

**BOARD OF ZONING APPEALS  
MINUTES OF THE REGULAR MEETING  
JANUARY 30, 2007**

Meeting was called to order at 7:30 P.M. by Chairman Edmister.

PRESENT: Board Members Richard Edmister, Jeff Neverman, John  
DesForges, Scott Fatzinger Jim Mayer

ALSO PRESENT: Law Director John Wheeler and Clerk of Commissions Nicolette  
Sackman

Chairman Edmister explained the Sunshine Law and the procedures of the Board of Zoning Appeals.

**ELECTION OF OFFICERS**

**Motion:** Mr. DesForges moved, seconded by Mr. Mayer to nominate the same slate of officers for 2007 (Edmister, Chairman; Mayer, Vice Chairman; Neverman, Secretary)

ROLL CALL:

Yeas: Neverman, Edmister, Fatzinger, Mayer, DesForges

Nays: None, motion passed

**SELECTED CORRESPONDENCE**

**Calendar 2006-26, Preteroti – request for reconsideration**

Letter dated received December 14, 2006 from Gary Preteroti requesting reconsideration of previous motion to deny variance request for door location

Letter dated received January 18, 2007 from Mrs. Lou Ann Keaney of 1720 Westhill Blvd. – opposed to reconsideration request

Letter dated received January 18, 2007 from Mrs. Deb Lively of 1839 Westhill Blvd. – opposed to reconsideration request

Letter dated received January 19, 2007 from Mr. Paul Konys, City of Westlake Building Inspector and Residential Plans Examiner, statement of facts

Letter dated received January 26, 2007 from Gary Preteroti in response to letters the clerk received by Mrs. Keaney and Mrs. Lively

Letter dated received January 30, 2007 from Mrs. Lou Ann Keaney of 1720 Westhill Blvd. – opposed to reconsideration request and response to the January 26, 2006 Preteroti letter

Letter dated received January 30, 2007 from Mr. John Keaney of 1720 Westhill Blvd. – opposed to reconsideration request and response to the January 26, 2006 Preteroti letter

Letter dated received January 30, 2007 from Mrs. Deb Lively of 1839 Westhill Blvd. – opposed to reconsideration request and response to the January 26, 2006 Preteroti letter

Letter dated received January 30, 2007 from Mr. John Lively of 1839 Westhill Blvd. – opposed to reconsideration request and response to the January 26, 2006 Preteroti letter

**Calendar 2007-02 - Pat O'Brien Chevrolet**

Letter dated received January 29, 2007 from Linda Keany of 25125 Detroit Road – opposed to variance request

Letter dated received January 30, 2007 from William Krause, Assistant Director of Planning and Economic Development

**Letter dated received December 14, 2006 from Gary Preteroti requesting reconsideration of previous motion to deny variance request for door location**

Mr. Wheeler explained that a member from the prevailing side, which in this case is those who voted no (Mayer, Edmister, and Fatzinger), can make a motion to reconsider the previous motion to deny the variance request. If a motion is made and it passes the issue will be scheduled for the next meeting and notice given to surrounding property owners. At this time no motion was made so the previous motion to deny the variance request stands.

**CALENDARS**

**Calendar 2007-01**

**Applicant: Dave Lusardo**

**Premises: 29242 Fall River Dr., PP# 216 20 009**

Requesting to construct a new 600 sq. ft. addition to his present 660 sq. ft. attached garage located 24.5' from the rear lot line; at variance with §1211.04(a)(2) which limits residential lots of this size to a single garage area with a maximum of 1000 sq. ft.; and §1211.09 which requires that structures be located a minimum of 30' from the rear lot line; **a 260 sq. ft. variance and 5.5' rear lot line variance.**

Applicant was not present.

**Motion:** Mr. Neverman moved, seconded by Mr. Fatzinger to table Calendar 2007-01

**ROLL CALL:**

Yeas: Neverman, Edmister, Fatzinger, Mayer, DesForges

Nays: None, motion passed

**Calendar 2007-02**

**Applicant: Pat O'Brien Chevrolet**

**Premises: 25100 Detroit Road, PP# 213 09 026**

Requesting to construct an 80' flag pole, at variance with §1216.09(b)(2) which limits the height of water towers, radio or television antennae and other similar structures to 35'

and requires a variance by the Board of Zoning Appeals for any such structure over 35' tall; a 45' variance. Requesting a variance from §1223.11(j) "The height of such flags shall not exceed...35' in nonresidential districts." Any flag not meeting these conditions shall be considered a sign and shall be subject to regulations as such; a variance to allow an 80' flag pole and not count the flag as signage.

Mr. Tim Flury, sworn in by Chairman Edmister, explained the applicant wishes to install an 80' flag pole at the northern end of the property along I-90. Mr. Flury presented aerial photos of the site and the location of the proposed flag pole in relation to the dealership, I-90 and the I-90 entrance ramp. He also presented a photo showing a view of the dealership from a point west on I-90. Mr. Flury stated that the flag pole would be hardly visible from I-90. He noted that there is an 80' flag pole along I-90 in Avon with the same size flag as the applicant is proposing. To his knowledge there have been no issues with the flag pole located in Avon. He stated that this site is pushed back from Detroit Road and the flag pole will not be seen from Detroit Road and hardly visible from I-90. Mr. Flury advised the applicant wishes to fly the American flag to show their support for the troops and America.

Discussion ensued with Mr. Mayer noting that there are two trucks at the north end of the property (along I-90) with advertising on them, which is in violation of the Conditional Use Permit approval that allows the dealership to be there. The first condition of approval of the Conditional Use related to signage is: "That no billboards are permitted on the property facing I-90 and that there are no trailers or trucks with advertising on them visible from Detroit Road or I-90." It was requested that this be relayed to the applicant and the advertising be removed and this should be taken care of before a variance is requested. Mr. Flury advised he would relay the message.

Mr. DesForges said that most businesses fly flags in the front of their building in a patriotic manner. It seemed suitable to fly the flag on Detroit Road (the front elevation of the building) but at a height of 35'. An 80' flag pole at the rear of the property along I-90 seems as though it is being used as an attention getting device and as such is considered a sign. He did not see that there is any hardship and the purpose of the flag pole is to create attention. Further discussion ensued and Mr. Edmister stated that there are no other 80' flag poles in Westlake and the purpose of the board is to grant variances to carry out the intent of the code. The intention of the code is clear that flag poles in non-residential districts are 35'. He did not see any basis to grant a variance.

Mr. Wheeler asked why the flag is not being flown on Detroit Road (front elevation). Mr. Flury responded that in a lot of communities businesses along highways fly flags along the highway; not necessarily trying to advertise business. There are even flags flown on light poles in the center of the highway in some communities to be patriotic. Mr. Wheeler commented if their intent is to be patriotic that Mr. Flury is not saying that if someone were to fly a flag in front of their property they're less patriotic than someone flying their flag at I-90. Mr. Flury stated at that location there is more traffic on I-90. Mr. Wheeler stated his point was that Mr. Flury was not saying that those business that fly flags on Detroit Road are less patriotic, which Mr. Flury agreed (they are not less

patriotic). Mr. Wheeler stated that Mr. Flury was not saying that the height of the flag pole is in any way related to ones patriotism. Mr. Flury said that what he is saying is with this location, the entrance ramp and being so close to Columbia Road, that the flag pole would not really be seen until one is right up on it. Mr. Wheeler stated the fact that it may not be seen as easy as an 80' flag pole doesn't necessarily detract from the patriotic message the applicant is trying to make. Mr. Wheeler stated his point is that the person who does fly their flag with a 35' flag pole is not less patriotic than someone who flies their flag with an 80' flag pole. It seems to Mr. Wheeler that Mr. Flury is stating that the applicant is wishing to show they are patriotic and if it is acknowledged if there was an 80' flag pole it would certainly draw ones attention to the Chevrolet dealership. Mr. Flury advised that it could but in relation to the site location being so close to the entrance and exit ramp it's not saying to get off here.

Mr. Edmister asked what getting on and off a ramp has to do with patriotism. Mr. Flury stated that is correct but what he was trying to say is that it will not force people to get off the interstate because they see a car dealership at the flag pole location. Mr. Flury stated from the back of a building a flag pole isn't to say there is a dealership at the location and traffic drivers should get off at this location. Mr. Wheeler asked if the purpose is to draw attention. Mr. Flury stated it is not to draw attention to dealership. Mr. Wheeler asked if it was to only draw attention to the flag, which Mr. Flury stated was correct. Mr. Wheeler questioned if the dealership is just ancillary to the 80' flag pole. Mr. Flury stated that was correct and that the dealer would like to fly the American flag. Mr. Wheeler asked if the dealer has any other 80' flag poles that are not on the premises. Mr. Flury answered that currently they do not.

Mr. Fatzinger commented that there is a significant difference in elevation between Detroit Road and the highway right-of-way. He suggested that from Detroit Road looking down toward I-90 that an 80' flag pole would not appear to be more than a 35' flag pole, which is probably the reason for the height. It seems it would not appear as large as it is. Mr. Edmister questioned what the difference in elevation is between Detroit Road and the proposed location of the flag pole. Mr. Flury did not know but he is aware there is a swale at the rear of the property along I-90. Mr. Edmister stated the property has been filled in and from the parking lot the elevation slopes down approximately 6' to 8'. Mr. Fatzinger agreed that the property slopes downward but he did not see that in any way form or fashion see that a United States flag is a form of signage or advertising. To him the United States flag is patriotic, it's a flag, and it's a symbol of our country as opposed to a vehicle for signage for a business establishment, which is his personal opinion. However, he stated that he feels very strongly about that opinion. Mr. Edmister agreed related to signage and noted that the city has rules related to people putting signs up in their yards.

Mr. Mayer stated that he didn't see that there was any real hardship; he thinks the flag in this case constitutes a sign, and he is not in favor of the variance request.

Mr. Wheeler explained a motion for the flag pole height is needed. If it passes then the board needs to make a motion for a variance to allow an 80' flag pole and not count the

flag as signage. If the height variance does not pass, then the second motion is not needed.

The Board made the following Findings of Facts:

1. Applicant's property is located on Detroit Road in a non-residential district;
2. Applicant wishes to construct an 80' flagpole along I-90 and that it requires a variance in order to fly a flag at this height;
3. The Code requires flagpoles to be not more than 35' in height in non-residential districts and requires a variance for any such structure over 35' tall;
4. The Code states that a flag at a height in excess of 35' in non-residential districts shall be considered as a sign and shall be subject to regulation as such;
5. The Applicant states that its hardship is that the exhibition of the flag at the Applicant's proposed location along side I-90 and close to an entrance ramp with the necessary setback is for patriotic purposes and that a flag at the required height would be difficult to see;
6. The Applicant states that a conforming flagpole could be constructed at another location on the property, such as in the front of the building which is located on Detroit Road;
7. The Applicant states that it is not less patriotic to have a conforming flagpole and flag on Detroit Road;
8. The Board finds that the Applicant has not presented a practical difficulty or unnecessary hardship, that there was nothing unique about his property, and the granting of the variance for the height of the flagpole would be detrimental with the neighborhood and would not be keeping with the spirit, letter and intent of the Codes of the City of Westlake; and
9. The Board finds that the request for a variance for a flag at a height in excess of 35' in non-residential districts has been determined as the request for a variance to construct an 80' flagpole has been denied

**Motion:** Mr. Neverman moved, seconded by Mr. Mayer to grant a 45' height variance to allow an 80' flag pole.

ROLL CALL:

Yeas: Fatzinger

Nays: Neverman, Edmister, Mayer, DesForges, motion failed

## **MISCELLANEOUS**

None

## **APPROVAL OF MINUTES**

**Motion:** Mr. Fatzinger moved, seconded by Mr. Mayer to approve the minutes of November 28, 2006

ROLL CALL:

Yeas: Neverman, Edmister, Fatzinger, Mayer

Abstain: DesForges

Nays: None, motion passed

**FINDINGS OF FACTS**

**Motion:** Mr. Neverman moved, seconded by Mr. Fatzinger to approve the findings of fact for Calendar 2006-26 Preteroti

ROLL CALL:

Yeas: Neverman, Edmister, Fatzinger, Mayer

Abstain: DesForges

Nays: None, motion passed

**Motion:** Mr. Fatzinger moved, seconded by Mr. Neverman to approve the findings of fact for Calendar 2006-27 Lusardo

ROLL CALL:

Yeas: Neverman, Edmister, Fatzinger, Mayer

Abstain: DesForges

Nays: None, motion passed

**Motion:** Mr. Mayer moved, seconded by Mr. Neverman to approve the findings of fact for Calendar 2006-28 McClain

ROLL CALL:

Yeas: Neverman, Edmister, Fatzinger, Mayer

Abstain: DesForges

Nays: None, motion passed

**Motion:** Mr. Neverman moved, seconded by Mr. Mayer to approve the findings of fact for Calendar 2006-29 Cowin

ROLL CALL:

Yeas: Neverman, Edmister, Fatzinger, Mayer

Abstain: DesForges

Nays: None, motion passed

**Motion:** Mr. Fatzinger moved, seconded by Mr. Mayer to approve the findings of fact for Calendar 2006-30 Fairfield

ROLL CALL:

Yeas: Neverman, Edmister, Fatzinger, Mayer

Abstain: DesForges

Nays: None, motion passed

**ADJOURNMENT**

Chairman Edmister adjourned the meeting at 8:15 P.M. The next regular meeting is scheduled for February 26, 2007.

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Richard Edmister, Chairman

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Nicolette A. Sackman, CMC  
Clerk of Commissions

Approved: \_\_\_\_\_