

**BOARD OF ZONING APPEALS
CITY OF WILLOUGHBY
JANUARY 24, 2024
PUBLIC HEARING MEETING
MINUTES**

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

ABSENT: None

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 present this evening and the applicant needs 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.

MINUTES

December 13, 2023

Mr. Maniche moved to approve the Board of Zoning Appeals public hearing meeting minutes for December 13, 2023 as submitted and Mr. Ross seconded.

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

Motion Carried: Approved

OLD BUSINESS

None

NEW BUSINESS

**Century 21st Media News Group
dba The News Herald
36625 Vine St.
(Rep.- James Lyons, Esq., John Myers, News Herald &
Doug Morgan, BDFM Inc.)**

**Warehouse/distribution facility
operating in a Retail Business
zone district**

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Chairman Palmer stated the applicant cited practical difficulty numbers 1, 2, 7 & 8 on the application for appeal and noted all items that were in the packet.

Chairman Palmer asked if there was anyone who wished to speak for this appeal. Mr. James M. Lyons, Esq. for the applicant.

Mr. Lyons introduced the people with him this evening. He said BDFM, Inc. is the owner of the building and Mr. Bob Diamond is one of the general partners. His long-time agent JF Morgan, Mr. Doug Morgan and the tenant, The News Herald, Mr. John Myers, is the Operations Manager.

Mr. Lyons said he submitted a four-page document with his application that listed the grounds for why they believe the City of Willoughby is incorrect in this particular situation. This document is challenging the fact that they should not be before this board. He said the city sent his client a Cease-and-Desist Order (Exhibit #1) which they believe is incorrect. The order stated to cease all activities but if they wished to delay that they would need a Certificate of Occupancy and Zoning Compliance. They did file a Certificate of Occupancy and Zoning Compliance and they were denied. They are appealing both these letters. Mr. Lyons said they are allowed to be at this location and there has been no change of use. This is a continuation of the way this building, as a whole, has been used. There are offices and a garage. The garage has always had motor vehicle activities and motor vehicle related activities in it. They believe these letters never should have been sent. He said there is no such thing as an Occupancy Permit in the City of Willoughby, however there is a Certificate of Compliance, but his position is this is not a change of use and the underlying letters should be stricken and his client should be released from this particular order.

Chairman Palmer asked Mr. Lucas if these letters should have been issued. Mr. Lucas said there are two items; one, the Certificate of Occupancy was administratively reviewed after this came up and it was determined they do not need a Certificate of Occupancy. He said in terms of the Certificate of Zoning Compliance, it was issued because the administration, at the threshold level, felt this was a distribution/warehouse as a primary use and is not permitted in this particular district and in fact these uses are only permitted in the General Industrial Districts and this is why the Zoning Inspector felt the Zoning Compliance was necessary. Chairman Palmer said he would like to speak with the Operations Manager so they can understand what is being distributed, and at what times and in what manner at that location.

Chairman Palmer asked if there was anyone who wished to speak for this appeal. Mr. John Myers, Operations Manager for The News Herald, 924 Quentin Rd., Eastlake, OH 44095 was sworn in to speak for the appeal.

Chairman Palmer asked Mr. Myers what is being distributed out of this garage that has been mentioned in your letters to the board and when does the distribution take place.

Mr. Myers said they are distributing the News Herald newspaper for Lake, Geauga Counties and some in Cuyahoga County, seven days a week. The newspapers arrive at their facility Monday-Friday at approximately 11:30 p.m. They arrive on carts/racks and the truck is unloaded which takes approximately fifteen minutes. They have roughly twenty independent contractors that arrive in their personal vehicles. The contractors have until 1:00 a.m. to pick up their newspapers. Chairman Palmer asked how far they are from a residential property. Mr. Myers said the truck is unloaded at the front of the building. He was unsure how far they were from a residential

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property. The truck backs in and has a lift gate. Chairman Palmer said his issue is with the hours of this distribution activity. Mr. Myers said they are on a time deadline.

Mr. Ross asked how long they have been in operation at this location. Mr. Myers said October/November 2023.

Chairman Palmer asked if there was anyone who wished to speak for this appeal. Mr. Doug Morgan, Owner of JF Morgan and Sons, 9505 Curberry Dr, Mentor, OH 44060. They are a real estate/management company.

They are the management company for BDFM and they manage this property. This building has been at this location for 40+ years. The garage was added on approximately 33 years ago. The garage was used by Allstate Insurance to do their claim work and other vehicle related activities. Chairman Palmer asked what Allstate's hours were and Mr. Morgan was unsure. They no longer use the garage and have subbed this portion of the business out to a third party. The garage is still being used for vehicle related activities. The garage has not been altered in any way. Mr. Lyons asked Mr. Morgan if the News Herald is using this location as a warehouse/distribution facility. Mr. Lyons asked if this was part of their whole operation of their business at this location and Mr. Morgan said that is correct.

Mr. Lyons said the board needs to determine what a distribution facility is. Mr. Lucas said distribution and warehousing are not defined in the Willoughby code, so as a matter of Ohio law the board has to give it the plain and ordinary meaning. Mr. Lyons made a reference to pizza restaurants and said that they have no limits on hours of operation. He said the Zoning Inspector is not here this evening to testify as to how she determined what this use was. Mr. Lyons asked Mr. Morgan if he or anyone else at BDFM spoke with the Zoning Code Inspector and Mr. Morgan said no. Mr. Morgan said he believed the Zoning Code Inspector knew what the garage was historically used for. Mr. Lyons asked Mr. Morgan if he read and signed the document submitted for the appeal #7 (Exhibit #2) and Mr. Morgan said yes. He asked Mr. Morgan if these facts are true and does he accept these as his testimony and Mr. Morgan said yes. Mr. Lyons asked Mr. Morgan if there are no other uses that would be allowed under the interpretation by the Willoughby employees and Mr. Morgan agreed. He said then this garage cannot be used for any other purpose other than vehicle related activities and Mr. Morgan said yes. He asked Mr. Morgan, in his opinion, if this use is grandfathered in and Mr. Morgan said yes.

Mr. Lyons said they have also asked for a variance under C.O. 1167. They are asking for a use variance under C.O. 1167.11 for newspaper circulation purposes. They do not consider this a distribution facility and is an in and out facility. It is not a warehouse where you commonly store things for a period of time.

Mr. Ross asked if this is used as office space. Mr. Lyons said in addition to the garage, The News Herald has their corporate headquarters in the building. The garage is part of their corporate headquarters and there are three offices inside the building itself. Mr. Ross said the primary use is for the News Herald office operations and then for a couple hours at night an accessory use of this building is to distribute these papers to the independent contractors. Mr. Maniche said distribution and circulation have the same meaning.

Mr. Lyons said they are requesting a Use Variance under C.O. 1167 (#10 in Exhibit #2). The garage will have no useful functions. Chairman Palmer asked if there are newspapers stored in this garage and Mr. Myers said no. Chairman Palmer asked if the garage were not there, would this affect this operation at all and Mr. Myers said yes and Chairman Palmer asked how. Mr. Myers said they would not have a place to circulate the newspapers.

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The office does prepare and print the necessary paperwork to distribute to the independent contractors. Chairman Palmer asked if there is any loading or unloading of equipment in the garage. Mr. Myers said there is a pallet jack.

Mr. Ross asked Mr. Myers would this location have been chosen had there been no garage and Mr. Myers said probably not. Mr. Maniche asked if the truck beeps while backing up and Mr. Myers said he does not believe it does. He said it is a 20' box truck with a lift gate and he has never heard it beep while backing up. Mr. Maniche asked if he was there and Mr. Myers said every night.

Mr. Davis asked Mr. Morgan if it is his company's policy to assist new clients/tenants and not check for zoning compliance concerns. Mr. Morgan said he did not think there would be an issue based on the fact it was a similar use of an office. Mr. Davis reiterated Mr. Morgan made this determination and Mr. Morgan said yes. Mr. Morgan said in his 25+ years in doing this he has never had to do an occupancy permit. When he met with Mr. Schell, he had his own legal counsel doing its own due diligence of what needed to be addressed because Mr. Schell wanted to keep the newspaper in Willoughby.

Chairman Palmer asked what the zoning district was where The News Herald resided previously. Mr. Lyons and Mr. Morgan both thought it was General Business.

Mr. Ross said it is no different than a Walgreens or any other store. Mr. Maniche disagreed and said they do this late at night and are close to residences and have had complaints. Chairman Palmer said this board appreciates all the businesses within the city and he is a long time subscriber to the newspaper himself. He does worry about defending a precedent.

Chairman Palmer said there are no neighbors here this evening and wonders if there have been complaints. Mr. Maniche said he spoke with Mrs. Brooks and there have been neighbor complaints. Mr. Lyons said he does not know when these complaints were made. He said at one time the large truck did use the back door and unloaded there, so maybe that is when the complaints were made. This has since changed and they unload in the front. Mr. Myers said as soon as they were aware of the neighbor issues, they moved the unloading of the truck to the front of the building. Chairman Palmer asked if any of the neighbors came to complain directly to The News Herald offices. Mr. Myers said yes, a neighbor did come over at night to express his concerns and they told him they would do their best to mitigate the noise.

Mr. Davis feels the board would agree that a business use it different from a retail use. He said there was discussion that pizza and drug stores are comparable analogies and contends they are not. Mr. Lyons said he agrees that a pizza shop or drug store are not offices with a circulation component but what they both do is have product that comes in and goes out.

Chairman Palmer said what the board is focusing on is the vehicular traffic after midnight. He went on to say that if this happened during normal business hours, they may have a valid argument but the fact they are adjacent to a residential neighborhood, literally 100' from the business's back fence.

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Mr. Morgan said the fence is made of 4-5' high block. Mr. Lyons said the fence could be raised and this can be made a condition. He said this is along the freeway and there is an abundance of freeway noise. Mr. Maniche said this is not being used for retail, for which it is zoned.

Mr. Lyons said this is a business office and the garage is part of the business. Mr. Maniche said no one is coming in to shop. Chairman Palmer asked if News Herald customers come in to this office. Mr. Myers said a couple months out of the year they sell coupon books and they can make an appointment to pick up a book.

Mr. Lyons said if this is not allowed then the garage would be worthless, which is a factor for the Use Variance. Chairman Palmer said Allstate used this garage successfully for 30+ years and Mr. Morgan said yes, they were an original tenant. Mr. Yutzy said it would be safe to say that when Allstate used the garage it would be during regular business hours.

Mr. Lyons entered three exhibits for the record and had Mr. Morgan identify each item. (Exhibit #1) Consists of #1 Notice of Violation, Cease and Desist Order from December 7, 2023, #2 Application for Certificate of Occupancy and Certificate of Zoning Compliance, #3 Notice of Non-Compliance. (Exhibit #2) Consists of Item #7 for the appeal, which is Mr. Morgan's testimony. (Exhibit #3) Consists of six (6) photos showing the garage etc.

Mr. Lyons asked Mr. Myers, in his opinion, is the noise from the freeway or this operation louder. Mr. Myers said the freeway is louder. Mr. Lyons said there has been no adverse or sworn testimony that this affects the neighbors.

Chairman Palmer asked if the independent contractors have to come to the office other than to collect their paperwork and newspapers and Mr. Myers said yes, they also need to sign legal documents when they are hired on as an independent contractor. Chairman Palmer asked if there has been any discussion in regard to moving the circulation component to a more suitable neighborhood and Mr. Myers said not that he is aware of.

Chairman Palmer said the one component that makes it necessary to be at this location is this invoice or bill of lading and the product itself. He said it sounds like the product does not really need to be at this location because it is not produced there and Mr. Myers said not anymore. The products actual retail distribution is done at these individual machines or locations people have subscribed at. Mr. Myers said yes, homes and stores. Chairman Palmer said the actual retail distribution takes place at these locations and Mr. Myers said yes.

Mr. Lyons asked Mr. Myers if the fact this is right off the freeway helps The News Herald and is an important function to get people in and out. Mr. Myers said it most certainly helps and allows them to receive their product in a timelier fashion. Mr. Lyons said it also helps the independent contractor find their location with ease of access and Mr. Myers said yes, it is a perishable product. Chairman Palmer asked if this was a problem with the other location. Mr. Myers said they did not have any say in the matter and it was a corporate decision. Chairman Palmer asked if the contractors had problems finding the other location and Mr. Myers said no.

Mr. Davis asked if they were aware that the General Business District is right down the street from where Marous Construction is and is close to the freeway also. Mr. Myers said his purpose is to oversee operations and not where they are located.

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Mr. Lyons addressed the previously mentioned precedent and believes the board may not come across this type of situation in the near future.

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. Yutzy moved to grant a use variance to C.O. 1141.03 and allow a warehouse/distribution facility to operate in the Retail Business (R-B) zoning district by Century 21st Media News Group dba The News Herald, 36625 Vine St., Willoughby, OH 44094; citing C.O. 1109.09(b) and Mr. Maniche seconded.

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

Motion Carried: Denied

Mr. Lucas, Esq. said there were actually two arguments made by the applicant that are interrelated; the first one requested is for a Use Variance and the second issue is an appeal from the legal correctness of the subject Notice of Violation. They are subject to two separate provisions. C.O. 1109.09 deals with variances and C.O. 1109.08 deals with appeals to the BZA. Mr. Lucas asked for a second independent motion under C.O. 1109.08 regarding the appeal.

Mr. Yutzy made a motion to affirm the decision and determination made by the Building Code Inspector as to her interpretation exemplified in the Notice of Violation for Century 21st Media News Group dba The News Herald, 36625 Vine St., Willoughby, OH 44094; citing C.O. 1109.08 and Mr. Maniche seconded.

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

Motion Carried: APPROVED

Mr. Lyons said there is one more issue that has not been addressed for his argument, #10, where he specifically requested a Use Variance under C.O. 1167.11 to a non-conforming use where evidence was presented to meet each and every requirement. The applicant did not ask for warehousing or distribution, rather the applicant asked for vehicle related activities for this particular location.

Mr. Yutzy moved to grant a variance pursuant to C.O. 1167.11 to grant a Use Variance for a non-conforming use as presented by the applicant for Century 21st Media News Group dba The News Herald, 36625 Vine St., Willoughby, OH 44094 and Mr. Davis seconded.

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

Motion Carried: DENIED

Mr. Lyons said if there is anybody on the board that would want to grant the Use Variance with specific conditions to protect the neighbors (e.g.- raising the fence or install sound deadening material) this would be a proper motion.

Mr. Davis suggested the appellant prepare plans/drawings indicating limited usage that could be filed with the Building Department which could be considered a modified approach. Mr. Maniche said this board is concerned this would set a precedent and Mr. Davis agreed. Mr. Maniche suggested moving the distribution portion to a different location.

Board of Zoning Appeals

**Election – 2024
Chairman
Vice Chairman
Secretary**

Mr. Ross moved to nominate Chairman Palmer as Chairman of the Board of Zoning Appeals for year 2024 and Mr. Maniche seconded. There were no other nominations for Chairman.

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

Motion Carried: APPROVED

Mr. Ross moved to elect Chairman Palmer for Chairman of the Board of Zoning Appeals for year 2024 and Mr. Maniche seconded.

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

Motion Carried: APPROVED

Chairman Palmer moved to nominate Mr. Ross as Vice Chairman of the Board of Zoning Appeals for year 2024 and Mr. Maniche seconded. There were no other nominations for Vice Chairman.

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

Motion Carried: APPROVED

Mr. Davis moved to elect Mr. Ross for Vice Chairman of the Board of Zoning Appeals for year 2024 and Mr. Maniche seconded.

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

Motion Carried: APPROVED

Chairman Palmer moved to nominate Mrs. Grinstead as Secretary of the Board of Zoning Appeals for year 2024 and Mr. Maniche seconded. There were no other nominations for Secretary.

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

Motion Carried: APPROVED

Mr. Ross moved to elect Mrs. Grinstead for Secretary of the Board of Zoning Appeals for year 2024 and Mr. Maniche seconded.

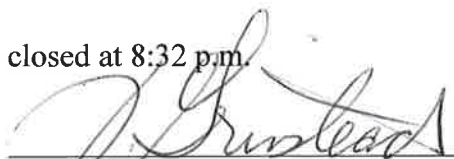
ROLL CALL: Yeas: Mr. Yutzy; Mr. Maniche; Mike Ross; Mr. Davis; J. Palmer, Chairman
 Nays: None
 Absent: None

Motion Carried: APPROVED

There being no further business the regular meeting closed at 8:32 p.m.



Joe Palmer, Chairman



Vicki Grinstead, Secretary