

**BOARD OF ZONING APPEALS
CITY OF WILLOUGHBY
OCTOBER 25, 2023
PUBLIC HEARING MEETING
MINUTES**

PRESENT: Mike Maniche; Phil Davis; Mike Yutzky; Mike Ross; Vice Chairman

ABSENT: Joe Palmer, Chairman

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

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

Vice Chairman Ross 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. Vice Chairman Ross advised the participants that the board has five members of which a majority of the board is needed to grant an appeal. Vice Chairman Ross 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.

MINUTES

October 11, 2023

Mr. Yutzky moved to approve the Board of Zoning Appeals public hearing meeting minutes for October 11, 2023 as submitted and Mr. Maniche seconded.

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

Motion Carried: Approved

OLD BUSINESS

None

NEW BUSINESS

Vice Chairman Ross asked Ms. Kaye if she wished to proceed with less than five members and she said yes.

Amanda Kaye
38356 Lakeshore Blvd.

Fence

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Vice Chairman Ross stated the applicant cited practical difficulty number 1 on the application for appeal and noted all items that were in the packet.

Vice Chairman Ross asked if there was anyone who wished to speak for this appeal. Ms. Kaye, 38356 Lakeshore Blvd., Willoughby, OH 44094 was sworn in to speak for this appeal.

Ms. Kaye said her house is on Lakeshore and this is her backyard. She said she saw her neighbors fence and she did the same thing. She owns a pig and neighbor kids want to pet and poke at it so they want privacy to protect it and since the fence has been up, they have had no issues. She said the deer that run across would jump a smaller fence. She said her kids also play in this backyard area. She has three lots and will combine them if necessary.

Mr. Maniche said she did not obtain a permit and she would have done this first this would not be before the board. She said there was miscommunication between her and her husband and she thought it was approved, so they installed the 6' fence themselves. She said she would shorten the fence if needed.

Mr. Maniche said the fence does not block any visibility for drivers or pedestrians. He thinks it is too close to the sidewalk but is unsure. He is more concerned as to why they did not obtain a permit. There was a brief discussion in regard to the sidewalk.

Mr. Davis said there is a door into the home off the Lakeshore side, so in a sense it is the front of the home. Ms. Kaye said yes, it is their sunroom. Mr. Davis said his reason for clarifying this is because the 40% pertains to front yards. There is a walk off of Lakeshore which would make this a front yard.

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

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

Mr. Yutzy moved to approve C.O. 1131.10(i)(2) requiring fences to comply with C.O. 1131.10(i)(1) and allow a 6' fence located in a corner side yard and less than twenty-five feet from the right-of-way exceeding the maximum height by three feet, instead of the allowable three foot height for the Kaye residence, 38356 Lakeshore Blvd., Willoughby, OH 44094; citing C.O. 1109.09(b) and Mr. Davis seconded.

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

Motion Carried: Approved

Mr. Yutzy moved to approve C.O. 1131.10(i)(2) requiring fences to comply with C.O. 1131.10(i)(1) and allow a less than 40% openness for the vertical surface of the fence within 25' of the right-of-way for the Kaye residence, 38356 Lakeshore Blvd., Willoughby, OH 44094; citing C.O. 1109.09(b) and Mr. Davis seconded.

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

Motion Carried: Approved

Michael Eppich
38032 Barber Ave.

Short-term rental

Vice Chairman Ross stated the applicant cited practical difficulty numbers 2, 6, 7, & 9 on the application for appeal and noted all items that were in the packet.

Vice Chairman Ross asked if there was anyone who wished to speak for this appeal. Mr. Eppich, for house at 38032 Barber Ave., Willoughby, OH 44094 was sworn in to speak for this appeal.

Mr. Eppich said his parents cannot be here today as they are out of town. He is the operator of the short-term rental. He used to have a short-term rental in Mayfield but they enacted an ordinance prohibiting them so he sold it. He is utilizing the one in Willoughby where they are not regulated and saw other properties being utilized for the same purpose. There are benefits for short-term rentals over staying at hotels. He incentivizes his guests to utilize the shops and restaurants in downtown Willoughby. He said there are other short-term rentals in Willoughby that are operated and if they are not regulated then it should be fair for everybody to have one. He keeps his property up and has had no noise complaints. It is not written into law in Willoughby and that is why he is here today.

Vice Chairman Ross said the property located at 37915 Barber Ave. was in front of the board approximately a year ago and was denied and is now under contract to be sold.

Mr. Davis asked him to explain the hardships he cited. Mr. Davis said exception 2 suggests there has to be no reasonable economic use of the property without a variance. This was a single family home until Mr. Eppich purchased it. Mr. Eppich said his father purchased the home to use as 1031 money and he allowed him to run it as an Air BnB.

Mr. Davis asked him to address item 6, which states are there special conditions or circumstances that exist that would justify this appeal. Mr. Eppich interprets this to mean it is his privilege to run a business out of the property.

Mr. Davis addressed item 7, which states whether the property owner's predicament feasibly can be obviated through some method other than a variance. He asked if Mr. Eppich's father purchased this property with the intention of using it as a business. Mr. Eppich said yes, he purchased it under his company's name. Mr. Davis asked what business did he intend to use it for. Mr. Eppich stated he purchased in as a long term rental. Mr. Davis said presumably his father could continue to use it as a long-term rental, which was the original intention and Mr. Eppich said yes, that is correct.

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Mr. Davis said the last item is item 9 and asked if he thought this would confer a special benefit to you and your father by granting this variance. Mr. Eppich believes it would be yes.

Mr. Maniche asked if they regulate this rental. Mr. Eppich said yes, through the short-term booking platform. Guests must have a verifiable phone number, email address and a government i.d. Beyond that he has installed outdoor security cameras and a Minut system which tracks noise inside the house. If it is too loud inside the home the system will notify him and he will contact the guest right away.

Mr. Maniche asked if there are any other restrictions. Mr. Eppich said he does not accept local guests. He said there is a feature on the platform called instant book where people can book without messaging you and he has that turned off. He said there may be exceptions if they have extended family in town etc. once he has done his due diligence.

Vice Charman Ross asked if resides at the residence and Mr. Eppich said no.

Mr. Davis said there is a lodging tax in Lake County that hotels/motels have to collect and asked Mr. Eppich if he collects something similar. Mr. Eppich said that is done through the platforms.

Vice Chairman Ross said it is unfortunate this is not regulated and they do come before this board randomly and several have come before this board. The Building Department does not go looking for them but when there is a complaint, they have to investigate it. This board tries not to set precedents.

Mr. Eppich said he found twenty-seven Air BnB's operating within the city. Mr. Maniche said a couple of these that came before the board; there were many neighbors speaking out against this. Mr. Davis said most of those neighbors were against these short-term rentals. He will be voting against this for several reasons but the most prominent is the fact this was purchased to be a long-term rental and could be successful as such.

Mr. Eppich asked how is long-term defined. Mr. Davis said not transient housing. Mr. Lucas, Esq. said the rule of thumb is thirty days or greater because it is customary in long-term rental situations when there is a lapse of a years term in leasing that is goes automatically goes into a month to month tenancy.

Vice Chairman Ross said he all for private property rights.

Vice Chairman Ross asked if there was anyone else who wished to speak for this appeal. Greg Patt, 38005 Brown Ave., Willoughby, OH 44094 was sworn in to speak for this appeal.

Mr. Patt said he utilizes Air BnB's out of town and in the City of Willoughby when he family is in town. He is a former member of the Planning Commission and they discussed this as a future issue. He said Air BnB knows there are potential problems with parties and they are looking into fixing it. He said 45% of the residents in Willoughby are renters. The short-term rentals are dispersed throughout neighborhoods. These rentals give Willoughby a chance to show off their town and they utilize the shops and restaurants. The city could regulate these by several means including being registered with the city. The city is allowing a couple neighbors to dictate what other people can do with their private property. He said there are ways to get around this code and still do it legally. He asked the board to approve this and get the ball rolling.

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

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

Mr. Yutzy moved to approve C.O. 1131.03 to allow a short-term rental property instead of the current use of short-term rental properties are not regulated and therefore not permitted for the Eppich property located at 38032 Barber Ave., Willoughby, OH 44094; citing C.O. 1109.09(b) and Mr. Davis seconded.

ROLL CALL: Yeas: Mike Ross; Vice Chairman
 Nays: Mr. Maniche; Mr. Davis; Mr. Yutzy
 Absent: J. Palmer, Chairman

Motion Carried: Denied

Richard & Therese Hazen
1799 Maple St.

Accessory Building

Vice Chairman Ross stated the applicant cited practical difficulty numbers 2, 3, 4, 5, 7, 8 & 9 on the application for appeal and noted all items that were in the packet.

Vice Chairman Ross asked if there was anyone who wished to speak for this appeal. Mrs. Hazen, 4799 Maple St., Willoughby, OH 44094 was sworn in to speak for this appeal.

Mrs. Hazen said they would like to have a larger shed. Vice Chairman Ross said on the Notice on Noncompliance it states the proposed shed is 148.5 sq. ft. but the actual sales piece included in the packet says the shed is 125.5 sq. ft. He showed Mrs. Hazen the document and confirmed this is the actual shed they are purchasing and she said yes, it is from Cosco. The appeal will be 23 sq. ft. less than originally presented. The overage is 119.5 sq. ft. (total of 719.5 sq. ft.).

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

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

Mr. Yutzy moved to approve C.O. 1131.10(d) to allow an accessory building of 125.5 sq. ft. with an existing garage of 594 sq. ft. exceeding the allowable by 119.5 sq. ft. instead of the total allowable area of 600 sq. ft. for the Hazen residence, 4799 Maple St., Willoughby, OH 44094; citing C.O. 1109.09(b) and Mr. Maniche seconded.

ROLL CALL: Yeas: Mr. Davis; Mr. Yutzy; Mr. Maniche; Mike Ross; Vice Chairman
 Nays: None

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Absent: J. Palmer, Chairman

Motion Carried: Approved

Raising Cane's
5051 SOM Center Rd.
(Rep.- Jamie Wells, OLIO Development Group)

**Outdoor dining seating,
Minimum parking setback,
Required off-street parking spaces**

Vice Chairman Ross stated the applicant cited practical difficulty numbers 1, 3, 6 & 8 on the application for appeal and noted all items that were in the packet.

Vice Chairman Ross asked if there was anyone who wished to speak for this appeal. Mr. Wells of OLIO Development Group, 1062 Ridge St., Columbus, OH, agent for Raising Cane's, was sworn in to speak for this appeal.

Mr. Wells said the code significantly decreases their outdoor dining capacity and if it is not approved could cause a complete redesign of the restaurant. The parking setback; they are requesting a variance due to the design of the plat. There is only one section that was changed from the original and it is a bump out from the north part of the curb but they stayed with the original plan that was already in place. He said the largest part of the actual setback is 2.6 ft. and would like to get a variance approved for this. The off-street parking; they are under the required parking spaces required and this is due to the double drive thru they have in place which is designed to cut back on stacking. This is Raising Cane's standard for their business model.

Vice Chairman Ross said the site does present challenges with the size and the double drive thrus. He said even if they do a single drive thru, they may not be able to achieve those parking spaces. Mr. Wells said Steak n' Shake was also under what was required and they had a single drive thru.

Mr. Maniche said, being northeast Ohio, he would think parking would be more of a priority since outdoor dining is only three to four months out of the year. He said looking at other Raising Cane restaurants he wondered if they had to ask for all the variances they are requesting here today. Mr. Wells said this is a company wide design for all their restaurants. Mr. Maniche asked how the Mentor Cane's compares to this restaurant. Mr. Wells said he was not part of that site design and is unfamiliar with that location. He and his coworker are both new to the company.

Mr. Yutzy asked if they had a meeting prior to designing this restaurant. Mr. Wells so no, the architect goes off of code research they do inhouse. He said Cane's has a specific set of regulations they have to abide by and this is the best site plan they had available. Mr. Yutzy said they may have benefited from a meeting with the city and gotten closer to their goal.

Mr. Davis asked if they have been to the site and he said no, neither of them have. Mr. Maniche said they need be better prepared.

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Mr. Yutzy said the ingress/egress onto Rt. 91 may be difficult and this parking and traffic flow will be an issue. Mr. Wells said there may be an overflow lot behind them they could utilize. The board suggested they may want to look at obtaining an agreement for additional parking or acquire additional parking. Mr. Davis suggested tabling this to speak with the city and the neighboring properties to find a work around. Vice Chairman Ross suggested looking at possibly moving the east or rear parking back to where they show landscaping/grass. Mr. Wells said they have to submit again for their landscaping plan because they were lacking originally.

Vice Chairman Ross asked if there was anyone else who wished to speak for this appeal. Greg Patt, 38005 Brown Ave., Willoughby, OH 44094 was sworn in to speak for this appeal.

Mr. Patt said there are changes and parking spaces are being reduced because patios and drive thrus are very popular. The code was written in the 1950's. An example is Chick-fil-A and they have double lanes and are packed every day. Mr. Maniche said he agrees but the city still has a code by which they must abide.

Vice Chairman Ross asked if there was anyone else who wished to speak for this appeal. Jennifer Krack, OLIO Development Group, 9980 Indian Mount Road, Pickering, OH was sworn in to speak for the appeal.

Ms. Krack said they did take into consideration amount of parking and the utilization of the overflow parking. They do not have an agreement in hand today but they can work to get one to the board. She asked if the board would approve this conditionally because they are on the docket for the Planning Commission tomorrow.

Mr. Lucas, Esq. said historically the Planning Commission will not review any type of development plan unless the required variances that are a part of the development plan are approved by the Board of Zoning Appeals. He said if you go before them tomorrow and this has been tabled the Planning Commission will wait. He does not advise this board to give conditional approval on any variances.

Ms. Krack said Cane's is very strong on their drive thru service and are very passionate about increasing their through put so there are no backups onto the main roads. They want to process things quickly and keep traffic flow controlled so that is the key driver for the dual drive thru and thus the sticking point for the parking discrepancy. Ms. Krack spoke to the amount of variances they are asking for; the Mentor location does have outdoor seating as well with bench seating and picnic table seating and this how Cane's wishes to proceed post Covid because it seems to be the new trend and is the driving point behind this variance. As far as the setback, they are following the current Steak n' Shake drive thru line. She said they are trying to straighten the curb out in the drive that is causing the need for this variance.

Vice Chairman Ross apologized for asking so late in the meeting and asked if they wished to proceed with four members and asked if she wished to proceed or table. Ms. Krack said she preferred to table this until the next meeting.

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

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

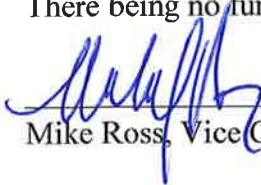
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Mr. Yutzy moved to table the appeal for Raising Cane's, 5051 SOM Center Rd., Willoughby, OH 44094, per the applicant's request, and Mr. Maniche seconded.

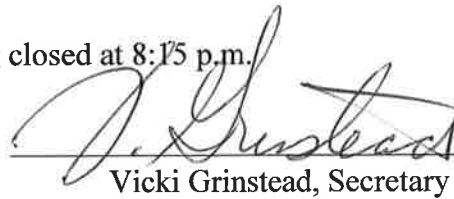
ROLL CALL: Yeas: Mr. Yutzy; Mr. Maniche; Mr. Davis; Mike Ross; Vice Chairman
 Nays: None
 Absent: J. Palmer, Chairman

Motion Carried: Tabled

There being no further business the regular meeting closed at 8:15 p.m.



Mike Ross, Vice Chairman



Vicki Grinstead, Secretary