

The regular meeting of the February 15, 2006 Board of Zoning Appeals meeting was called to order at 7:05 p.m. Present were Brian McElroy, Genevieve Silveroli and Chairman Charles Cvitkovich. Also present were secretary Nicole Rosiu and Building Commissioner Keith Foulkes.

Mr. Cvitkovich asked the audience to stand for the Pledge of Allegiance.

Ms. Silveroli moved to approve the minutes of the December 21, 2005 Board of Zoning Appeals meeting. Seconded by Mr. McElroy. Roll call, all approved.

Mr. McElroy moved to approve the minutes of the December 21, 2005 Board of Building Code Appeals meeting. Seconded by Ms. Silveroli. Roll call, all approved.

New Business

Center Properties

The secretary read the public notice for Application #20060160.

John Wheeler was present as the attorney representing Center Properties. Frederick Bower was sworn in as the president of Center Properties and Thomas Gable was sworn in as an agent representing Center Properties.

Mr. Wheeler said that he thought there were 5 members of the Board of Appeals. Mr. Cvitkovich stated that there are 5 members, but only 3 are present and that is enough for a quorum. Mr. Wheeler asked if the voting is based on the majority of all 5 members or just the members present. Mr. Cvitkovich said only the members present. Mr. Wheeler stated that he talked to Mr. Tim Melena a few months ago regarding this use variance. Mr. Wheeler said that he wanted to clarify that the board is authorized to hear the appeal for a request for a use variance. Mr. Cvitkovich said that for a use variance which is applicable for the district that it is zoned for, yes. Mr. Wheeler asked if he would be correct in saying that under Section 540.06(e)(1), "Variances authorizing a use in a district in which such use is not specifically permitted shall be prohibited," according to the zoning resolution, the board is not authorized to grant that type of variance. Mr. Cvitkovich said that is correct.

Mr. Wheeler stated that he would still like to go forward, but he is contesting the legality of that specific provision. Mr. Wheeler said that he believes the board is permitted to grant a use variance. Mr. Cvitkovich said that it is his understanding that the board cannot grant a use variance for a use that is not conditionally permitted in that district. Mr. Wheeler stated that this specific use is a use that is neither permitted nor conditional in this district. Mr. Cvitkovich agreed. Mr. Wheeler asked if the board is even authorized to hear it. Mr. Cvitkovich stated that it is his understanding that the board cannot grant the variance, but he does not know if they are authorized to hear the discussion.

Mr. Wheeler stated that in Mr. Foulkes' response, he said that the parcel must be rezoned for the use. Mr. Wheeler stated that it is his contention that the Township is authorized to grant a use variance for a use that is not permitted in the Zoning Code. Mr. Wheeler said that it is not statutory to hear the discussion, the statute that he is referring to is Section 519.14 of the Ohio Revised Code. Mr. Wheeler said there is a case that is called, "North Fork Properties vs. Bath Township." Mr. Wheeler said it is a Westlaw site, 2004 WL 57564 (Ohio App. 9 Dist.), 2004-Ohio-116, gives the Township Board of Appeals the authority to hear this type of application. Mr. Wheeler asked the board if they believe that they do not have the authority to grant the variance. Ms. Silveroli stated that nobody is quarrelling about the code and that the board does not believe that they can grant this particular use variance, so there is probably no use in going forward with this.

Mr. Cvitkovich said that if the board has no authority to grant this variance, he does not see any reason to continue. Mr. Wheeler stated that the Township code is statutory with the Ohio Revised Code. Ms. Silveroli said that the Board of Appeals cannot determine the statute from the Ohio Revised Code over the

Township Code. Mr. Wheeler said that he wanted to raise the issue of statute before going forward. Mr. Cvitkovich asked Mr. Wheeler why he isn't pursuing a rezoning with the Zoning Commission. Mr. Wheeler said that it has been tried 3 times before. Mr. Wheeler stated that since Center Properties has been turned down, the only other option is to try for a use variance. Mr. Wheeler said that the Olmsted Township Zoning Code violates state statute. Mr. Wheeler said that he talked briefly about the issue with Mr. Grendell, but Mr. Grendell has not contacted him.

Mr. Cvitkovich asked Mr. Gable why the letter written to Mr. Foulkes from Mr. Gable says "Reject/Deny". Mr. Cvitkovich asked if Mr. Gable thought that the application was denied. Mr. Gable stated that reject and deny are the same thing. Mr. Cvitkovich said that they are 2 different words. Mr. Cvitkovich said that the application was rejected for additional information. Mr. Gable stated that he supplied additional information in the BZA packet. Mr. Wheeler said that in the Olmsted Township Zoning Code it says anyone, who is adversely affected by the Zoning Commissioner's decision, is able to appeal the decision. Mr. Cvitkovich stated that there is more information that is needed. Mr. Cvitkovich said that Mr. Foulkes acted on the application by rejecting it, requesting additional information. Mr. Wheeler said that what Mr. Foulkes was asking for was a development plan and all Center Properties was going for was a conditional use.

Mr. Cvitkovich stated that the board's interpretation is that the application was rejected, not denied. Ms. Silveroli said that it was not a complete application that was submitted, so Center Properties is appealing an incomplete application. Mr. Wheeler asked why the application was incomplete. Ms. Silveroli said for the reasons that Mr. Foulkes stated in his letter. Mr. Wheeler asked if the board has the authority to grant the use variance. Mr. Wheeler asked what needs to be done to complete the application. Ms. Silveroli said it is all in the letter from Mr. Foulkes. Mr. Gable stated that he submitted a zoning certificate application, it was denied. Mr. Gable said that he was adversely affected by the decision, so he appealed. Mr. Gable stated that what Mr. Foulkes is asking for is not required for a zoning certificate.

Mr. Foulkes said that he responded in writing and spoke with Mr. Gable to clarify how the building would sit on the property. Mr. Foulkes stated that it is critical to know where the building will be situated on the lot to the other properties. Mr. Wheeler asked if development plan is required on all zoning certificate applications. Mr. Foulkes stated that this was the first one he ever got for a commercial use in a residential district. Mr. Wheeler asked what is required. Mr. Foulkes stated that it is all in the letter he wrote on January 23, 2006. Mr. Wheeler said that he does not believe he needs a development plan for a zoning certificate. Mr. Wheeler stated that he is now being affected by money and time for a full development plan. Mr. Cvitkovich asked Mr. Foulkes if he was looking for a final development plan or a general development plan. Mr. Foulkes said that he was looking for a general plan including a lot outline. Mr. Cvitkovich stated that Mr. Wheeler is trying to build a case against what Mr. Foulkes is asking for. Mr. Wheeler said that what Mr. Foulkes is asking for is irrelevant. Mr. Wheeler stated that Center Properties is asking for a use variance, not a development plan approval.

Mr. Foulkes read the following and commented on each point (*the comments are in bold italics*):

Dear Mr. Gable,

In response to your recent application for a Zoning Certificate regarding proposed construction of a Child Day Care Center located at PP#262-15-03 located in Olmsted Township. I have rejected this application for reasons indicated below.

1. This Zoning Certificate Application was received, and is not in accordance with the Zoning Code. The Zoning Certificate is used for a "day care located within a residence" that is incendiary to the primary use of the dwelling. Section 510; See Section 250

2. The drawings provided are incomplete to not clearly indicate the location of the building and parking facility on the parcel, and the proximity to adjacent parcels or street intersections. ***Just the general, not a topographical map.***
3. A traffic study has not been provided as to the projects impact of traffic volume on Cook Road and Fitch Road. ***This is absolutely necessary to see the relationship to the parking.***
4. The drawings do not indicate improvements that exist or that are proposed, such as: sanitary sewer, storm sewer, public water, etc. ***Cuyahoga County has the existing records for this.***
5. Applicant did not provide a certificate or license to operate this type of facility. ***This may not be necessary up front, however it is required.***
6. This parcel must be rezoned to allow for the use and operation of a Commercial Day Care Facility. Section 540.06. This parcel is currently zoned R-30 and only allows for residential development.
7. Drawings for this type of project would require building permits in accordance with the Ohio Building Code. Building permits cannot be issued until all zoning requirements are met. ***There is not enough information to tell if all zoning requirements have been met.***

If you have any questions please feel to contact me at 440.235.4225.

Mr. Wheeler stated that the information requested by Mr. Foulkes is all common in development plan review. Mr. Foulkes stated that Center Properties is proposing a development. Mr. Wheeler said no, they are proposing a use variance. Mr. Wheeler stated that if they find out they cannot get a use variance for it, there is no sense in submitting a development plan. Mr. McElroy said that one of the nine factors in the appeals section says if it is changing the character of the neighborhood. Mr. McElroy said that more information would be better for the BZA to determine whether it is changing the character of the neighborhood. Mr. McElroy stated that a map where the property is at would be helpful. Mr. McElroy asked if the child day care center would be on the entire wooded lot. Mr. Wheeler said yes.

Ms. Silveroli said that she does not understand why this is even being discussed. Ms. Silveroli stated that the board does not believe they have the authority to grant this use variance. Mr. Wheeler said that is Ms. Silveroli's opinion and that one of the members believes the application is incomplete. Ms. Silveroli said that the completeness of the application is irrelevant.

Ms. Silveroli stated the following:

The Board found that based on the provisions of section 540.06 the Board is not authorized to grant this type of variance in the district in which such use is not specifically permitted and that the Board should properly reject the application on the basis of our opinion that we do not have the authority to grant approval of this application.

Seconded by Mr. McElroy. Roll call, all approved.

Floor Discussion

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

Respectfully submitted,

Nicole L. Rosiu, Secretary

Charles Cvitkovich, Chairman

Date

