

**BOARD OF ZONING APPEALS
MINUTES OF THE REGULAR MEETING
FEBRUARY 27, 2007**

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

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

ABSENT: Richard Edmister

ALSO PRESENT: Assistant Law Director William Huffman and Clerk of
Commissions Nicolette Sackman

Acting Chairman Mayer explained the Sunshine Laws and the procedures of the Board of Zoning Appeals.

SELECTED CORRESPONDENCE

Calendar 2007-01, Lusardo

Letter dated received February 27, 2007 from Mr. Lusardo requesting to be tabled until there is a full board present

Calendar 2007-03, Calabrese

Letter dated received February 26, 2007 from Mr. & Mrs. Burneson, 31211 Hilliard Blvd. – rescinding previous letter in favor of request, now opposed

Letter dated Letter dated received February 1, 2007 from Mr. & Mrs. Burneson, 31211 Hilliard Blvd. (aka Sparky Land LLC) –in favor of request (received with variance application)

Calendar 2006-18, Thomas Skliros

Letter and floor plans dated received February 26, 2007 from Mr. S. Gaspar

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** – *tabled 1-30-07 applicant not present*

Letter dated received February 27, 2007 from Mr. Lusardo requesting to be tabled until there is a full board present

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

Yeas: Neverman, Fatzinger, Mayer, DesForges

Nays: None, motion passed

Calendar 2007-03

Applicant: Mary Calabrese

Premises: Hilliard Blvd. (vacant lot), PP# 217-02-001 & 013

Requesting to construct a new house which shall have a 10' side yard on the west and an 8.43' side yard on the east, at variance with §1211.12(b)(3) which requires the total side lot widths to be a minimum of 25'; a 6.57' side yard variance

Ms. Calabrese, sworn in by Assistant Law Director William Huffman, explained she purchased the lot in the 1980s and was under the assumption the two parcels had been assembled but she recently discovered that they were not. She will assemble them as a condition of approval. The lot is an odd shaped lot which presents challenges when building a house related to setbacks. At the rear of the proposed house a 6.57' setback variance is required due to the shape of the lot in that location (it narrows rather than staying square) while the front corner of the house meets the setback requirements. Only a small corner of the house does not meet the setback requirement. The neighboring house to the east is 47' away. All other setbacks can be met.

Members discussed the variance request and that a letter had been submitted by the neighbor with opposition to the request related to water run off issues. It was explained by Mr. Huffman that all grading plans are approved by the city's engineering department as part of construction and the building department approves all building permits. The issues raised in the letter are not issues BZA has rule over and are addressed by other city departments as part of construction. Ms. Calabrese advised she spoke to the city engineer and she will comply with all grading requirements just like anyone else building a new home. Members expressed they would be in favor of the variance request due to the odd shape of the lot. If the house were moved to other locations more variances would be required.

Mr. John Willi of 31277 Hilliard Blvd., sworn in by Assistant Law Director William Huffman, explained that many of the neighbors have discussed the request and he presented a letter signed by 15 neighbors opposed to the variance request. Concerns the neighbors raised were: the drawing was incomplete and does not show the neighboring house to the west in relation to this house; overhangs for the house are not shown which move the house closer to the neighbors; drainage problems; a small side yard; no tree plan; the neighbors are taxpayers and have lived there for a long period of time; the house is too wide for the lot and not in keeping with the spirit of the code or character of the neighborhood. Mr. Willi explained that his house is 7' from his property line and the proposed house will be 10' from the west property line making the house only 17' from his. It was his understanding the code requires 25' between houses. Mr. Neverman clarified that the code requires a 25' total side yard setback which would be 15' and 10'

in relation to the house on the parcel and its setback from the lot lines. Some of the trees in question are on the applicant's property and as such the applicant has the right to do what they want with the trees. The issues that have been raised are good but they are issues that the engineering and building departments deal with as part of construction and are not under jurisdiction by the Board of Zoning Appeals.

The Board made the following Findings of Facts:

1. applicant's property is located on Hilliard Blvd.;
2. applicant's lot is vacant and applicant wishes to build a home 10' from one side line and 8.43' from the opposite side lot line;
3. code requires a minimum of 25' of total side yard setback;
4. applicant requests a 6.57' variance;
5. applicant's lot is an odd shape due to the fact that the side lot lines are not perpendicular to the street;
6. applicant's home would be 37' away from the next door neighbors house;
7. Board finds that applicant has presented a practical difficulty or unnecessary hardship based on irregular shape of the lot and the non-perpendicular lot lines from the street, that granting the variance would not be detrimental to the neighborhood and would be in keeping with the spirit, letter and intent of the codes of the city of Westlake

Motion: Mr. Fatzinger moved, seconded by Mr. Neverman to grant the variance as requested with the condition that the two parcels are assembled.

ROLL CALL:

Yeas: Neverman, Fatzinger, Mayer, DesForges

Nays: None, motion passed

Calendar 2006-18

Applicant: Thomas Skliros

Premises: 25984 Detroit Road, PP# 213 07 024, 213 07 023, 213 07 022, 213 07 029 & 213 07 036

Proposes to demolish the existing 2,555 sq. ft. beverage store and rebuild a new 14,291 sq. ft. office building with 17.8 % of the total building designated as retail use (2,555 sq. ft.)(same as amount of existing retail on the site), on property which when combined totals 2.7 acres. At variance with §1215.04(b) which permits only 10% retail use of a building on property of 2 to 4 acres; **a 7.8% retail percent variance.** – withdrawn by applicant on 8-29-2006

Mr. Stephen Gaspar, architect for the applicant, sworn in by Assistant Law Director William Huffman, explained since they were previously before the board they made a number of revisions to the proposal. They variance request is for a 7.8% retail variance in the phase I building. When the project is built out to its completion, three phases, the total amount of retail space will be less than 10%. The building size was increased to 14,291 sq. ft. by increasing the width of the building. The total project consists of three buildings to be built in three phases. Due to the odd shape of the lot and grade of the property there have been difficulties meeting the code but at the end of the project they

can meet the 10% retail requirement. If they were to build a building to fit the lot and meet the 10% retail requirement for one building they would have to build a very large long (approximately 400' long) building, which Mr. Gaspar commented would not be very desirable. The lot is narrow and very steep. If they were to build a three to four story high-rise building they would have difficulties meeting the setbacks due to the narrow lot. After much review they propose three individual buildings which have a nice layout on the property and in Mr. Gaspar's opinion are a better option than one large building. Mr. Gaspar further reviewed the floor plans, parking lot layout of the property and color renditions of the elevations.

Members of the board felt the proposed development is an improvement to the existing buildings, which are in very poor condition. It was addressed that all five parcels should be assembled as a condition of approval. It was questioned how much office space has been committed to tenants. Mr. Gaspar advised there has been interest but until a development plan is approved they are unable to obtain signed leases for space. He did indicate that one tenant is interested in the entire phase II building so depending on leases phase I and II may be constructed close together. It was questioned what the timing of phase III would be, which Mr. Gaspar explained once they reach 70% occupancy they would start the third phase and hoped it would be within 1 ½ to 2 years. There were concerns expressed that if phase III were not constructed the 10% total retail requirement would never be met.

Mr. Rich Nash of 1431 Cobblestone Way, sworn in by Assistant Law Director William Huffman, explained he represents the homeowners association and expressed the following concerns: when will Detroit Road be widened; increased traffic; difficulty getting out of residential development and onto Detroit Road; the need for a traffic light at the intersection of Cobblestone and Detroit; that people will use the Cornerstone residential development as a cut through; the need for traffic signs the prohibit through traffic through the residential development; and the desire for the proposed development to contain green space. Mr. Gaspar explained there will be landscape mounds along Detroit Road to buffer the view of the parking lot, which may not be visible because of the slope of the property. He also added that currently there are five curb cuts on the properties and with the redevelopment there will only be three. Mr. Huffman explained that the only issue before the board this evening was the variance request to allow a certain percentage of retail space in one building and that the development plan would go through planning commission for review where all property owners within 500' will receive notice when the issue is before the commission. All the items mentioned by Mr. Nash would be addressed in that venue. As for the widening of Detroit Road there has been talk for many years to widen the road but at this time it is uncertain when that will happen. It was also noted that the Cobblestone development is a difficult development to use as a cut through since the streets are laid out like a maize, which was intentionally done to help alleviate cut through traffic.

Mr. Edward Hack Ward I Councilman, sworn in by Assistant Law Director William Huffman, explained council will continue to address the widening of Detroit Road and work with the state on the issue. Related to the traffic light request he explained there are

numerous criteria that must be met to warrant traffic lights but as part of ongoing discussion related to traffic on Detroit Road different studies can be conducted by the city's engineering department.

The Board made the following Findings of Facts:

1. applicant's property is located on Detroit Road;
2. applicant is operating a beverage store on the location;
3. applicant's operation has been grandfathered;
4. applicant is wishing to build an office building, such operation is permitted in this zoning district if it is less than 10% or less of the building;
5. applicant wishes to build a new building with 17.8% of the building being used for retail use;
6. applicant indicated that the lot is narrower at the point of where he wishes to build the retail section and that building a large building would not be appropriate or conducive to the property;
7. applicant stated he will consolidate all the lots and once all the buildings are constructed the retail use would be 10% or less of the entire development;
8. applicant's property is "L" shaped and has a sloping grade away from Detroit Road;
9. applicant's states that his difficulty is due to the narrowness of the lot of Detroit Road;
10. Board finds that applicant has presented a practical difficulty or unnecessary hardship due to the narrowness of the lot, the slope of the property, that the granting of the variance would not have a detrimental effect on the neighborhood and would be in keeping with the spirit, letter and intent of the codes of the city of Westlake.

Motion: Mr. Fatzinger moved, seconded by Mr. Neverman to grant the variance as requested with the following conditions:

1. Condition that an assembly plat consolidating all five parcels be recorded prior to any building permits being issued for building A
2. Condition that the owner maintains a minimum two acre parcel size under building A

ROLL CALL:

Yeas: Neverman, Fatzinger, Mayer, DesForges

Nays: None, motion passed

Calendar 2007-04

Applicant: Pat O'Brien Chevrolet

Premises: 25100 Detroit Road, PP# 213 09 026

Requesting to construct a 74'6" 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 39'6" 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 a 74'6" flag pole and not count the flag as signage.**

Mr. Mike Poklar, attorney for applicant was sworn in by Assistant Law Director William Huffman. Acting Chairman Mayer suggested tabling this matter since there is a pending ordinance before council which would change the code. He suggested to table until the ordinance is enacted.

Motion: Mr. Neverman moved, seconded by Mr. Mayer to table Calendar 2007-04

ROLL CALL:

Yeas: Neverman, Fatzinger, Mayer, DesForges

Nays: None, motion passed

Mr. Huffman explained that it is not uncommon to table matters, which they have done in the past when there is pending legislation which would eliminate the need for a variance. Mr. Jim Connole, Ward II Councilman, explained that he is one of the sponsors of the proposed ordinance and wished to clarify the reason for the proposed ordinance. He did not wish to rush legislation through the review process nor did he wish to hold up any hardships since the proposed legislation may or may not be adopted. The proposed code change reflects all areas of the city. It is his desire to clean up the current ordinance which seems to be in conflict because for example a 60' structure can have a 20' pole placed on top of it but a pole on the ground has a different height limitation. He also does not want to confuse an American Flag with that of a business sign so the code needs to be clarified. An American Flag should be flown in accordance to federal guidelines.

MISCELLANEOUS

None

APPROVAL OF MINUTES

Motion: Mr. Neverman moved, seconded by Mr. Fatzinger to approve the minutes of January 30, 2007

ROLL CALL:

Yeas: Neverman, Fatzinger, Mayer, DesForges

Nays: None, motion passed

FINDINGS OF FACTS

Motion: Mr. Neverman moved, seconded by Mr. Fatzinger to approve the findings of fact for Calendar 2007-02 Pat O'Brien Chevrolet

ROLL CALL:

Yeas: Neverman, Fatzinger, Mayer, DesForges

Nays: None, motion passed

ADJOURNMENT

Acting Chairman Mayer adjourned the meeting at 8:21 P.M. The next regular meeting is scheduled for March 27, 2007.

W. James Mayer, Acting Chairman

Nicolette A. Sackman, CMC
Clerk of Commissions