had no additional comments at this time.

Kleinbeck moved to close the public hearing, Juve, second. Weinstein called for the vote. Robinson, aye, Juve, aye, Kleinbeck, aye, Daniel, aye. The motion carried.

Robinson stated that the Board has approved flag lots in the past. This is not unique but it doesn't mean that we have to approve this. Considering the area and the size (R-3A) he is requesting just one additional house and this is appropriate.

Weinstein stated that he was concerned. This is rewriting the ordinance. I don't think, in this case, that the practical difficulties standard is met. Weinstein stated that he doesn't think in this case that the practical difficulties have been met. I don't think in any case where an applicant is proposing a lot split that they want to do themselves when they are already on a lot that they purchased as a single-family lot fits the practical difficulties test. Weinstein stated that he does not think that we should be putting ourselves in the position where we are relying on things that were done in the past (right or wrong). Weinstein stated that he does not see where this is justified under the practical difficulties test.

Robinson stated that he is very concerned because we have done this in the past. We

have an obligation to do each variance individually. The applicant does satisfy a number of the practical difficulties.

Weinstein disagreed with Robinson's comment about meeting some of the practical difficulties. Weinstein stated that he does not think that they remotely meet the practical difficulties test. Weinstein stated that there is nothing unpractical about that existing lot, that lot is not split today, there is nothing on the existing property that gives rise to practical difficulty.

Robinson moved to approve the request for the lot split with the condition that the applicant agree to put on the deed that there will not be future lot splits from these parcels and contingent on Health Department approval, Juve, second. Weinstein called for the vote. Kleinbeck, aye, Robinson, aye, Juve, aye, Daniel, abstain, Weinstein, nay. The motion carried.

Weinstein stated that he was uncomfortable with the fact that we have misapplied the practical difficulties test with respect to this type of application. Even though we have approved these in the past, and it is unlawful to continue to do so in the future.

Weinstein stated that he will not participate in another one of these applications.

Robinson stated that he was on Weinstein's side, but we have an obligation to look at each application individually. Robinson stated that he followed the test in Duncan vs. Middlefield.

Schultz stated that under the purpose section of the R-3A District, it states: A minimum of five (5) acres is required to establish an R-3A District. At least 75% of the lots must front on a local collector or cul-de-sac street.

Weinstein stated that was his point. The Board just created an R-1 in and R-3A District, which is spot zoning. This is unlawful.

PUBLIC HEARING * 6:05 PM
APPLICANT: DOMINIC & JILL MUSITANO
LANDOWNER: DOMINIC & JILL MUSITANO
LOCATION: 258 S CLEVE-MASS. ROAD
CONDITIONAL: ART. IV, SEC. 421-3 J. SCHOOLS/EDUCATIONAL FACILITIES,
SUBJECT TO SUBSECTIONS 802-2-101, 102, 103, 105, 106, 111 & 117.
ZONING DISTRICT: C-2 COMMERCIAL

Weinstein opened the public hearing.

Weinstein swore in all persons who wished to speak.

Ferencz stated that this application falls under Article IV, Sec. 421-3 J. Schools/Educational Facilities, subject to Subsection 802-2-101, 102, 103, 105, 106,

111 and 117.

Dominic Musitano Jr. stated that they will be doing an (41' x 48') addition for Almost Mom to the rear of the property. The building is currently 2,500 square feet. We will be adding capacity and improving what we have now.

Schultz stated that they currently have a Condition Use Permit.

Weinstein stated that they would be adding to their current Conditional Use Permit.

101. All structures and activity areas shall be located at least one hundred (100) feet from all property lines.

102. Loud speakers which cause a hazard or annoyance shall not be permitted.

103. All points of entrance or exit shall be located no closer than two hundred (200) feet from the intersection of two (2) major thoroughfares; or no closer than one hundred (100) feet from the intersection of a major thoroughfare and a local or collector thoroughfare or two (2) local or collector thoroughfares.

105. No lighting shall constitute a nuisance and shall in no way impair safe movement of traffic on any street or highway; no lighting shall shine directly on adjacent properties.

106. Elementary school structures should be located on a collector thoroughfare.

111. Such uses shall be properly landscaped to be harmonious with surrounding residential uses.

117. All permitted installations shall be maintained in a neat and orderly condition so as to prevent injury to any single property, any individual or to the community in general.

Ferencz entered into the permanent record the complete file, the Zoning Resolution & Map and the Comprehensive Land Use Plan.

Schultz stated that the parking and setbacks will be reviewed during the site plan review process.

Dominic Musitano Sr. went before the Board and was sworn in. Mr. Musitano stated that his son operates Almost Mom and his mother sent me here to make sure everything was going well. This has been cleared by our architect and our builder. It will be a nice addition to Copley.

Weinstein stated that if this passes to let your mother know that it was because of what your father did.

Weinstein stated that if we were to extend the Conditional Zoning Permit to include this

addition would you agree to abide by all of the current Conditions that you currently have to abide by and whatever additional Conditions that may be under the Ordinance. Dominic Musitano stated that he agreed with Weinstein's statement.

Schultz stated that the site plans have not been submitted to the Zoning Department. Schultz stated that she was not sure if the applicant is able to meet 802-2-101.

Weinstein stated that they may have varied from Section 802-2-101 when the business was originally approved.

Kleinbeck moved to close the public hearing, Robinson, second. Weinstein called for the vote. Robinson, aye, Juve, aye, Kleinbeck, aye, Daniel, aye. The motion carried.

Weinstein moved to grant the application, add on and continue the indefinite Conditional Use Permit, subject to all existing Conditions and all Conditions contained in the Ordinance, and with the benefit of any variance that may have been granted in the past, Juve, second. Weinstein called for the vote. Robinson, aye, Juve, aye, Kleinbeck, aye, Daniel, aye, Weinstein, aye. The motion carried.

PUBLIC HEARING * 6:05 PM
APPLICANT: COPELY TOWNSHIP BOARD OF TRUSTEES
LANDOWNER: COPLEY TOWNSHIP BOARD OF TRUSTEES
LOCATION: COPLEY CIRCLE
VARIANCE: ART. V, SEC. 501-5-3 ADVERTISING SIGNS
ZONING DISTRICT: C-3

Weinstein opened the public hearing.

Weinstein swore in all persons who wished to speak.

Ferencz stated that under Art. V, Sec. 501-5-3 Advertising Signs, it states that one advertising sign per property may contain changeable copy. The Township is requesting two signs, one sign would face northwest and the other would face southwest. These two signs would be informational signs for the public, i.e. community functions, Board of Trustees meeting dates, Zoning Commission meeting dates, Board of Zoning Appeals meeting dates.

The sign would not be used for commercial purposes.

Ferencz entered into the permanent record the complete file, the Zoning Resolution & Map and the Comprehensive Land Use Plan.

Schultz stated that the sign structure would be made out of the bricks that were sold for Heritage Days.

Free-standing temporary signs will not be used in the Circle.

Weinstein asked for comments from the floor. None were offered.

Kleinbeck moved to close the public hearing, Juve, second. Weinstein called for the vote. Juve, aye, Robinson, aye, Kleinbeck, aye, Daniel, aye. The motion carried.

Daniel moved to approve the variance as submitted, Juve, second. Weinstein called for the vote. Kleinbeck, aye, Juve, aye, Robinson, aye, Daniel, aye. The motion carried.

The minutes of July 27th, August 24th, October 19th, February 1st, March 29th and April 19th were approved as read.

FUTURE MEETING DATES: May 24th and June 21st.

With no further business to come before the Board, the meeting was adjourned at 6:52 p.m.

Joe Weinstein, Chairman Sue Schultz, Secretary