

July 23, 2008

Chairman Joe Weinstein convened the Board of Zoning Appeals meeting at 6:00 p.m. Present were Paul Wilkerson, Dave Robinson, Russell Hose, Robert Juve and Neal Call. Bill Daniel was absent. Sue Schultz and Matt Springer, Asst. Zoning Inspectors were also present. Chairman Weinstein introduced Matt Springer as a new Assistant Zoning Inspector.

NEW BUSINESS:

PUBLIC HEARING

APPLICANT: **CICOGNA SIGN COMPANY**

LANDOWNER: **GETGO PARTNERS SOUTH – ECHO DEVELOPERS**

LOCATION: **4072 MEDINA ROAD**

ZONING DISTRICT: **C-5 COMMERCIAL**

VARIANCE: **REQUESTING L.E.D. PRICE PANELS**

Chairman Weinstein swore in all persons that wished to speak.

Chairman Weinstein swore in Asst. Zoning Inspector Schultz.

Chairman Weinstein opened the public hearing.

Ms. Schultz stated that this was a similar request that was granted for the Circle K gas stations on Cleve-Mass. and Copley Road. The applicant was requesting double sided (35 square feet each side) L.E.D. price panels.

Question #12 from the Variance application: Please explain the practical difficulties or unnecessary hardship which justify this application for a variance: "Having better visibility and making it easier to read going from three gas prices to one".

George Dragon from Cicogna Sign Company representing GetGo addressed the board.

Mr. Weinstein stated the following that similar applications have been before the Board and the Zoning Resolution is in the process of being updated.

Mr. Weinstein asked Mr. Dragon if the message of the proposed signs are of similar size to the existing price panels? Mr. Dragon responded by saying "yes."

Mr. Weinstein asked Mr. Dragon if these were LED signs? Mr. Dragon responded with saying "yes."

Mr. Weinstein asked if the sign had a single price display. Mr. Dragon responded by saying "yes."

Mr. Weinstein asked if the price display would be centered? Mr. Dragon stated the price would be towards the top to give proper visibility.

Mr. Weinstein asked if the sign would flash? Mr. Dragon said that the sign will not flash and this will make it easier for employees during the winter months.

Mr. Weinstein asked if other Board Members had any questions. No questions were asked.

(No motion to close the public hearing was made).

Mr. Weinstein made a motion to approve that request as submitted given the fact the Board of Zoning Appeals is recognizing the change in technology, stating that this is effectively the very same thing that GetGo has now. Mr. Robinson second. Mr. Weinstein called for the vote. Mr. Robinson, aye, Mr. Hose, aye, Mr. Wilkerson, aye, Mr. Juve, aye. Motion carried.

PUBLIC HEARING

APPLICANT: **AKRON VETERINARY REFERRAL & EMERGENCY CENTER**

LANDOWNER: **R & L FERGUSON**

LOCATION: **1321 CENTERVIEW CIRCLE**

ZONING DISTRICT: **I-1 INDUSTRIAL**

VARIANCE: **ART. III, SEC. 302 Q. ACCESSORY BUILDING & ART. IV., SEC. 430-2 H.**

Chairman Weinstein opened the public hearing.

Chairman Weinstein swore in all persons who wished to speak.

Ms. Schultz stated that this Use is similar to the application that was approved by the Board of Zoning Appeals for the animal hospital on Cleve-Mass. Road.

Ms. Schultz gave the following background. On September 26, 2007 variance requests were granted for Metro Veterinary Hospital located at 1053 S. Cleveland Massillon Road for the location of a portable MRI Unit to be detached from the principal building and be placed on the lot line of properties owned by Betron. Ms. Schultz stated that this is zoned I-1 Industrial.

Ms. Schultz went on to say that a previous Zoning Inspector advised Akron Veterinary Referral and Emergency Center that they were also permitted to have a MRI unit at 1321 Centerview Circle.

Ms. Schultz stated she received a request to park and operate an MRI trailer at this location. The trailer was to be stored at the rear northeast portion of this property on a new concrete pad, adjacent to the existing parking lot.

Ms. Schultz also said she had a conversation with Eric Betz from The Brewer-Garrett Company and told him that trailers were not permitted at this location and a certified letter had been sent stating this.

Ms. Schultz stated that since that time she had a conversation with Kim Durusz who is also from The Brewer-Garrett Company.

Ms. Schultz read Question #12 from the Variance application: Please explain the practical difficulties or unnecessary hardship which justify this application for a Variance: "In response to Item 12, the denial of this variance request will result in a practical difficulty and unnecessary hardship to the services provided by the Akron Veterinary Referral & Emergency Center. An area variance from Section 302 Q is requested to allow for an accessory detached building to be placed on the property as a compliment to the veterinary center. The variance requested is not substantial, will not alter the essential character of the neighborhood and will not adversely affect the delivery of governmental services. The spirit and intent behind the zoning would be observed and substantial justice would be done by granting the variance since it will allow full utilization of the property consistent with its permitted use under the Zoning Resolution. In the alternative, we are also asserting an appeal of the zoning inspector's decision because the proposed unit is permitted as an accessory use. Our prior request should not have been denied".

Ms. Schultz read Question #13 from the Variance application: How will the granting of the Variance affect the immediate neighborhood and community in general: "In response to Item 13, the granting of the variance will have no negative impact on the immediate neighborhood and community in general. In fact, the granting of this variance would have a positive impact on the community by protecting the health and safety of the local animals. Additionally, the variance would provide the community with state of the art diagnostics and ensure a full service veterinary center to the residents. By granting this variance, the center would continue to serve residents within the Township."

Ms. Schultz stated the variance before the Board (per their variance application) which they would like to be allowed to place the mobile MRI unit to be deemed as a "detached accessory building" pursuant to Sections 430-2 H and 302 Q for this property. Specifically, the applicant is requesting a variance from Section 302 Q requiring the accessory building to be attached. The proposed building is detached and is consistent with the present use of the property.

Ms. Schultz stated that Matt Springer and herself visited the MRI trailer currently located on Cleveland Massillon Road to take photographs. Ms. Schultz asked for clarification if the photos taken

were dramatically different from what is being proposed at 1321 Centerview Circle.

Mr. Weinstein asked that the photographs displayed on the smart board be identified in relationship to the existing building.

Ms. Schultz stated that the MRI Unit on Cleveland Massillon Road was on the east side and to the rear of the building.

Mr. Weinstein asked fellow board members if they had any further questions for the assistant zoning inspectors before moving ahead to the applicant. No other board members had additional questions.

Mr. Weinstein asked that the applicant step forward and identify themselves in the microphone for the record.

Mr. Tony Vacanty, an attorney from Buckingham, Doolittle and Burroughs LLP 3800 Embassy Park Way Suite 300 Akron, OH. Mr. Vacanty identified himself as a representative of Akron Veterinary Referral and Emergency Center along with PetsDX who operates the MRI units.

Mr. Vacanty stated that his clients are here seeking a variance from Section 302 Q of the Copley Township Zoning Resolution. Mr. Vacanty said his clients are looking to place an unattached mobile MRI unit on the property and are therefore here to seek a variance. The mobile MRI unit is merely an extension of the permitted use in the I-1 industrial district and supplements the practices of the Center.

Mr. Vacanty said the requirements of Section 302 Q imposes an unnecessary hardship and practical difficulties upon the veterinary center because it is economically infeasible at this time to create a build-out. However this is new technology which will be beneficial for the community and the patients of the Center and is merely an extension of the permitted use.

Mr. Vacanty said the variance is not substantial and is merely seeking exemption from the definition of "attached" within the Copley Zoning Resolution. The Board has provided similar variances to the Metropolitan Hospital and Akron Veterinary is seeking an almost identical variance.

Mr. Vacanty states that this variance will not violate the spirit or intent of the zoning resolution because this is an accessory use to the veterinary clinic in the I-1 zoning designation. This is new technology which will be beneficial to the patients and clinic.

Mr. Weinstein asked the Board if they had any questions for Mr. Vacanty.

Mr. Robinson asked if there were any property drawings showing the location of the proposed location of the MRI unit?

Mr. Vacanty stated the MRI unit would be located on the northeast corner and would comply with all other zoning setbacks and is approximately 70 feet from the main building and a parking lot is in-between.

Ms. Schultz asked Mr. Vacanty to identify where on the lot the MRI unit will be placed?

Dr. Ferguson walked to the smart board where he pointed to the location of the unit.

Ms. Schultz stated that lot 1 and lot 2 were both owned by Dr. Ferguson but asked where the unit would be placed?

Dr. Ferguson stated the unit would be on both lots.

Mr. Weinstein stated so that the record is clear, Dr. Ferguson will be responding.

Dr. Ferguson said the unit will be primarily on the second lot.

Mr. Weinstein asked Dr. Ferguson if the portion of the building is on the second lot and if so is it attached to the building on the first lot?

Dr. Ferguson responded by saying it was not physically attached to the main building but just a chain link fence used for a dog run.

Mr. Weinstein asked Mr. Vacanty to clarify what he meant when he earlier said this would be an extension of a permit use.

Mr. Vacanty responded by saying "Dr. Ferguson would be more apt to testify than I that this mobile MRI unit is an accessory use to a veterinary clinic which is a permitted use under the I-1 zoning designation." Mr. Vacanty also stated that these units are becoming the norm and standard for emergency referral centers.

Mr. Weinstein responded by saying he understands the statement of the function comes from within the permitted use?

Mr. Vacanty said "yes."

Mr. Weinstein continued by saying it's not the location of the permitted use if that does require a variance.

Mr. Vacanty said "yes, that is why we are here seeking an area variance."

Mr. Weinstein asked if they are changing area variance and permitted use?

Mr. Vacanty said, "yes, they are seeking exemption from the definition of accessory building."

Mr. Weinstein asked about the justification of the practical difficulties because of being economically infeasible or non feasible to build an accessory building to the attached principle building.

Mr. Vacanty said "correct because it will not alter the neighborhood and great deal and it's in the spirit and intent of the zoning resolution."

Mr. Weinstein said, "not altering the neighborhood does not constitute a practical difficulty. Not altering the neighborhood and not creating problems isn't the practical difficulty but what's preventing it is simply dollars."

Mr. Vacanty asked Mr. Weinstein to rephrase the question.

Mr. Weinstein said what is preventing this and making this practically difficult is the cost.

Mr. Vacanty said the parking could be an issue and where to locate the unit within the parking lot and in addition to the build-out and the certain number of parking spaces required.

Mr. Weinstein asked where the build-out would be? Mr. Weinstein stated that if we are talking about placing this on lot 2, isn't the principle building on lot two separate from the main building?

Mr. Vacanty responded by saying "yes, it's part of the same facility."

Mr. Weinstein said he understood but it's on two separate lots and the zoning ordinance recognizes separate buildings on separate lots and so if the applicants talking about an accessory building that has to be attached to the principal building without a variance if you wanted to locate this on lot two, you would have to build out and attach to the existing building on lot two.

Mr. Vacanty responded by saying that may be an option but that he's not sure that he can testify to that.

Mr. Robinson said that as he reads the Zoning Resolution, it states that an accessory building attached to the principle building on a lot shall be made structurally apart thereof, and shall comply to all regulations. Mr. Robinson continued to say that the variance they are after is a variance on the proposed accessory building not being attached.

Mr. Wilkerson asked if there was a building on lot two?

Dr. Ferguson said "No there is not. This is just a fenced in area and our goal is not just to have this back here because this is a temporary thing for us." Dr. Ferguson continued to say that "I plan on having addition which would double the size of our current hospital and the MRI unit will be incorporated at that time. So from a practical standpoint, since you mentioned dollars, this is certainly not practical

to place this somewhere and then move the unit later." Dr. Ferguson continued with saying, "it's important for us to have this capability since we are a leader in veterinary care."

Mr. Wilkerson asked if the unit which comes as a trailer is empty or does it come completely equipped which just needs electric?

Mr. Glenn Matamoros said that the MRI units can be either set up inside a building which is very expensive or build out which you must put copper around the walls to make sure there is no "radio frequency" bleed out. The trailer on the screen is similar in that our unit is mobile and comes with a full MRI unit inside which means that significant power attached to the building. Mr. Matamoros continued by saying that you could bring an "18 wheeler" around the front and drive it away but the intent is to put it in there and make it look decent.

Mr. Wilkerson asked if the unit arrives and is completely equipped and ready to go?

Mr. Matamoros said "correct, and there is a significant practical difficulty in putting the MRI unit inside the building due to significant build out costs."

Mr. Wilkerson asked, "would the electric fee to the trailer be underground or overhead?"

Mr. Matamoros said "it will be whatever the inspection requires."

Mr. Vacanty asked Mr. Matamoros how many of these units have they been involved with installing. Mr. Matamoros said three in various veterinary clinics. One outside Leesburg Virginia, DC and Pittsburg and they are transitioning one into Copley Township. He added that the units will not have any affect on sewage delivery. Mr. Matamoros continued by saying this will allow the clinic to walk out the back door and use the MRI unit and get the results immediately and do follow up procedures.

Mr. Wilkerson asked what the square footage would be of the trailer?

Mr. Matamoros said "8'X52' or about 400 sq. feet."

Mr. Wilkerson asked what the setback from the side yard and front yard would be to the trailer?

Ms. Sue Schultz states that whichever street on a corner lot has the least amount of road frontage this is your declared front yard. Ms. Schultz asked where would the unit be placed?

Mr. Matamoros responded by pointing to where the unit would be placed.

Ms. Schultz said that these lots will need to be combined.

Mr. Robinson asked Dr. Ferguson if the unit would be located inside the new addition?

Dr. Ferguson said "we plan on having it closely attached to the wall or part of the building itself, yes."

Mr. Robinson asked would the zoning rather be a conditional use permit for two years rather than an accessory building?

Ms. Schultz responded by saying the accessory building is a conditional use.

Mr. Robinson said "yes, but as I read this it mentions residential use."

Mr. Weinstein said this trailer is not an accessory building and that's the problem. Under the conditional use permit you can have temporary structures that are not continued as permanent structures that can be kept there only for the period of the conditional use permit for a maximum.

Mr. Weinstein said counsel maybe this is a question for you, "I'm not sure why this was submitted as a variance application instead of a conditional use application because now you've given yourself a much higher hurdle here."

Mr. Vacanty responded by saying the idea behind the submission is twofold. First, an area variance was granted back in September 2007 to the Akron Metropolitan Hospital, which established precedence. Secondly, this is an area variance requirement with the attachment and distance which are area requirements.

Mr. Robinson said this brings up two questions. First, is the other building which we granted a variance, planning on moving there building in two years?

Mr. Weinstein responded by saying "no, that's part of the problem." He added that finding practical difficulties is very status specific and typically (in my view because I'm not speaking for the Board) but they don't rest on financial consideration. If they did then everybody would have a practical difficulty and we would be changing the zoning in this Township every time somebody had a wallet issue. With that said, I realize the Doctor is trying to do good things for the people and the community and so we are trying to find a solution.

Mr. Robinson said I'm not opposed to this at all but I think we are going about this in the wrong way. The Zoning Resolution talks about a residential accessory building and this is not a residential accessory building. The way out of this is to make this a conditional permit use for two years.

Dr. Ferguson responded by saying we were hoping to be done with all this in two years and with a time frame for construction I'm not sure about. Our intent is not to leave this sit on this spot.

Mr. Robinson said that after two years you could reapply for the conditional use.

Mr. Weinstein said two years is not a hardship because you have the ability to come back and reapply and it's also not something that's going to be indefinite.

Mr. Matamoros said, "One of the real concerns is that I have with the two year contract is that the machines that we have are not inexpensive. We will bring staff and the whole business is brought here based upon the assumption that this is going to be a phenomenal hospital. However, if the Board turns over and says no, this could shut down the business and as a result I'm going to lose \$3,000 a month in electric and service contracts. This is a real concern for me."

Mr. Weinstein said sure, and "I was involved in the prior one and I'm certainly am aware of the standards that I will be bringing to apply and I think a conditional use permit for two years is better than no variance if that's the outcome. Beyond that, it's really a question if we consider it first as a variance and do it without prejudice so you are reapplying as a conditional use permit or we can do it the other way around. You normally would have to apply for a conditional use permit." Mr. Weinstein asked if any of the Board has any objections to this? Mr. Weinstein continued by saying that since we don't have any objections to this and we've had a full public notice.

Mr. Weinstein asked for a local resident to stand and identify himself for the record.

Mr. Rod Brigger said "I live at 3700 Copley Rd. and since this unit needs to be air conditioned, what will be done to keep the noise levels down? Sometimes I work nights and sleep during the day and need to know how much noise this will put out. I think it's a great idea but we need to address the noise buffer."

Mr. Weinstein stated these are points that the conditional use permit takes into account. Mr. Weinstein went on to ask the applicant to address these concerns.

Mr. Matamoros said the units have similar air conditioning units to the current building. "I don't think the noise will be a problem."

Mr. Weinstein asked Mr. Matamoros if he knew the noise rating.

Mr. Matamoros said "I don't have a noise decimal chart in front of me to know exactly what it would be."

Mr. Weinstein stated that since this will be in such close proximity to residential neighborhoods, do you plan on doing anything for a noise buffer, or earth mounds?

Dr. Ferguson said that we can put in a sound barrier. However, the fact that three air conditioning units sit right here next to the hospital and they run all the time and have never been a problem before.

Mr. Weinstein asked if they run at night as well.

Dr. Ferguson said "yes, including night and this has been going on for 12 years now."

Mr. Weinstein asked if the air conditioning units on the MRI unit run day and night?

Mr. Matamoros said they will be about 50' farther back. They will be 30' to 50' from where the existing units are.

Mr. Weinstein asked if they are similar in terms of BTU to the current units?

Mr. Matamoros said that he would have to take a look at them to know for sure.

Dr. Ferguson said that he also cannot say for certain but that for a decimal rating but for a 800 sq foot unit, but our clinic is 10,000 sq feet with three units but are willing to work with Mr. Brigger if this is a problem.

Mr. Weinstein said we are happy to consider this as a variance and asked council if they would like a short recess to consider?

Mr. Vacanty said yes.

Mr. Weinstein asked for a motion for recess.

Mr. Robinson moved to recess the meeting. Mr. Weinstein second. Mr. Weinstein asked for a vote. Roll call on the motion: Mr. Juve aye, Mr. Hose aye, Mr. Wilkerson aye, Mr. Robinson aye.

Mr. Weinstein reconvened the meeting at 6:45 pm.

Mr. Vacanty asked for a request from the Board to ask for a ruling on the variance application and if denied to consider this as a conditional use application?

Mr. Weinstein said that the Board may consider this as a variance and we will vote on the matter of the agenda for the evening and the applicant will need to resubmit an application to have this as a conditional use and if denied then the Board would allow the applicant to resubmit as a conditional use permit without prejudice.

Mr. Vacanty asked if the Board would allow the applicant to amend the application to request a conditional use permit application. Mr. Vacanty added there are no objectors and all testimony is still applicable.

Mr. Weinstein said he would allow the Board to vote on the request and would also make a motion to the board that deem the application to be a two year conditional use permit.

Mr. Vacanty requested because of construction concerns, a three year conditional use?

Mr. Weinstein said the law only allows two years or indefinite.

Mr. Vacanty said that would be acceptable for the applicant to have the two year time frame.

Mr. Weinstein said that on behalf of the applicant, given the fact the Board has no objections and have had full notice we deem this application to be a two year conditional use permit subject to the very same proposal and justifications contained in the existing application.

Mr. Robinson asked Mr. Brigger if this satisfied his requirements?

Mr. Brigger replied by saying his only concern dealt with noise and barrier. Three units, we've adjusted to it but these units run very high and how much noise will that fourth unit produce?

Mr. Weinstein said that under a conditional use permit, the applicant they cannot create a nuisance to noise.

Mr. Vacanty said that in the event that any situation would arise, Dr. Ferguson would be happy to work with those concerns.

Mr. Robinson asked if a two year conditional permit be satisfactory in place of the variance?

Dr. Ferguson said it creates a mechanical challenge, and how significant will that be and that's his only concern. He added, hopefully they can get this done in less than two years.

Mr. Robinsons asked what the variance is?

Mr. Vacanty said the variance is on the definition of the requirement of an accessory building being attached.

Mr. Weinstein asked counsel and Dr. Ferguson to make the call on which way they want to go. If you want to make two notices to landowners and let them deal with it.

Dr. Ferguson asked how soon would they reconsider this?

Mr. Weinstein asked if they put in a new application for a conditional use are we going to schedule a new meeting shortly?

Ms. Schultz said she was going to ask the board to schedule for August. Ms. Schultz asked for a specific night towards the end of the month.

Mr. Vacanty asked to consider the variance and the testimony and request if denied it be without prejudice so they could re-file for a conditional use.

Mr. Weinstein responded by asking if the Board had any further questions?

Mr. Wilkerson asked if the request is for a variance to allow for a detached building as opposed to a attached building, wouldn't the Township want to consider setback to sideline. A detached residential building has a 5' setback.

Mr. Weinstein told Mr. Wilkerson he was correct and asked what the sideline setback be? Mr. Weinstein also asked if the applicant is going to comply with the zoning ordinance with respect to the setback?

Dr. Ferguson said 15'.

Mr. Weinstein said how many feet from the property line?

Dr. Ferguson said he believes this is the property line.

Mr. Weinstein asked if the Zoning Inspector knew if the blue line on the map is the property line or setback line.

Ms. Schultz said she believes it is the property line.

Dr. Ferguson stated the trash containers are on the property.

Mr. Wilkerson commented that it looks like all the property lines are off set.

Mr. Matamoros said that if you look at the plans it shows where the easement line which runs upside the trash line and 25' according to these plans which match that photo.

Mr. Weinstein concluded that the MRI unit will not protrude into this setback line.

Mr. Vacanty said "yes."

Mr. Weinstein asked if these were two separate lots?

Mr. Vacanty responded by saying correct and that they have not been consolidated.

Mr. Weinstein said that's a separate problem to have a separate property which is unconsolidated.

Mr. Vacanty responded by saying sometimes tax maps are off.

Mr. Weinstein said there is no way this meets setbacks. It's not an issue here that I care to consider but it's an issue of compliance with the Zoning Resolution.

Dr. Ferguson said they will take care of it.

Mr. Weinstein asked for additional comments. None were offered.

Mr. Robinson moved to close the public hearing, Mr. Wilkerson second.

Mr. Weinstein called for a vote to close the public hearing.

Mr. Robinson, aye, Mr. Hose, aye, Mr. Wilkerson, aye, Mr. Juve, aye. Motion carried.

Mr. Weinstein said that the question before the Board of Zoning Appeals is whether or not this meets the practical difficulty test and I don't think that every economic issue can become a practical difficulty and I don't think that is what the law says. He added that he appreciates what the doctor is trying to do but the problem with this is that you can't time limit the variance. If you could time limit the variance then the Board of Zoning Appeals has an issue. The conditional use is designed for that purpose.

Mr. Hose said he has a problem with the fact that it's going over onto the other lot and until that's straightened out there is a problem.

Mr. Weinstein asked Mr. Hose if his problem was that they don't qualify for a variance because there is no principle building to be attached from?

Mr. Hose said correct. He added that he is not trying to muddy the water but doesn't know how this ever got built like this. Maybe those lines are off, but even if they are off, the lines can't be off that much.

Mr. Weinstein said then we have two issues qualification for the variance whether or not you can have an accessory building on a lot without a principle building and then the practical difficulty issue.

Mr. Robinson said that the best way is to deny without prejudice so they can reapply for the conditional permit.

Mr. Weinstein asked if any of the other Board Members have any further discussion.

Mr. Robinson said I'll motion for the denial of the variance as presented and that this be without prejudice and the applicant can resubmit for conditional use.

Mr. Weinstein asked for a second.

Mr. Hose second the motion.

Mr. Weinstein asked for a vote of aye denying the variance.

Mr. Robinson, aye, Mr. Hose, aye, Mr. Wilkerson, aye, Mr. Juve, aye. Mr. Weinstein abstained.

Mr. Weinstein stated to the applicant that they are free to resubmit the application. Mr. Weinstein moved to allow a resubmission without the filing of a second fee.

Roll call on the motion: Mr. Robinson, aye, Mr. Hose, aye, Mr. Wilkerson, aye, Mr. Juve, aye.

Mr. Hose commented to the applicant to consider having the lot combined if in fact they are encroaching on a lot that cannot be in compliance the way it is.

Mr. Weinstein also said that could present a problem with the conditional use application as well.

Dr. Ferguson said the line is off.

Mr. Weinstein said that is not the issue for tonight's meeting, but just a word to the wise for the next meeting.

PUBLIC HEARING

APPLICANT: **JAMES D. EVANS, ARCHITECT**

LANDOWNER: **DEVILLE DEVELOPMENT COMPANY**

LOCATION: **620 RIDGEWOOD CROSSING**

ZONING DISTRICT: **C-4 COMMERCIAL**

VARIANCE: **USE VARIANCE TO PERMIT A DENTAL OFFICE**

Ms. Schultz read Question #12 from the Variance application: Please explain the practical difficulties or unnecessary hardship which justify this application for a variance: "A dental office is a less restrictive use and should be permitted in this location, zoned as a more restrictive Use."

Chairman Weinstein opened the public hearing.

Chairman Weinstein swore in all person who wished to speak.

Ms. Schultz stated that the applicant was requesting a Use Variance to allow a dental office to be located in a C-4 Commercial District. A dental office is a permitted use in a C-2 Commercial District.

Mrs. Aiken introduced herself by saying she is the Project Architect for James D. Evans Architect and they are looking to build a dentist office addition in at the end of the existing building. It is zoned C-4 and a dentist office is permitted in C-2. Dentist offices have less impact in a C-2 and a C-4 allow for greater impact for traffic and congestion and so they are asking the Board of Zoning Appeals to allow this permitted use of the C-2 use in the C-4 district.

Mr. Weinstein said this is an issue of a use variance and these standards are different from an area variance. Area variance needs to show practical difficulties and a use variance you must show undo hardship. Therefore, the property must show no economic value without the variance otherwise you should be seeing the Zoning Commission to determine your next step. Mr. Weinstein asked if it is Mrs. Aiken's testimony that this property has no value?

Mrs. Aiken said certainly not. They were advised by the Assistant Zoning Inspector to apply for a use variance. Mrs. Aiken added that typically when we read zoning resolutions, as your district becomes more restrictive everything that fits those requirements is allowed. So I would submit our hardship is in the way the zoning resolution is written.

Mr. Weinstein asked if other board members have additional questions for Mrs. Aiken?

Mr. Weinstein asked that the other witness step forward and state his name for the record.

Mr. Paul Steigerwald: I am the Business Manager for Dr. George Family Dental Team and for the past two years we've been looking for a new dental home for Dr. George's office. We're currently located at Wolf's Ledges near the University of Akron and many of our patients and shareholders have moved to Copley so we are looking to following our patients. We are looking for a facility that offers a solid 20 year commitment. We are privately owned and we do not and never will have stockholders. We do have shareholders. We are not corporately owned.

Mr. Weinstein clarified that they business was not publically held, but privately held.

Mr. Steigerwald said correct; the business is an S-1. We have a lot of requests to move to the Miller/Ridgewood area with easy accessibility to the interstate system and the surroundings homes in the area and it's becoming more difficult for them to keep coming to our current location.

Mr. Weinstein asked if the Board Members had any questions for the witness?

Mr. Wilkerson asked if the Board of Zoning Appeals was approving this plan?

Mr. Weinstein said no. The applicant is asking for a use variance which is not provided for in the Zoning Resolution.

Mr. Steigerwald said that the zoning laws are not definitive enough.

Mr. Robinson asked if Mr. Steigerwald knew what current businesses are located at this property.

Mr. Steigerwald answered by saying a nail salon, a vacant 4,000 sq. foot building which they could occupy in addition to building another 5,100 sq. feet to make the main office. There is also a bakery.

Mrs. Aiken responded by saying she could identify the businesses which are Nail Express, Hollywood Tans, Rian Hair Studio, My Girl Friends Kitchen, Tiffany's Bakery. She added that a bakery supermarket could be permitted here if she read the Zoning Resolution correctly.

Mr. Weinstein said that your understanding of the current Zoning Resolution is that your dentist office is not a clinic as we define clinic?

Mr. Steigerwald said "It's truly a dentist office."

Mr. Weinstein asked if that's the Assistant Zoning Inspectors understanding that a dentist office is not included in the definition of "clinic". Please refer to Article II.

Mr. Weinstein read the care, diagnosis, and treatment of the sick or injured or those in need of medical or surgical attention. He then asked Mr. Steigerwald what kind of degree do your dentists have?

Mr. Steigerwald responded by saying "Doctor of Dental Surgery."

Mr. Weinstein said "yes, that's my point. I think it's a permitted use."

Ms. Schultz stated that when the C-2 district was listed and it listed clinic as a permitted use and "dentist office" as a permitted use. However, the C-4 has "clinic" but not "dental office".

Mr. Weinstein agreed with Ms. Schultz interpretation.

Mr. Wilkerson said that because of the definitions, dental office would not be listed under the general umbrella of clinic.

Mr. Weinstein stated he thinks there are two things at play. The more specific trump the general. When one fits with both definitions,

it's sloppy draftsmanship. Do we know what the new Zoning Resolution is likely to do yet with the new Resolution.

Mrs. Schultz responded by saying that definitions will be more broad and the book should be much smaller.

Mr. Wilkerson said that if that is the way we are going then I think that the dental office would fit under the clinic definition.

Mr. Weinstein agreed with Mr. Wilkerson's assessment.

Mr. Robinson concurred with Mr. Weinstein and Mr. Wilkerson.

Mr. Weinstein stated he didn't think the Board of Zoning Appeals were even granting a variance but instead advising the Zoning staff that this use would apply for current zoning and then they can use their judgment in writing or not writing the permit. The applicant is entitled to ask for a permit and the Zoning Inspector then must choose whether to write it.

Ms. Schultz asked if it's the Boards opinion that the definition meets the C-4 zoning definition?

Mr. Weinstein said we haven't stated that. The Board of Zoning Appeals will consider the variance application, but might find that the variance is necessary if it meets the definition. Then the applicant can request for permit and you would make a judgment on writing the permit. If the Assistant Zoning Inspectors refuse to write the permit then the applicant can appeal to the Board of Zoning Appeals.

Mr. Robinson said the definition of dentist office fits into two of the permitted uses in the "C" area, the clinic and dentist office. C-4 doesn't mention "dentist office" but does mention "clinic". Since "dentist office" meets the definition of "clinic" he didn't see why the applicant would need to have any appeal for the Board of Zoning Appeals.

Mr. Weinstein stated the dentist office is a medical provider and they are regulated by the same folks who regulate doctors. A Dental Doctor of Surgery is allowed to do surgery.

Mr. Juve commented that he believes the Zoning staff should be encouraged to move ahead with this.

Ms. Schultz asked if uncompleted commercial zoning projects would need to be back before the Board if the revised zoning resolution doesn't allow a use?

Mr. Weinstein said I don't want to tell the Zoning staff where they may be because that is up to the applicant and their counsel or attorney.

Mrs. Aiken stated the owner of the property wants to move ahead with this plan if it is going to be denied in the future and so they are looking for an answer before we proceed.

Mr. Weinstein said the only way is to get a vote from the board. My view is that the only way you get that kind of clarity is to go before the Zoning Commission and get a ruling because they are the ones who control what this means. We can only advise the Inspector on what we think and they can take the advice or not.

Mr. Wilkerson said that the Board of Zoning Appeals has been asked to consider a variance so what do we do with that?

Mr. Weinstein said we can rule on it. It's moot if we don't need to consider it.

Mr. Robinson said the Board can go either way because there are grounds to permit the use variance but it would be unfair since the definition is not clear in the code. It's not for economic reasons, but there is no other way of doing it. Therefore, there are grounds for a use variance. The other way of doing this is that you don't need a use variance but that may bring up litigation. It meets the definition of clinic in C-4 and if you deny them then you are denying a use that is already permitted.

Mr. Wilkerson said I agree.

Mr. Weinstein asked for a motion to close public hearing.

Mr. Robinson made a motion to close the public hearing. Mr. Wilkerson second. Mr. Weinstein called for a vote. Roll call on motion: **Mr. Robinson, aye, Mr. Hose, aye, Mr. Wilkerson, aye, Mr. Juve, aye.**

Mr. Robinson said he sees no reason at all not to permit this use because it meets the intent of the section.

Mr. Weinstein stated it meets the permitted use however he is uncomfortable to allow the use variance because of the definition. He added that the bar is set so high to establish that there is no economic use of the property and the applicant conceded that there is an economic use for the property absent of the dental office. The next time somebody is unable to read something the Board will be asked to grant a use variance.

Mr. Robinson said the way to solve this is the vote for a use variance and ask the Zoning Commission to clean this section up. It is not fair to the applicant the way it's presented.

Mr. Weinstein said that granting a use variance would be a big mistake. The next time an applicant requests the same thing, we are going to have a hard time finding that they don't meet the task because of language.

Mr. Robinson asked what the other members thought?

Mr. Weinstein said that we either vote for the variance as a use variance or to table that issue for a moment and decide if the Board believe that the current zoning fits within the use then simply deny the proposed variance as moot because it's unnecessary.

Mr. Wilkerson said that a third option is to allow the applicant to withdraw.

Mr. Weinstein said that instead of denying it as moot, the Board deems it moot which means that it's not in or out.

Mr. Robinson suggested a motion that the application was moot because this use falls under the C-4 clinic definition and instruct the Zoning Inspector to issue the permit.

Mr. Weinstein asked if he wants to make a motion on this so that it is reflected in the record that way?

Mr. Wilkerson asked if the Board of Zoning Appeals was asked to either approve, deny, withdraw or table and asked if those are the four options?

Mr. Weinstein said "no, because when it's moot it's not subject to consideration because something else has happened."

Mr. Robinson said the safest way to handle this is to have the Zoning Inspector write the permit. I don't know that they are completely happy with this but that's the way it goes. I think it may put a little more work on the Zoning Inspector because they may get the wrath of somebody who disagrees with her. That's what it says in the book and it's very clear. A dentist office is a clinic.

Mr. Robinson made a motion that the Board of Zoning Appeals declare the application moot because under the current zoning resolution, a "clinic" includes "dental facilities" and C-4 includes the use of a medical clinic. The Board of Zoning Appeals instructed the Assistant Zoning Inspectors to approve the application for a dentist office.

Mr. Juve second the motion. Mr. Weinstein called for a vote. Roll call on the motion: Mr. Robinson, aye, Mr. Hose, aye, Mr. Wilkerson, aye, Mr. Juve, aye.

PUBLIC HEARING

APPLICANT: **COPLEY TOWNSHIP BOARD OF TRUSTEES**

LANDOWNER: **COPLEY TOWNSHIP BOARD OF TRUSTEES**

LOCATION: **1540 S. CLEVE-MASS. ROAD**

ZONING DISTRICT: **R-3 RESIDENTIAL**

CONDITIONAL: ART. IV, SEC. 412-3 F. GOVERNMENTALLY OWNED AND OPERATED BUILDINGS

Chairman Weinstein opened the public hearing.

Chairman Weinstein swore in all persons who wished to speak.

Ms. Schultz stated that the request before the Board was for a Conditional Use for the construction of a new bell tower at the town hall.

Mr. Mark Mitchell, Copley Township Service Director, stated the Township is planning to install an elevator in the forward bump out area of the town hall. The elevator will serve the firefighters from the lower level and will also service all the floors above grade. There will be a half stop to the reception area and then continue up to the third floor. This is for the ADA requirements. The bell tower started out as a roof repair. The bell tower is obviously no longer on the building and Mark could not remember when and how it was removed. He added we had a roof leak on the top of the bump out portion that affected the first floor, and he approached the Trustees last fall and asked for their opinion on how to proceed. They suggested the idea of reinstalling the bell tower. By combining the bell tower and elevator along with insulation into an estimate, these are the three components we are looking to address in this project.

Mr. Robinson asked if the elevator would be on the north side of the building?

Mr. Mitchell said the elevator will be on the forward area where the main door is. Mr. Mitchell added that the door will be removed and the elevator shaft will be on the south side of the building. We decided to get an elevator large enough to handle a gery in a horizontal position in the event somebody needed to be taken out in emergency situation. The elevator is a 2500 lb capacity car.

Mr. Weinstein asked if the bell tower will be restored the way it originally was?

Mr. Mitchell said it will not be the original dimensions. We are going to shorten it up on the forward side to eliminate the weight on the backside. The brick extends below the roof line and moves out with heavy angle iron. So we are going to shorten this up so it's not as deep. The materials to be used consist of composite materials but look very similar to the original but don't have the weight. The bell that sits out on the sign is going to be put back up. He added that the Trustees wanted to install an eclectic clapper for special events.

Mr. Robinson said that the conditional permitted uses have numerous subsections here which I think are all moot.

Mr. Mitchell stated the project is within the original footprint of the building. Once the equipment is gone there are plans to repave the parking lot and possibly change the sidewalk configuration up front.

Mr. Hose asked if the original tower was stone pillars and not wood?

Mr. Mitchell stated he could not verify that it was stone but by the separation of the joints, he thought it was stone. Mr. Mitchell added that there will be a solid slab stone replacing the current existing floor.

Mr. Wilkerson asked if they would need to get a building permit from the county?

Mr. Mitchell said "yes."

Mr. Wilkerson added that they should make sure it's properly engineered so that it doesn't blow over again.

Mr. Mitchell said we are going to have a flat roof to keep the birds out and we're trying to keep the look as original as possible.

Mr. Hose asked if they are going to have an architect draw it for you?

Mr. Mitchell said the Township hired a civil engineer who has drawn the components but is not an architect. He added they talked to one company about what we imagined it would look like. He added he didn't know if the Township will install the 16 posts again.

Mr. Weinstein asked if anybody else wished to speak for or against the application.

Mr. Weinstein asked that the public portion of the meeting be closed.

Mr. Wilkerson so moved.

Mr. Hose second the motion.

Roll call on the motion: Mr. Robinson, aye, Mr. Hose, aye, Mr. Wilkerson, aye, Mr. Juve, aye.

Mr. Weinstein said public portion of the hearing is now closed and asked for discussion by the Board.

Mr. Robinson stated he has no objections.

Mr. Weinstein said "The Township will be ADA compliant on one hand and restoring a bell tower with an upgrade to make it better and nicer.

Mr. Robinson moved to approve the conditional permit application as submitted. Mr. Wilkerson second the motion. Mr. Weinstein called for a vote.

Roll call on the motion: Mr. Robinson, aye, Mr. Hose, aye, Mr. Wilkerson, aye, Mr. Juve, aye.

Mr. Weinstein asked that the record reflect that Mr. Robinson has amended his motion to approve this as an indefinite conditional permit.

Mr. Wilkerson second the amendment. Mr. Weinstein called for a vote.

Roll call on the motion: Mr. Robinson, aye, Mr. Hose, aye, Mr. Wilkerson, aye, Mr. Juve, aye.

Mr. Weinstein called for the minutes of May 21, 2008 to be considered.

Mr. Call stated he was present for the May 21, 2008 Board of Zoning Appeals meeting.

Mr. Robinson motioned to approve the minutes and attendance from the May 21, 2008 meeting.

Mr. Wilkerson second the motion.

Mr. Weinstein called for a vote.

Roll call on the motion: Mr. Robinson, aye, Mr. Hose, aye, Mr. Wilkerson, aye, Mr. Juve, aye.

There being no further business to come before the Board of Zoning Appeals, the meeting was adjourned at 8:00 pm.

FUTURE MEETING DATE: August 27, 2008 at 6:00 pm.

Approved By:

Submitted By:

Joe Weinstein, Chairman

Matt Springer, Asst. Z. I.