

**BOARD OF ZONING APPEALS
CITY OF WILLOUGHBY
APRIL 13, 2022
PUBLIC HEARING MEETING
MINUTES**

PRESENT: Mike Ross; Mike Maniche; Phil Davis; Joe Palmer, Chairman

ABSENT: Bruce Shade

OTHERS: Mike Lucas, Law Director; Vicki Grinstead, Secretary

Chairman Palmer called the regular meeting to order at 7:00 p.m.

Chairman Palmer advised the participants of their right to be heard in person or by attorney present and/or proffer evidence present and examine witnesses and the subpoena of evidence and/or witnesses. Chairman Palmer advised the participants that the board has five members of which a majority of the board is needed to grant an appeal. Chairman Palmer stated all five members of the board are not present this evening and the applicants need a majority or three votes to pass their appeals. If an appeal is denied the applicant(s) has thirty days to file an appeal with the Lake County Court of Common Pleas. The appeal application, the letter of the meeting notification, the letter of non-compliance and the list of names and addresses of adjoining property owners within the required distant of the appellant were noted into the record.

Chairman Palmer asked all four of the applicants if they wished to proceed with their appeals with only four members present and all applicants said yes.

MINUTES

March 23, 2022

Mr. Ross moved to accept the Board of Zoning Appeals Public Hearing meeting minutes of March 23, 2022 as submitted and Mr. Davis seconded.

ROLL CALL: Yeas: Mr. Ross; Mr. Davis; Mr. Palmer, Chairman
Nays: None
Absent: Mr. Shade
Abstain: Mr. Maniche

Motion Carried: Approved

OLD BUSINESS

None

NEW BUSINESS

Justine Host
5350 Oak Ridge Dr.

Fence

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Chairman Palmer stated the applicant cited practical difficulty numbers 2, 3 and 8 on the application for appeal and noted all items that were in the packet.

Chairman Palmer asked if anyone wished to speak for this appeal. Mrs. Host, 5350 Oak Ridge Dr., Willoughby, OH 44094 was sworn in to speak for the appeal.

Mrs. Host said they are asking for a 19' setback instead of the 25'. The wood fence will go to the edge of their home to enclose their back yard. They would like the 6' high shadowbox fence for privacy and to keep their children safe because there are always cars parked on Hickory. This fence will also match her neighbor's fence, so it would look aesthetically pleasing. She presented the board with two letters of support (Exhibits "A" and "B) from neighbors Mr. Cherry and Ms. France. She cited examples of homes in her neighborhood that have similar fences. The fence will create a useful back yard.

Chairman Palmer said they have had a lot of requests for fencing. Mr. Lucas clarified the first issue, independent of a shadowbox fence has nothing to do with being 19' from the right-of-way verses 25'; it cannot be 6' in height. The code specifically calls for 3' in height. The issue is the height of the fence within the right-of-way.

Chairman Palmer asked if there was anyone else who wished to speak for this appeal. Mr. Gabriel Host, 5350 Oak Ridge, Willoughby, OH 44094 was sworn in to speak for the appeal.

Mr. Host reiterated what his wife said about security for their family, it will also improve their home value, and said it will look aesthetically pleasing.

Mr. Ross said Mr. Cherry who wrote a letter in favor of this appeal is the neighbor directly behind the Host's property. Mr. Davis asked if the privacy differential between a 4' and 6' fence is critical to them, and Mr. Host said yes for the safety of their children.

Chairman Palmer asked if there was anyone else who wished to speak for this appeal (x3) and there was no one.

Chairman Palmer asked if there was anyone who wished to speak against this appeal (x3) and there was no one.

Mr. Davis moved to grant a variance to C.O. 1131.10(i)(2) to allow a 6' high fence instead of the allowable 3' height and to allow shadowbox fence instead of the required 40% opening; citing C.O. 1109.09(b) for the Host residence, 5350 Oak Ridge Dr., Willoughby, OH 44094 and Mr. Ross seconded.

ROLL CALL: Yeas: Mr. Maniche Mr. Ross; Mr. Palmer, Chairman
 Nays: Mr. Davis
 Absent: Mr. Shade

Motion Carried: Approved

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Dina Rulli
37915 Barber Ave.
(Rep.-Dave Stokley, Host Pros LLC)

Short Term Rental

Chairman Palmer stated the applicant cited practical difficulty numbers 2, 4, 8 and 9 on the application for appeal and noted all items that were in the packet.

Chairman Palmer asked if anyone wished to speak for this appeal. Mr. Stokley is representing Dina Rulli's property located at 37915 Barber Ave., Willoughby, OH 44094 was sworn in to speak for the appeal.

Mr. Stokley read a statement from the property owner who was a former Willoughby resident but lives out of state but does utilize the property when coming home to visit. He read a list of guests to whom the property was rented to since mid-February. He said his company screens the guests in depth and does not allow one-night stays; there is a two-night minimum. They do not allow local guests to stay at the property because in his experience they tend to cause issues. He believes that there is one thing that sets this rental apart from others and that is the homeowner employed a professional management company. He said they have an employee who handles all the yard maintenance and snow removal of the properties.

Mr. Stokley spoke to Mr. Keller who stated that long-term rentals are also not regulated. He said 20-30% of the properties are rentals in Willoughby. Chairman Palmer asked if he manages properties in other cities and he said yes. He then asked if there are codes that prohibit short-term rentals in other cities. He said the city of Cleveland is revising their laws and he has had no problems anywhere else. He said Cleveland has 1,800 short-term rentals but was told it was not a priority for them. Mr. Ross asked if the owner employed him after she purchased the home and he said yes.

Chairman Palmer asked if there was anyone else who wished to speak for this appeal (x3) and there was no one.

Chairman Palmer asked if there was anyone who wished to speak against this appeal. Chairman Palmer read into record a letter from Mr. & Mrs. David Sarosy, 37911 Barber Ave., Willoughby, OH (Exhibit "A") who is the neighbor directly next door.

Chairman Palmer asked if there was anyone who wished to speak against this appeal. Mr. Mike McCarthy, 37920 Barber Ave., Willoughby, OH was sworn in to speak against this appeal.

Mr. McCarthy read to the board a letter he had prepared which quoted from the Lake County.gov hotel/motel tax page regarding the collection of excise taxes collected for transient guests (Ohio Revised Code section 5739.09). He quoted the meaning of motel from the dictionary. He said the house at 37915 Barber Ave. is being used as a motel. He said the substantial character of the neighborhood will be substantially altered with the introduction of motels in residential neighborhoods. Granting this appeal would open up the flood gates to many more motels. He said C.O. 1131.03 did not include motels and believes the reason behind that is because they did not want motels in residential areas. He is in opposition to this request.

Chairman Palmer asked if there was anyone who wished to speak against this appeal. Elizabeth Amos, 37919 Barber Ave., Willoughby, OH was sworn in to speak against this appeal.

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Mrs. Amos said she is the neighbor on the other side of this property. She said even though Mr. Stokley said he is doing a responsible job; it is still a motel. She said this rental is five feet from her home and an occupant waved to her through the window. She said this is not like some of the Air BNBs where someone lives there and takes care of the property and takes out the trash. Her main concern is the safety of the eight children that live in the vicinity of this rental, including her two young girls. Garage cans and packages have been left out. She does not believe this rental belongs in the residential area. She said long term rentals are different because they will live there and take care of things.

Chairman Palmer explained that the city does not have anything “on the books” that treat these rentals fairly but does understand her position.

Mr. Davis suggested the residents contact their City Council representative.

Chairman Palmer asked if there was anyone who wished to speak against this appeal. Jeremy Amos, 37919 Barber Ave., Willoughby, OH was sworn in to speak against this appeal.

Mr. Amos said his issue is his two teenage daughters and the rentals bedroom window is directly across from their bathroom window. He said the last two renters they had were both there for approximately five years each. He said they got to know each other and there are unwritten rules on how you act with each other and do not look into each other’s homes etc. He said if he knew he was moving next to a motel he would have not chosen to live there. He understands this is a gray area with Air BNBs. There are no backgrounds checks done to see who these people are. He said there are also parking issues.

Chairman Palmer asked if there was anyone who wished to speak against this appeal (x3) and there was no one.

Chairman Palmer asked if there was anyone who spoke for the appeal had a rebuttal. Mr. Stokley of Host Pros said by Mr. McCarthy’s definition of a motel, this is not a motel. They do not rent it by the room and the sleeping rooms are not accessible from the parking lot. He said they pay Lake County lodging tax on this property which is collected automatically by Air BNB and remitted directly to the County. He said they are a professional management team who will be taking care of the exterior of this property, including garbage and snow removal.

Chairman Palmer asked if there are window treatments in this property and Mr. Stokley said yes. He said there are no parking or traffic issues. He said there is more than enough parking and there is a three-car garage and a huge driveway.

Mr. Davis said Mr. Stokley admitted they pay an excise tax, but a long-term rental is not subject to this tax and that is the difference. Mr. Stokley said he understands the difference, but the city’s zoning code does not differentiate.

Chairman Palmer asked if there was anyone who spoke against the appeal that had a rebuttal. Mr. McCarthy said if Air BNB is paying the excise tax, his question is, is it the Lake County hotel/motel tax and if so, they are admitting that they are a hotel or motel. There are a number of long-term rentals in this area, and he has become close friends with one of the tenants. When they are there a long time, they become part of the community. He is concerned for the neighborhood’s safety.

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Chairman Palmer asked if there was anyone who spoke against the appeal had a rebuttal. Mr. Amos, 37919 Barber Ave., Willoughby, OH stated the statement they heard about background checks was false; they were never told. Chairman Palmer said he misunderstood the statement from the applicant, and it was stated it was nice of the owner of the long-term rentals to inform the neighbors about his background checks, but it was not required.

Chairman Palmer asked if there was anyone who spoke against the appeal had a rebuttal. Mrs. Amos, 37919 Barber Ave., Willoughby, OH stated the reason they are here is because this is not a permitted use. Chairman Palmer said they have established that already, but neither are long-term rentals. She said she is not pro long-term rentals either.

Mr. Lucas, Law Director advised that this is not a variance, but rather an appeal to a Cease-and-Desist order from the Willoughby Building Department to the applicant/owner. The motion be made in the affirmative to uphold the decision of the Willoughby Building Department's Cease and Desist order.

Mr. Stokley asked if he could ask a question and Chairman Palmer allowed it. He asked how he would know he is in violation of the code since short-term and long-term rentals are not in the code. Mr. Lucas quoted C.O. 1103.03 under definitions of Hotel.

Mr. Davis moved to affirm the interruption by the Willoughby Building Department that the property for the Rulli residence, 37915 Barber Ave., Willoughby, OH 44094 is being used as transient lodging according to C.O. 1131.03 instead of the regulated R-60 usage; citing C.O. 1109.08 and Mr. Ross seconded.

Chairman Palmer said this is opposite of what they would normally do for a variance request. He explained if you vote no you are voting to allow this short-term rental at 37915 Barber Avenue.

ROLL CALL: Yeas: Mr. Davis; Mr. Maniche; Mr. Palmer, Chairman
 Nays: Mr. Ross
 Absent: Mr. Shade

Motion Carried: Approved

Chick-fil-A
35403 Euclid Ave.
(Rep.- Lance Osborne, 35403 Euclid Avenue LLC)

Lot split

Chairman Palmer stated the applicant cited practical difficulty numbers 2, 4 and 8 on the application for appeal and noted all items that were in the packet.

Chairman Palmer asked if anyone wished to speak for this appeal. Mr. Osborne, 35403 Euclid Avenue LLC, 7670 Tyler Blvd., Mentor, OH 44060 was sworn in to speak for the appeal.

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Mr. Osborne said the property they own is immediately west of the Chick-fil-A and Valvoline parcel. Chick-fil-A owns the parcel and leases to Valvoline. By approving the lot split this evening it would allow Chick-fil-A to consolidate the north side of his parcel onto their parcel and add on to their drive thru. This proposal will be before Planning Commission if this variance is granted. The southern remaining parcel which is on 35403 Euclid Ave. would be less than an acre or approximately half an acre.

Mr. Davis asked Mr. Osborne to explain why he chose Practical Difficulty factors 2, 4 and 8 on the appeal application. Mr. Osborne said regarding #2, the existing structure that is there will be demolished and has been approximately 60-70% vacant. They purchased the property over five years ago and have success leasing to one tenant. He said #4, the character of the neighbor would be improved by the granting of this variance. He said the building is not aesthetically pleasing and would be demolished and the expansion of the drive thru would alleviate some of the congestion on their property and on the adjacent roadways. He believes practically difficulty #8 is in the spirit of the zoning code and granting of this variance will improve the immediate neighborhood.

Mr. Davis asked if Chick-fil-A and his company have an agreement for the proposed consolidation and Mr. Osborne said yes. Mr. Davis asked if it was shared with the city. Mr. Osborne said no because there is a confidentially provision in the agreement.

Chairman Palmer asked if there was anyone else who wished to speak for this appeal. Mr. Thomas Thielman, 29655 Grand Blvd., Wickliffe, Oh is the Director of Economic Development for the City of Willoughby, One Public Sq., Willoughby, OH 44094 and was sworn in to speak for this appeal.

Mr. Thielman said the department of Community Development supports the applicant, Mr. Osborne and Chick-fil-A's request for the lot split in the General Business district. The city has encouraged Chick-fil-A to seek solutions to have alleviate the traffic issue in front off their building and onto Euclid Ave. It will provide a safer parking area for customers who are entering the building. Chick-fil-A has committed to a large investment to make the property more functional. He said this variance would not affect any of the adjacent property owners and has their support. It also has support from the Mayor and Administration. He said our own ordinances created these non-conforming lots requiring 200 ft. of frontage and this lot is already non-conforming in regard to frontage. He said there are over fifty other buildings that are non-conforming throughout the city in the General and Retail Business corridors. Mr. Thielman does not believe this will set a precedent because this is an unusual set of circumstances.

Mr. Davis asked if the Valvoline received an appeal for their building and Mr. Thielman did not know.

Chairman Palmer asked if there was anyone else who wished to speak for this appeal. Mr. Amos, 37919 Barber Ave. Willoughby, OH said he is in favor of anything that will alleviate the traffic issue.

Chairman Palmer asked if there was anyone else who wished to speak for this appeal (x3) and there was no one.

Chairman Palmer asked if there was anyone who wished to speak against this appeal (x3) and there was no one.

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Mr. Davis asked if they as a board can create a new non-conforming parcel. Mr. Lucas said the Board of Zoning Appeals serves as a Quasi-judicial body which is similar to a court. They have the powers to act in lieu of legislative action on fact sensitive single applications.

Mr. Maniche moved to grant a variance to C.O. 1141.04 to allow a 0.4822-acre parcel instead of the allowable one-acre parcel; citing C.O. 1109.09(b) for Chick-fil-A, 35403 Euclid Ave., Willoughby, OH 44094 and Mr. Ross seconded.

ROLL CALL: Yeas: Mr. Maniche; Mr. Ross; Mr. Davis; Mr. Palmer, Chairman
 Nays: None
 Absent: Mr. Shade

Motion Carried: Approved

Storage King

Use Variance

31597 & 35579 Euclid Ave.
(Rep.- Chris Schmidt, Davey Resource Group)

Chairman Palmer stated the applicant cited practical difficulty numbers 2, 3, 4, 7 and 8 on the application for appeal and noted all items that were in the packet.

Chairman Palmer asked if anyone wished to speak for this appeal. Mr. Schmidt of Davey Resource Group, 1310 Sharon Copley Rd., Sharon Center, OH 44274 was sworn in to speak for this appeal.

Mr. Schmidt said there is existing indoor and outdoor storage on a 14.3-acre parcel. There is a .3-acre parcel within the 14.3-acre parcel that will consolidated with the larger parcel and they will raze three existing buildings that are on the property. There will be a new 100' x 250' multi-level climate-controlled building. He said they included a letter with the application addressing the hardships.

Chairman Palmer noted that a similar application for the same address, but was the former owner, came before the Board, which was approved, July of 2019.

Chairman Palmer asked if there was anyone else who wished to speak for this appeal (x3) and there was no one.

Chairman Palmer asked if there was anyone who wished to speak against this appeal (x3) and there was no one.

Mr. Davis moved to grant a variance to C.O. 1167.11 to allow expansion of a non-conforming mini storage use in a Retail Business and Limited Industrial zone districts; citing C.O. 1109.09(b) for Storage King, 31597 & 35579 Euclid Ave., Willoughby, OH 44094 and Mr. Ross seconded.

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ROLL CALL: Yeas: Mr. Ross; Mr. Davis; Mr. Maniche; Mr. Palmer, Chairman
Nays: None
Absent: Mr. Shade

Motion Carried: Approved

Board of Zoning Appeals

**Election – 2022
Chairman
Vice Chairman
Secretary**

Mr. Ross moved to nominate Mr. Palmer as Chairman of the Board of Zoning Appeals for year 2022 and Mr. Maniche seconded. There were no other nominations for Chairman.

ROLL CALL: Yeas: Mr. Davis; Mr. Maniche; Mr. Ross; Mr. Palmer, Chairman
Nays: None
Absent: Mr. Shade

Motion Carried: APPROVED

Mr. Ross moved to elect Mr. Palmer for Chairman of the Board of Zoning Appeals for year 2022 and Mr. Davis seconded.

ROLL CALL: Yeas: Mr. Maniche; Mr. Ross; Mr. Davis; Mr. Palmer, Chairman
Nays: None
Absent: Mr. Shade

Motion Carried: APPROVED

Mr. Palmer moved to nominate Mr. Ross as Vice Chairman of the Board of Zoning Appeals for year 2022 and Mr. Maniche seconded. There were no other nominations for Vice Chairman.

ROLL CALL: Yeas: Mr. Ross; Mr. Davis; Mr. Maniche; Mr. Palmer, Chairman
Nays: None
Absent: Mr. Shade

Motion Carried: APPROVED

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Mr. Palmer moved to elect Mr. Ross for Vice Chairman of the Board of Zoning Appeals for year 2022 and Mr. Davis seconded.

ROLL CALL: Yeas: Mr. Davis; Mr. Maniche; Mr. Ross; Mr. Palmer, Chairman
 Nays: None
 Absent: Mr. Shade

Motion Carried: APPROVED

Mr. Ross moved to nominate Mrs. Grinstead as Secretary of the Board of Zoning Appeals for year 2022 and Mr. Palmer seconded. There were no other nominations for Secretary.

ROLL CALL: Yeas: Mr. Maniche; Mr. Ross; Mr. Davis; Mr. Palmer, Chairman
 Nays: None
 Absent: Mr. Shade

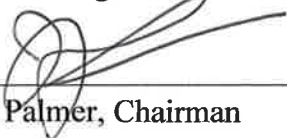
Motion Carried: APPROVED

Mr. Ross moved to elect Mrs. Grinstead for Secretary of the Board of Zoning Appeals for year 2022 and Mr. Palmer seconded.

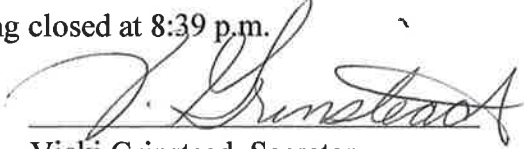
ROLL CALL: Yeas: Mr. Ross; Mr. Davis; Mr. Maniche; Mr. Palmer, Chairman
 Nays: None
 Absent: Mr. Shade

Motion Carried: APPROVED

There being no further business the regular meeting closed at 8:39 p.m.



Joe Palmer, Chairman



Vicki Grinstead, Secretary