

The regular meeting of the Olmsted Township Board of Appeals was called to order September 15, 2010 at 7:07 PM. Present were Chairman Brian McElroy, Larry Maser, Herbert McTaggart and James Prosek. Also Present were Building Commissioner Anthony Bumbalis and Secretary Tammy Tabor.

Pledge of Allegiance

Mr. McElroy noted typographical changes to the minutes of June 16, 2010. Mr. McTaggart moved to approve the minutes of June 16, 2010 as amended. Seconded by Mr. Maser. Roll call, all approved.

Mr. McElroy noted typographical errors to the minutes of July 12, 2010 and an incomplete sentence in the last paragraph. Mr. McElroy stated that the minutes will be set for approval at the next meeting after review of the recordings.

Old Business

Fence Variance, Waffan # 20100507

Greg Waffan was sworn in. Mr. Waffan stated that he is requesting a fence to be placed on his property. Mr. Waffan stated that the Board seemed confused at the previous meeting regarding the storm water code and easements. Mr. Waffan stated that he spoke with Robert Klaiber, County Engineer. Mr. Waffan stated that Mr. Klaiber advised him that in Strongsville property owners would be advised of the homeowners responsibility regarding placing structures in easements. Mr. Waffan said that Mr. Klaiber told him that homeowners sign off stating that they will remove anything in an easement at the owner's expense.

Mr. McElroy asked if the easement is along the west side of the property. Mr. Waffan stated yes.

Mr. McElroy asked if the fence is proposed on the west side of the property. Mr. Waffan stated that would like to place the fence around the yard, at the property line. Mr. McElroy asked if Mr. Waffan knows where the sewer pipe is. Mr. Waffan stated that he believes that the pipe goes down the property line.

Mr. Maser asked if there were any permits issued by the Township in storm easements. Mrs. Tabor stated that the HOA had not responded to the request for records of approved permits. Mrs. Tabor stated that the records that she reviewed, approximately 30, did not show, (approvals to construct), in storm sewer easements.

Mr. Waffan asked if any were denied for this reason. Mrs. Tabor stated yes.

Mr. Prosek stated that the alternative to Mr. Waffan's request would be move the fence out of the easement. Mr. Waffan stated yes. Mr. McTaggart asked if Mr. Waffan had considered that. Mr. Waffan stated that moving the fence would reduce the effective space in his yard and leave a space between his fence and the neighbor's fence. Mr. Waffan stated that it would not be aesthetically appealing. Mr. McTaggart asked if the fences would be abutting. Mr. Waffan stated that the neighbor had no objection to the fences connecting.

Mr. Prosek asked if the neighbor's fence is on the property line. Mr. Waffan stated he thought the fence was on the property line. Mr. Prosek asked if Mr. Waffan's goal would

be to have a common fence. Mr. Waffin stated that he would not object to having a common fence. Mr. Waffin stated that there would be a 20 foot gap in between the two fences if they were to remain off of the easements

Building Commissioner Anthony Bumbalis was sworn in.

Mr. McElroy asked if Mr. Bumbalis has been in contact with the County Engineer regarding this application. Mr. Bumbalis stated that he has been in contact with the County Engineer, Sanitary Engineer and County Planning Commission, that regulate storm water regulations. Mr. Bumbalis stated that they are not in favor of fences in easements with storm sewers and not so much surface water drainage. Mr. Bumbalis stated that the County does not have as much of an issue with access or moving a fence as much as they are concerned they are concerned with the shallow sewers being damaged. Mr. McElroy asked if the pipe was concrete or PVC. Mr. Bumbalis stated that he believed that the plans called for PVC pipe. Mr. McElroy asked what the depth of the pipe is. Mr. Bumbalis stated that the Township does not have an as built plan, the depth could be 2, 3 or 5 feet depending on how the final grading of the subdivision was done. Mr. McElroy asked if the pipe is supposed to go down the property line. Mr. Bumbalis stated that the pipe is supposed to be placed within the easement. Mr. Bumbalis stated that without seeing an as built survey, he would not know where the pipe is.

Mr. McElroy stated that there is a catch basin in his yard, can it be determined where the pipe is from that. Mr. Bumbalis stated that you cannot unless you dig up the pipes. Mr. McElroy asked if the e-mail correspondence from the Building department is part of the record. Mrs. Tabor stated yes. Mrs. Tabor stated that there may be attorney/ client privileged correspondence in that communication, it should be reviewed before making public.

Mr. McTaggart asked how much of the yard would be lost if the fence would be out of the easement. Mr. Waffin stated 10 feet.

Mr. Prosek asked why the easement is 20 feet. Mr. Bumbalis stated that the entire PRD plan calls for 20 foot storm sewer easements.

Mr. McTaggart asked if Mr. Waffin has included a statement of financial responsibility if the fence needs to be moved. Mr. Waffin stated yes, he included it in his application.

Mr. Prosek stated that a future land owner may not be aware of the financial responsibility. Mr. Waffin stated that he would disclose that in the event of a sale.

Mr. Prosek stated that easements are granted to allow access to the property. The easement holder should be permitted unimpeded access. If granted the easement holder would then have to wait until the homeowner allowed that access. Mr. McElroy asked Mr. Waffin if he had any further questions. Mr. Waffin stated that he believes that the risk of repair or maintenance to the storm sewer is minimal.

Mr. Bumbalis stated that during construction of the fence the pipe could be damaged.

Bill Calabrese, a resident, was sworn in. Mr. Calabrese stated that the applicant could obtain a company that would post a bond in the event of damage and permit the easement holder to remove the fence if needed.

Mr. McElroy stated that if an open sewer was constructed, you can see it. Mr. Waffin stated that there is a manhole in the tree lawn.

Mr. McElroy stated that the board may grant variances, however in the Storm Water Management Code nothing is permitted in storm sewer easements. Mr. McElroy may entertain a compromise. There must be a significant amount of space from the pipe. Mr.

McElroy stated that there are properties currently under violation that have constructed fences in storm sewer easements.

Mr. Prosek stated that the applicant has not shown evidence of practical difficulty in this case.

Mr. McTaggart asked who is responsible for maintenance of the easements. Mr. Bumbalis stated that the surface easements are usually maintained by the property owner. Mr. McTaggart asked if the contractor damaged the pipe, the homeowner is responsible. Mr. Bumbalis stated yes.

Mr. Waffen asked who does inspections. Mr. McElroy stated that after construction is complete the responsibility passes to a third party. Mr. Bumbalis stated that the sewers are not owned by the Township, the Sanitary Engineer owns the sewers.

Mr. Waffen asked if the Board would permit the construction of the fence if Mr. Waffen provided documentation showing the location of the pipe would that information to the Board make a difference in the deliberation. Mr. McElroy stated that he does not know if that would make a difference. Mr. McElroy stated that the Board would allow Mr. Waffen to amend his application.

Mr. Waffen amended his application to state that the fence would be located 2 feet from the center of the pipe once the location has been determined at the expense of Mr. Waffen.

Mr. McTaggart moved to approve the amendment to application # 20100509. Seconded by Mr. Maser. Roll call: Prosek- no , Maser-yes , McTaggart- yes , McElroy- no.

Mr. Prosek moved to approve the application # 20100509 as submitted. Seconded by Mr. McTaggart. Roll call: Maser-no, Prosek-no, Mr. McTaggart-no, Mr. McElroy-no.

Application # 20100545 Fat Little Buddies

Joseph O'Malley was sworn in. Mr. O'Malley stated that he does not know why the application is considered an expansion. Mr. O'Malley stated that since he took occupancy of the bar, he has changed the configuration and now has less seating. Mr. O'Malley stated that he is requesting a roof over the bar on the patio. Mr. O'Malley stated that he is proposing a stand alone 13 X 40 foot roof on the patio. Mr. Prosek asked if Mr. O'Malley is expanding the seating area. Mr. O'Malley stated no. The patio has been existing, sand and concrete remain from the previous owner. Total exterior 82 occupancy in 1992 permitted by the Ohio liquor control to use the patio as part of the facility. Mr. Prosek asked if this is exterior space only. Mr. O'Malley stated yes.

Mr. O'Malley stated that the previous owner had 72 chairs inside they now have 40. The reconfiguration of the bar added 8 seats.

Mr. O'Malley stated that he would like a roof over the outside bar. Mr. McElroy asked if the roof is currently built. Mr. O'Malley stated that what is there is a tent. The tent was put up for the fundraiser last week.

Mr. O'Malley stated that they are proposing a roof. Everything outside is not attached. Mr. McElroy asked if they are just covering the bar area or the sand area as well. Mr. O'Malley stated just over the bar area.

Mr. Prosek asked if the bar was already changed, not expanding size or seating, just putting a roof over the bar.

Mr. O'Malley said that the sand and patio area has not changed.

Mr. Bumbalis stated that the building had a bar with a residence behind it. They have changed the residence to expand the stage area changing the A-2 use. The proposed 40 foot bar is expanding.

Mr. McElroy asked if the shed in the back is the current bar, is it remaining? Mr. O'Malley stated that they use it for serving food, not as a bar.

Mr. McTaggart asked if the existing parking is grandfathered. Mr. Bumbalis stated no.

Mr. McTaggart stated that the parking isn't changing. Mr. Bumbalis stated that The changes in use, changing volley ball court to patio, increasing the bar size and incorporating the residential space to the bar increases the possibility for more people.

Mr. McTaggart stated that the proximity of the building has not changed. Mr. Bumbalis stated that the interior changes constitute the expansion of a conditional use. The records that the Township has do not show the patio being used for any thing other than volleyball. Mr. Bumbalis stated that the expansion of the bar from 10 ft to 40 ft does constitute an expansion.

Mr. McTaggart stated that the fire department would govern the occupancy.

Mr. McElroy asked if the bar had a formal agreement for additional parking. Mr. O'Malley stated that he spoke with Tom Gable, manager of the Greenbrooke Plaza. Mr. O'Malley stated that the cost to allow Fat Buddies' customers to park in the plaza was very high.

Mr. O'Malley stated that the business could not survive if he was forced to pay for parking space.

Mr. O'Malley stated that the money invested in the business has yet to be realized. Mr. O'Malley stated all profits are reinvested. Mr. O'Malley stated that if the need was great, they may eventually have to put in parking in the rear of the building.

Mr. McElroy asked if the patio is primarily used for smokers. Mr. O'Malley stated that the patio usually brings people in the summer, the roof will allow the patio to be used longer. Mr. O'Malley stated that the volleyball court is not used for seating, the sand area is used for corn hole. Beach chairs are available in the sand, no tables for eating are in the sand.

Mr. Prosek asked if the expansion of the business is because the house was incorporated into the business?

Mr. Bumbalis stated that the former living space has been incorporated into the business. Any changes or expansion to a non conforming use are reviewed by the BZA. Mr. Prosek asked if the capacity has been increased. Mr. O'Malley stated that based on the number of tables that were present when he purchased the business, the capacity is less.

Mr. McTaggart stated that the Board should not challenge what should have been done previously. Mr. McTaggart stated that the business has the same parking issues it had previously. Mr. McTaggart stated that the parking issues would be the same without the roof.

Mr. Prosek moved to consider application #20100545 the expansion of a conditional use at Fat Little Buddies. Seconded by Mr. McTaggart. Roll call: Mr. Maser- no, Mr. Prosek - n, Mr. McTaggart-y, Mr. McElroy-n.

Anthony Bumbalis questioned the expansion of a conditional use. The application to expand should be heard by the Olmsted Township Zoning Commission. Mr. McElroy stated that they, Olmsted Township Zoning Commission, do not have to agree with the Olmsted Township Board of Zoning Appeals.

DiSanto Enterprises request to table will be heard at the October 20, 2010 meeting of the Olmsted Township Board of Zoning Appeals. Mr. McElroy requested Mr. Bumbalis and Township's legal counsel present.

#20100636 Cantley- Garage Variance

Cynthia Cantley was sworn in. Ms. Cantley stated that the house currently does not have a basement or garage for storage. Ms. Cantley stated that the old metal shed that is existing, needs to be torn down. The request to place the detached garage slightly in front of the house is due to the window that is currently at the end of the house. Ms. Cantley stated that the garage, if placed further back would block the window. Ms. Cantley stated that the 20 X 20 garage would be less than 2 feet from the clean out drain and the swale behind the house. Ms. Cantley stated that the garage would interfere with the drainage in the rear yard if it was moved behind the window. Ms. Cantley stated that it would also be inconvenient to attach the garage to the house since there would be no access through the house, the bedrooms are located on the north side of the house. The proposed garage would need to be built behind the allowable setback. Mr. Bumbalis stated that the house is setback far enough that it doesn't look that bad it is set in front of the house. Should be 85 feet from the center line. The older part of the community. The code states that the setback is determined by the existing structures.

Mr. Bumbalis stated that the house is currently marked as being 85 feet from the edge of the road.

Mr. Bumbalis stated that the Olmsted Township Zoning Resolution states that the garage needs to be constructed in the rear yard.

Mr. McElroy asked if it was attached to the house would it conform? Mr. McElroy stated that in Woodgate Farms the garages are built in front of the houses. Mr. Bumbalis stated that the garages are attached.

Ms. Cantley stated that having the garage attached would be unusual since it would be attached to the bedrooms.

Mr. Prosek stated that the location of the garage door near the bedroom window would be unusual. Mr. Prosek also stated that the wind conditions sounded unusual as a reason for variance.

Mr. Prosek stated that if the garage was built behind the house it would conform in every way to the code. Ms. Cantley stated that it would potentially impact the drainage. Mr. Prosek asked if Ms. Cantley had a surveyor, contractor or engineer that could that could determine that.

Mr. Prosek stated no. Ms. Cantley stated that the swale is not very wide. Ms. Cantley stated that she is very concerned with the flooding in her rear yard.

Ms. Cantley described the rear yard swale and ditch.

Mr. Prosek asked if the garage was built behind the house, would it reach the ditch. Ms. Cantley said no, it would not reach the ditch.

Mr. McElroy stated that when the addition was done, the bedrooms were placed on the north side of the house. The garage would be built attached to the bedrooms.

Ms. Cantley stated that she takes things from the front of the house to the rear of the house. She stated that if the garage was attached she would have to open both garage doors or go around the garage to get to the rear yard if it was attached.

Mr. Prosek stated that if the drainage was to be affected, a statement from a contractor or engineer would be helpful. The property is over 400 feet deep, plenty of room for the garage to comply with the code.

Ms. Cantley stated that the cost to remove trees and change the drainage would not be easy. The cost would also be a factor.

Mr. Prosek asked if the garage went straight back it would impact the tree. Ms. Cantley stated no, but you would not be able to access the rear yard.

Mr. McElroy asked how close a garage can be to a structure. Mr. Bumbalis stated that 3 feet is when you need to begin fire rated construction, five feet is OK.

Mr. McElroy asked for any further questions.

Mr. McElroy asked if the house was built flush with the existing. Ms. Cantley stated that would not create enough light or ventilation for that bedroom.

Ms. Cantley asked if a contractor or surveyor stated that the garage in the rear yard would cause a problem with drainage, would the Board reconsider. Mr. McElroy stated that the Board could reconsider additional information.

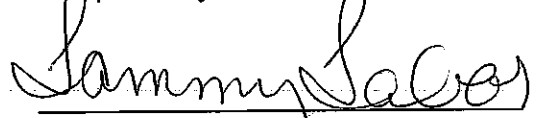
Mr. Maser moved to approve application #20100636 as submitted. Seconded by Mr. Prosek. Roll Call: McTaggart-No, Maser- Yes, Prosek- No, McElroy-Yes.

Discussion

Mr. McElroy stated that Trustee Lippus had requested that the Board suggest any comments or changes to the Olmsted Township Zoning Resolution.

Mr. McTaggart moved to adjourn. Seconded by Mr. McElroy. Roll call, all approved.

Respectfully submitted,



Tammy Tabor, Secretary

 11-17-10

Brian McElroy, Chairman Date