

BOARD OF ZONING APPEALS - Minutes of October 22, 2019

7:00 pm ★ Municipal Complex (687 Decatur) *Courtroom* ★ Vermilion, Ohio

Roll Call: Dan Phillips, Bob Voltz, Jerry Schrenk. Absent: Dave Chrulski, Guy LeBlanc

Attendees: Bill DiFucci, Building Inspector; Barb Brady, Council Rep.,

NOTE: OFFICIAL ACTION REQUIRES 3 AFFIRMATIVE VOTES, See COV 1264.02(b); Therefore, *Motions will be stated in the positive (e.g., To Grant... / To Waive... / To Determine...); and a member=s >Yes= vote means Agree and a >No= vote means Disagree.

Dan Phillips, Chairman called the October 22, 2019 meeting to order.

APPROVAL OF MINUTES:

B. Voltz MOVED; D. Phillips seconded to approve the meeting minutes of September 24, 2019. Roll Call Vote 3 YEAS. **MOTION CARRIED.**

An *Oath* of truthfulness was administered to those in attendance who planned to speak during these proceedings. *Dan Phillips* described how meetings are conducted, explained the avenue of recourse available when a variance request or appeal might be denied, and gave a reminder that it takes 3 affirmative votes for an action (motion*) to pass.

NEW BUSINESS:

[B-3] 4620 Liberty Avenue – Applicant: IDC of Ohio, LLC (Allow Sweepstakes)

Applicable City code section(s) cited:

878.11 (e) No sweepstakes within 1000 feet of another sweepstakes terminal – variance request to allow sweepstakes.

Attorney Kenneth Nelson representing IDC of Ohio, LLC conveyed the company owns the Lucky Seven Café that is there presently and they're looking to expand in the same plaza. They've accommodated the other businesses in the plaza by putting up parking signs for the tenants, so certainly if there was another sweepstakes within this plaza it would not affect their business. They've gotten approval from most of the other businesses that are there, and they are requesting a variance to allow them to open another internet café.

D. Phillips asked if their present building is not big enough and Attorney Nelson said this is correct. D. Phillips said there are many other vacant buildings in Vermilion, so why don't they go over to one of those. Attorney Nelson said there is another sweepstakes owner in another plaza, and there is a non-compete with some of the other areas, so this would be the best location for this sweepstakes. D. Phillips said he wasn't sure what he meant by non-compete and Attorney Nelson said they're not allowed in that area because of the other sweepstakes. D. Phillips said this would be across the street, but there are still other vacant buildings by Giant Eagle and the old McDonald's. Attorney Nelson said this was a good point but one of the factors they consider when granting this variance, is that it might affect the essential character of the neighborhood, and he doesn't think it will affect the essential character or the adjoining properties, or the quality of the neighborhood if they would grant this variance.

J. Schrenk asked the building inspector how many parking spots are in the plaza. B. DiFucci said he didn't have a count of spaces. Attorney Nelson said he provided a photograph where it shows parking behind the business and on the sides. There are also signs where their patrons are not allowed to park along the front row, so he doesn't think in granting a variance this would affect any of the businesses in the plaza. J. Schrenk questioned if there was parking behind the plaza. D. Phillips said he didn't think there was parking in the back.

D. Phillips asked what the hardship would be for this variance request. Attorney Nelson said the owner already signed a lease without the previous knowledge of the 1,000 ft variance. They improved the property and cleared this particular property to get ready for the sweepstakes to happen, and then they had contact with the inspector and this is the reason for the variance request. So, not being able to use the space for this purpose would be the hardship in this case.

B. DiFucci said the other location will not be an expansion of Ram Entertainment, but a new sweepstakes that is called 'Talk and Play' – two separate entities.

Ben Borlaug of 1328 Birchview Drive and co-owner of Mod A Style Salon, which is in the same plaza, said this sweepstakes has no approval from any business in the plaza. They have a representative with them from Golden Crown and hundreds of pictures, and there is no parking. They have the salon, the Chinese restaurant, and travel agency and there is no parking right now. H&R is not even open right now for their tax season, so there will be no parking for them either. He said the quality of people at the plaza is something to be questioned. They have videos of loud fighting outside, spousal issues outside, and pictures of garbage everywhere. They have décor outside of their salon and there are cigarette butts stubbed out on it. They have pictures of beer bottles all over the parking lot – people are going out to the cars drinking beer. It's turning into a loitering haven. There are lots of pretty ladies coming into the salon and their getting cat calls and whistles. One of their customers got nervous about the people walking back and forth and standing in the salon window that made the customer uncomfortable and she walked to the back of the salon where his wife was because she was upfront by herself. He said it's not something they see in Vermilion and they're seeing it in Vermilion because they're not allowed in Lorain anymore. They're not supposed to be paid in cash and they have clients who are walking out with \$1,000 in their hand – they have pictures of this. He said there is no parking in the back.

Christine Borlaug, owner of Mod A Style Salon said she moved into this plaza in June and signed a lease on February 1 and the sweepstakes was not at the plaza. She has had her business in town for 6½ years and came from Avon Lake, and she has a lot of Avon Lake clientele and it has not been a good experience since they opened. She said she would have never opened in this plaza if they were their first, but they opened in August. She said it's not a comfortable feeling for anybody. She said there is no parking and they take pictures daily.

Brian Wittingham of 548 Hazelwood and owner of the Lucky Duck Café across the street said when they came to Vermilion, they wanted to do something different – a nice and social entertainment, not about a shady part of things. He said they have homecooked food with customer service. He said they are a café not a casino. They took provisions ahead of time to make sure they got the good people to come in and it keeps the bad people out. The type of things they're hearing from other people is because those types of provisions are not in place. He said businesses are looking at their plaza because of the positive traffic. In reference to the non-compete, this business can easily move anywhere he wants to if he's 1,000 ft from another sweepstakes. He said the 1,000 ft. was vague and questioned if it was door to door or plaza to plaza. B. DiFucci said its door to door (address to address) and they are just over 1,000 ft.

Attorney Nelson said with regards to the payouts this is something that is monitored strictly by the state. They can't give out cash by law, so he isn't sure where those allegations are coming from. With reference to some of the loitering, his client has hired a full-time security guard who walks and monitors the place. They put up signs to address the parking and there should be plenty of parking. He thinks there are only three chairs in the salon and all the spots in the front are being left empty, which he thinks addresses the parking concerns. They do believe the variance is warranted in this case and they would request consideration of the variance.

Jim Gross of 5936 Liberty Avenue said he is a customer and diner at the Chinese restaurant and in the last few weeks he wanted to go there several times but there was no parking, and his wife and him can't walk too far. When they do walk in the restaurant, they walk through a smoke stream and the police can't stay there and enforce it, and the operator has a tough time, but there's not room for parking.

D. Phillips MOVED; J. Schrenk seconded to approve the variance request as submitted to allow the sweepstakes within 1,000 feet of another sweepstakes. Roll Call Vote 3 NAY. **MOTION FAILED/VARIANCE DENIED.**

[R-4] 3588 Ann Drive – Timothy E. Blackburn (Side/Rear Yard Setbacks – Pole Barn)

Applicable City code section(s) cited:

1272.11 (c) max height = 15' – proposed = 19' 5/8" – variance request of 4' 5/8"
1270.05 (e) (3) (c) side yards not less than 8' – proposed = 7' – variance request of 1'
1272.12 rear yard shall be 5' – proposed = 4' - variance request of 1'

Timothy Blackburn said he would like to build a pole barn in his back yard and is asking for a variance for the side yard and back yard setback, and for a variance for the height.

D. Phillips questioned if he would need a rear yard setback too and B. DiFucci said yes, so they added the applicable code section 1272.12 rear yard shall be 5' – proposed 4' – variance request of 1'. He conveyed the owner is under the 30% maximum for rear yard coverage.

D. Phillips said he visited the site and the owner took down the existing building already and he prefers to build it a little bigger and behind him looks landlocked, but it belongs to the neighbor who is fine with him building a pole barn. He asked the owner why he took the old barn down and T. Blackburn said it was too small and he and his wife are retiring this year, and she does a lot of woodworking and crafts, so he's building a she shed.

J. Schrenk MOVED; B. Voltz seconded to approve the variance requests as cited on the application and noted above. Roll Call Vote 3 YEAS. **MOTION CARRIED.**

[I-2] 406 Nicholson Road – Gregory & Linda Epperly (Allow Shed on a Non-Conforming Lot in the Front Yard)

1280.06 (d) no additional structures conforming with this chapter shall be erected in connection with such non-conforming use of land – proposed = shed in front yard – variance request is to allow the shed on a non-conforming lot in the front yard.

Greg Epperly of 406 Nicholson said most of his property is in his side yard. He is on the corner of Nicholson and Liberty and they are trying to beautify the property, and he is having a positive

impact on his neighbor to the west who has started to clean up his yard. He has talked with all his neighbors and nobody has a problem with this request. They are just trying to make things look nice and beautiful.

D. Phillips said technically the shed would be in his front yard because his house sits on the corner of Nicholson and Liberty. G. Epperly said the shed is already in place as he didn't realize he needed a permit as he moved from Summit County. D. Phillips said this property is zoned industrial. B. DiFucci said Mr. Epperly has a residential property in the I-2 zoning district, which is industrial, so it's a non-conforming use in the I-2 and he's also situated on three separate parcels, so parcels independently do not meet the requirements of being a parcel in the I-2, so they see them as combined because on their own merit they do not meet the square footage for an individual parcel. He said the property is 406 Nicholson and the property doesn't abut Liberty, so his front yard is from the street curb all the way to his front wall on both streets. He is proposing to enlarge the property non-conforming residential use, so this is the reason why the request is before the board.

J. Schrenk asked the property owner if he was doing some excavating in front of the house towards the Nicholson side – so is this going to be another driveway. G. Epperly said they will be tying in with the sewer as the sewer ends on his property, and they want to tie it in before they do anything else. His wife wants to be able to park in front of the front door, so after they resolve the sewer issue then they will throw some gravel down and park a vehicle. J. Schrenk said they will need hard surface, so will they need another variance. B. DiFucci said there could be as they don't see a lot of residential driveways in the industrial zoning district, so they will need to investigate this. He said the sewer main ends and there is a lateral that ends on his property, so they would like to tap into it.

B. Voltz MOVED; D. Phillips seconded to approve the variance request as submitted and cited above. Roll Call Vote 3 YEAS. **MOTION CARRIED**.

[R-S] 806 Aurora Drive – Mark & Marlene Shepard (Side Yard Setback)

Applicable city code section(s) cited:

1270.09 (e) (2) (c) Side yards not less than 7' – proposed = 1' – variance request 4 ½'

Mark Shepard of 7556 Deer Path, Brecksville, Ohio conveyed that in July they bought a cottage in Bluebird Beach (806 Aurora Drive) with the intent was to fix it up. However, upon further investigation the cottage was not worth saving, so they would like to tear the structure down and rebuild, but he needs a 7' setback and where the foundation is located, he needs a side yard variance of 4 ½'.

D. Phillips asked if there is a shed in the back yard and Mark Shepard noted the shed will be coming down when the house does. B. Voltz asked if he would be modifying the current foundation/slab. M. Shepard said they will add an extra course of cinder block -it's currently on a floor joist and they're going to pour it as a slab, but they will use the same foundation. If they kept the wall, they could call it a remodel and he wouldn't need a variance, but they're changing the foundation to a slab and taking all the walls down and starting brand new.

D. Phillips MOVED; J. Schrenk seconded to approve the variance request as submitted and cited above. Roll Call Vote 3 YEAS. **MOTION CARRIED.**

[R-S] 5778 Huron Street – Heidi Riddle (Side Yard Setbacks)

Applicable City code section(s) cited:

1270.09 (e) (2) (c) Side yard not less than 7' – proposed = 1' 8-1/4" – variance requested 5 3-3/4"

Neil Akers representing Heidi Riddle said they are asking for a variance to build a new garage on the existing foundation and will be adding 4'. D. Phillips said he went to the property and feels there is a serious hardship because her neighbor's yard is elevated higher than her property and when it rains it floods her garage. Per the application a variance was requested for the rear yard, but this is not needed. Therefore, it was stricken from the application. It was noted the rear yard square footage does cover more than 30% of the rear yard.

B. Voltz MOVED; D. Phillips seconded to approve the variance request of 5' 3 3/4 as cited. Roll Call Vote 3 NAYS. **MOTION FAILED.**

[R-S] 5655 Huron Street – John Cook (Side Yard Setback to Build Shed)

Applicable City code section(s) cited:

1272.12 (c) Side yard = 6' – proposed = 1" - variance request of 71".

Note: Rear yard variance granted on August 27, 2019

John Cook explained his variance request reasoning is for the fact that the location relationship to his driveway didn't make him happy with the aesthetic appearance (the balance). He said the neighbors are fine with this change. The board had minimal discussion about property pins, etc.

J. Schrenk MOVED; B. Voltz seconded to approve the variance request as submitted and cited above. Roll Call Vote 3 YEAS. **MOTION CARRIED.**

[R-1] 3520 Cooper Foster Park Road – Brendan Sexton (Build Pole Barn – Height/Sq. Footage)

Applicable city code section(s) cited:

1272.11 (c) Max height = 15' – proposed = 20' – variance request of 5'

1272.11 (e) Max square footage = 768 sq. ft – proposed – 256- sq. ft. – variance request – 1792 sq. ft.

Brendan Sexton explained he would like to build a pole barn on the back of his property and the variance request is for the square footage and the height. He has taken down the two older sheds in the back yard because they were rotten. He said his measurements are 148' off the rear, 20' off the side yard, and 160' to the back of the house. D. Phillips said it's a big pole barn and questioned what they will be using it for. B. Sexton said he would like to store his boat and his 9'+ work truck, and his personal truck in the pole barn. He said they just moved in and they're trying to get the property cleaned up.

J. Schrenk asked if the driveway would need to be hard-surfaced and B. Sexton said the driveway in front of the home is gravel. B. DiFucci said if it's a gravel drive now then he can maintain that gravel without any issues. D. Phillips said there is a lot of green space, so he had no further questions.

B. Voltz MOVED; D. Phillips seconded to approve the variance requests as submitted and cited above. Roll Call Vote 3 YEAS. **MOTION CARRIED**.

[R-S] 350 Berkshire – Rodney Rogers, Jr. (6' Fence in Side Yard)

Applicable city code section(s) cited:

1272.09 (a) (1) Fence in front yard not to exceed 42 – proposed = 6" – variance request of 30"

Rodney Rogers, Jr. said he would like to put up a 6' fence in his back and front yard. He's on the corner of Berkley and Berkshire. He said he has talked with the neighbor on Mornington who is all for this. He said they have little dogs and the plan is extend the fence in the future, so he'll come back before the board. J. Schrenk asked how far it will be from the road. R. Rogers said it's probably a good 4' from the road to his chain link fence. He said he won't go any farther than the yellow house on Mornington Road. He would like to go pretty much even with this house in the future. D. Phillips asked if the view would be obstructed once he puts the fence down Berkley. B. Voltz conveyed that the property owner is not asking for this right now. R. Rogers said he will sooner or later, but not now. However, it won't block the view on Berkley because they have a big oak tree now.

B. DiFucci said if the yellow house would make application for a fence, they would approve it because it's his rear yard and he's allowed to be up to 7' up to the front wall of the house.

D. Phillips MOVED; B. Voltz seconded to approve the variance request as submitted and cited above. Roll Call Vote 3 YEAS. **MOTION CARRIED**.

[A-1] 2801 Cooper Foster Park Road – Tommy & Kari Halko (Allow Gravel for One Year/No Sidewalk)

Applicable city code section(s) cited:

1270.01 (g) (3) Driveways shall be hard-surfaced – proposed = gravel for one year – variance request to allow gravel for one year.

1024.01 Sidewalks required – proposed = no sidewalks – variance request for no sidewalks

Neil Akers of 14807 Kneisel Road said he is representing the property owners as they are building onto their property at Cooper Foster Park Road. There currently are no sidewalks, so they are asking for a variance for no sidewalks. In addition, they are requesting a variance to allow gravel for one year, so it's compacted before doing anything with it.

D. Phillips said most people in the area have a gravel driveway and most don't have sidewalks.

J. Schrenk MOVED; D. Phillips seconded to approve the variance requests as submitted and cited above. Roll Call Vote 3 YEAS. **MOTION CARRIED**.

Adjournment:

D. Phillips adjourned the meeting after no further business was entertained.

2018 MEETINGS:

4th Tuesday monthly (except December) - *Next: **December 3, 2019** @ 7:00pm*
Municipal Complex Courtroom, 687 Decatur, Vermilion
Gwen Fisher, Certified Municipal Clerk