

BOARD OF ZONING APPEALS

APRIL 13, 2015

The meeting was called to order at 5:30 p.m. by Chairman Jonathan Smith. Board members present were: John Brown, Jason Decker, Craig Pickerel, Jonathan Smith and Becky Williams (5). Also present were Brody Walters, Planning and Zoning Administrator and Julie Liebenthal, Zoning Inspector.

Ms. Williams moved to approve the minutes of the March 9, 2015 meeting as submitted. Mr. Brown seconded and the minutes were approved 4-0. Ayes: Brown, Pickerel, Smith, Williams (4). Abstain: Decker (1).

ADMINISTRATIVE APPEAL, 04-15 – Jeffrey Stopar, attorney at Eastman & Smith, on behalf of G-Made, Inc. requests one (1) administrative appeal concerning Ch. 1260.15, Final Site Plan Approval Criteria. The subject property is located on the east side of N. Dixie Highway, south of Lincoln Blvd. and north of Gloria Street. “Social” restaurant is the immediate neighbor to the north of this property. It is zoned C-4 (Highway Commercial).

NOTE: *Chapter 1260.20 Appeals: With regard to Final Site Plan and plot plan approval decisions, an appeal may be taken to the Board of Zoning Appeals in the manner as other administration decisions except that appeals of decisions for Planned Unit Development projects shall not be permitted.*

NOTE: *Chapter 1275.02(a) Administrative Review: To hear and decide appeals where it is alleged by the applicant that there is an error in any order, requirement, permit, decision or refusal made by the Zoning Inspector or any other administrative official in carrying out or enforcing any provisions of this Zoning Code.*

NOTE: *Chapter 1260.15 Final Site Plan Approval: Each Final Site Plan shall conform to the applicable provisions of this Zoning Code and the criteria listed below in addition to any conditions imposed by the Planning Commission.*

1. The applicant is seeking an appeal regarding a Planning Commission decision to deny approval of a preliminary site plan based on the exclusion of an adjacent parcel, in which a legally nonconforming billboard sign is located.

Recommendation:

1. None provided.

Ms. Liebenthal reviewed Administrative Appeal 4-15. Jeffrey Stopar of Eastman and Smith, and George Kentris, owner of G-Made, Inc. were present. Mr. Stopar said that the issue is the billboard on the corner of Lincoln and Dixie Highway and he provided some background on the subject. He said that G-Made purchased the property in 2013. On July 31, 2014, the Planning Commission considered and denied the preliminary site plan that did not include Lot 577 which is where the billboard is located. Mr. Stopar said that the billboard was the impediment to obtaining site plan approval so they took steps to evict. They filed in Perrysburg Municipal Court, but the matter was sent to Wood County

Common Pleas Court and is scheduled for trial in August, 2015. In February 2015, a couple of different site plans were submitted to the Planning Commission. The Planning Commission approved the Site Plan that showed the immediate removal of the billboard but denied the plan showing that the billboard would remain. Mr. Stopar said that they are making three basic arguments:

1. The Planning Commission made an error in requiring that Lot 577 be part of the site plan for the Taco Bell restaurant. Mr. Stopar said that he does not see the authority in the law to require an adjacent parcel to be included in a site plan.
2. Even if Lot 577 is included, the Planning Commission has no authority to require removal of a valid, legal non-conforming sign. Mr. Stopar said that there have been at least two Supreme Court decisions in the last year and a half upholding the rights of individuals with legal non-conforming uses.
3. It was an error by the Planning Commission to reject the proposed condition to remove the billboard when the lease ends. Mr. Stopar said that there is a lessee on the billboard and with the Planning Commission requiring that it come down, they are stuck between a rock and a hard place.

Mr. Kentris requested that the Board of Zoning Appeals overturn the Planning Commission's decision and allow them to build the Taco Bell. He said that they can hold him personally responsible to guarantee that the billboard will be removed as soon as it is legally possible. He said that this is a million dollar investment and will probably have 30-40 employees with over \$300,000 a year in wages with tens of thousands of dollars in income tax.

Ms. Williams asked Mr. Kentris if the property was in the City when he purchased it and if he was aware that the billboard was a non-conforming sign. Mr. Kentris said that the property was in the City, and he knew the billboard was legal non-conforming because Brody Walters was present when he purchased the property. Mr. Decker asked how long the billboard has been there. Mr. Kentris said since 2006. Mr. Brown asked if the property was in the Township then. Mr. Walters said it was. Mr. Smith asked what the Planning Commission's rationale was in requiring that Lot 577 be included. Mr. Walters read Chapter 1260.15(a)(1):

a) Each Final Site Plan shall conform to the applicable provisions of this Zoning Code and the criteria listed below in addition to any conditions imposed by the Planning Commission:

(1) All elements of the Final Site Plan shall be harmoniously and efficiently organized in relation to topography, the size and type of lot, the character of adjoining property and the type and size of buildings. The site shall be so developed as not to impede the normal and orderly development or improvement of surrounding property for uses permitted in this Zoning Code.

Mr. Walters said that they did not feel the exclusion of Lot 577 would be conducive to its future development. Ms. Williams asked if there is room to develop on that lot. Mr. Walters said that the setbacks may overlap, but if not, it is a very small building envelope.

There was discussion regarding what was actually being appealed since the applicant has received Preliminary and Final Site Plan approval. Mr. Stopar said that they could not appeal the denial of the preliminary site plan which excluded lot 577, so they are appealing the denial of the site plan that included the billboard. Mr. Walters said that it was labeled as Site Plan #1 in the submission to the Planning Commission.

Mr. Walters stated that with regards to the three arguments that Mr. Stopar outlined, we are already past discussing the inclusion of lot 577 because the final site plan that was denied, which is the subject of this appeal, included lot 577. Mr. Walters stated that regarding the authority to require the removal of a legal non-conforming sign, quite often the Planning and Zoning Division requires the immediate compliance of non-conforming properties through what is referred to as triggers, basically self-imposed changes. The sign could remain there forever as long as the Taco Bell doesn't go in there, which is the justification for requiring the site in its entirety to come into conformance. They are not losing their legal non-conforming status because of something the City has done, it is a result of their desire to build on the site. Mr. Walters stated that in the Code regarding final site plan approval it says "and any other special conditions required by the Planning Commission" and this is something the Planning Commission has reaffirmed is one of their conditions for approval.

Mr. Stopar said that they keep going back to the Preliminary Site Plan that was denied in July of 2014 that did not include lot 577 because they had no other remedy and they had to do something to trigger the appellate process so they have to keep arguing it to preserve it. He said that with regard to the legal non-conforming status, the Perrysburg Planning and Zoning Code says that the main way to lose the non-conforming use is to expand it and they are not expanding it, they want to build a Taco Bell adjacent to a parcel that has a legal non-conforming sign. He compared it to telling someone they can't do something on their property because their neighbor has a non-conforming sign.

There was discussion regarding when the billboard could legally be removed. Mr. Kentris said that the lease expires in 2016 and there is one five year extension that the lessee can exercise. He said if he wins the lawsuit, he will take it down the next day, but the worst case scenario is 2021. He said that he would be willing to post a bond for removal of the sign as soon as legally possible. Mr. Decker asked if there is a legally binding hook that could guarantee removal of the billboard. Mr. Walters stated that at the Planning Commission meeting, Mathew Beredo, former Law Director, had reservations about what that hook would look like. If the Board of Zoning Appeals overturned the Planning Commission's decision and a zoning permit is issued, the City would have no way to guarantee that the billboard will be removed.

Ms. Williams said that her dilemma is that two Site Plans were submitted to the Planning Commission and they were both the same except for the removal of the billboard, as if to say approve one or the other, and the Planning Commission did that. They approved the Site Plan without the billboard.

Ms. Williams made a motion to deny Administrative Appeal 4-15 and uphold the Planning Commission's decision. Seconded by Mr. Decker. Ayes: Decker, Pickerel, Smith, Williams (4). Nays: Brown (1).

Ms. Williams moved to adjourn the meeting at 6:19 p.m. Mr. Decker seconded and the meeting was adjourned.

Respectfully submitted,

Mary Jo Sutton