

BRIMFIELD TOWNSHIP BOARD OF ZONING APPEALS

MEETING MINUTES of December 16, 2020

Virtual Meeting via Zoom due to COVID-19 Guidelines – 7:00 pm

Present: Chairman Bruce Knippenberg, Scot Etling, Vince Murdocco, Sean Phillips, Ed Shutty,

Alternates: William Kremer, Clayton Popik

Absent:

Staff: Michael Hlad, Economic Development Director and Zoning Inspector, Lauren Coffman, Zoning Secretary, Brian Gardner, IT Director, and Mark Guidetti, Township lawyer

CALL TO ORDER:

The Brimfield Township Board of Zoning Appeals meeting was called to order at 7:00 PM on Wednesday, December 16, 2020.

Roll Call:

Etling = Here

Knippenberg = Here

Murdocco = Here

Phillips = Here

Shutty = Here

Kremer = Here

Popik = Here

MOTION#2020-71

Vince Murdocco made a motion to approve minutes from November meeting. **Ed Shutty** seconded his motion. All members were in favor. Motion passed.

MOTION#2020-72

Vince Murdocco made a motion to accept the proposed agenda. **Scot Etling** seconded his motion. All members were in favor. Motion passed.

Mr. Knippenberg noted that there were two applicants for the meeting that night.

Mr. Guidetti stated that he did speak with the Sheetz attorney earlier that morning to confirm that the request to extend to the next meeting was received. Requesting to move to January meeting.

Mr. Knippenberg stated that if continuance was warranted, there was a 60-day window to act on the application.

Mr. Etling questioned whether they were asking to continue the vote to the next meeting.

Mr. Hlad explained that they are looking to get approval from ODOT for the activation of the traffic light, it is important to them that they have all the evidence.

MOTION#2020-73

Scot Etling made a motion to continue the Sheetz applications until the January meeting. **Ed Shutt**y seconded his motion. All members were in favor. Motion passed.

Zoning Conditional Use Application:

Applicant: Lemmon Development, LLC

Owner: Michael R. Casamento & John J. Flynn & Plaza Field Ltd.

Address: PO Box 37, Kent, OH 44240

Parcel: 04-031-20-00-059-002

Conditional Use Request: Applicant is requesting a Conditional Use Permit to “Section 311.02.B.1.a Multi-family dwelling up to a total of twelve (12) units per acre, subject to provisions of Chapter 4 and Section 400.10.B subsection 53” for the 19.37 acre parcel.

Zoning Conditional Use Application:

Applicant: Lemmon Development, LLC

Owner: John J. Flynn

Address: 3560 Gary Drive, Mogadore, OH 44260

Parcel: 04-032-00-00-047-000

Conditional Use Request: Applicant is requesting a Conditional Use Permit to “Section 311.02.B.6 Uses not covered come before Board of Zoning Appeals”. The goal of the project is to develop the 1.95 parcel and the 19.35 acre parcel to the east according to “Section 311.02.B.1.a Multi-family dwelling up to a total of twelve (12) units per acre, subject to provisions of Chapter 4 and Section 400.10.B subsection 53”

Mr. Knippenberg stated that the next applicant was a Conditional Use Application from Lemmon Development LLC in the I-C district. He questioned who was present at the meeting to speak on the development.

Rich Costin stated that he was in attendance and representing Lemon Development Group at the meeting.

Mr. Hlad noted that there were two additional attorneys as well attending the meeting

Marcus Pryor II – 4237 Whitestone Rd - stated that he was an attorney representing himself appearing in opposition to the proposed applications.

Frank Simino stated that he has been the law director for the city of Ravenna since 1976 and that he is in attendance to represent Mike Casamento and John Flynn, who are the owners of the two parcels of land.

Mr. Hlad explained that Todd Peetz, Regional Planning Director for Portage County, was also in attendance to help out and assist.

SWEARING IN OF APPLICANTS

Marcus Pryor – Pryor Law Firm

Frank Simino – Law Director, City of Ravenna

Todd Peetz – Director of Regional Planning for Portage County

Mr. Knippenberg asked the zoning inspector to start off and explain what was going on

Mr. Hlad explained that this was a Conditional Use within the Integrated - Commercial district. Mr. Hlad reached out to the engineer to provide a statement about being in harmonious use and the application was complete at the time of the meeting. Section 311.02.B.1.a states a residential use, multi-family dwellings, up to a total of twelve units per acre is subject to provisions of Chapter 4 in section 400.10.b.53 so it is a conditional use in the commercial district. The Comprehensive Land Use Plan, which was last updated in 2004, placed the Integrated-Commercial district on the map. Mr. Hlad stated that Todd Peetz was in attendance from Regional Planning to discuss some of the history.

Mr. Peetz explained that the I-C district was created as a result of the 2004 Comprehensive Land Use Plan which was before he was involved with the department. Before the change to I-C, the area was zoned for General commercial or highway commercial. Both areas were in close proximity to interchange and to interstate 76.

Mr. Knippenberg questioned whether part of the property was in the H-C district and if it was conditionally permitted in that area.

Mr. Hlad stated that the applicant would be coming in under uses not covered and that Rich Costin was in attendance to explain further.

Mr. Costin explained that the smaller piece of land is to mainly get a road connection out to State Route 43. The small parcel would also house some villa units for the apartment complex. The small parcel would work with in conjunction with the larger one in providing a better way to get traffic out to Route 43.

Mr. Knippenberg asked for any questions from the other board members. With no other questions, Mr. Knippenberg asked the applicant what exactly it was they were expecting to do and why they needed 12 units per acre in that area.

Mr. Costin explained that he was with Lemmon Development and they are proposing a market rate apartment community project with a maximum of 216 units. These units would be garden style residential buildings. A buffering of mounding trees would be in place, butting against the Sterling Green neighborhood. The developer felt this was an ideal location for the apartment complex with its proximity to the 76 interchange and State Route 43.

Mr. Hlad interjected to make it clear that they are coming for the conditional use only at this time, variances will be needed if the design stays the way it was presented at the time of the meeting.

Mr. Costin stated that they have two items, one large parcel in the I-C district, that allows for high density residential housing. They feel this request meets all criteria and is harmonious to the area. The apartments have a residential look and style to them, with brick and vinyl siding along with shingled roofs. The second parcel is the smaller piece of land that is zoned H-C. The main reason they are requesting for this parcel is for secondary road access away from the apartments and coming out onto State Route 43. The smaller parcel project would connect to 43 and be fitted with 12 single story villas.

Mr. Knippenberg questioned if the structures mentioned were going to be single or multi-level buildings

Mr. Costin replied that they would be a three-story wooden structure with stairs, no elevators, and open hallways to the corridors. The garages would be detached.

Mr. Knippenberg asked if the main egress was going to be Town Square Dr. onto Kelso Dr.

Mr. Costin agreed that that was correct and reiterated that the second request they are asking for is the connection onto route 43 via the smaller parcel of land. He stated that secondary access is important in helping with overall traffic in the area.

Mr. Popik mentioned that the area in question is a tight space. Town center drive is a crowded area, dumping all traffic out onto Kelso Drive. With the main entrance coming off Kelso Dr. and Town Center Drive., there would be a lot going on in that area. Mr. Popik asked if there was a traffic study done by ODOT for that area.

Mr. Costin responded that there are no comments from ODOT at that time, but they will provide a traffic study. One thing with traffic is that you must have the need for it. The traffic in the area must warrant signals for them to be turned on.

Mr. Knippenberg questioned where the second road out would be.

Mr. Costin explained that the road will connect to Town Square Drive. Would be coming in off the Town Center Drive and head West coming up the hill, coming out North of the Wendy's.

Mr. Knippenberg asked if there were any other questions from the board

Mr. Shutty asked if anyone had heard anything from the Police or Fire

Mr. Hlad stated that there were no letters from Fire or Police at this time, but there were letters from residents and from two of the trustees.

Mr. Etling stated that he had the same concerns about traffic and the same stipulations for wanting a traffic study.

Mr. Costin explained that a traffic engineer would be brought in for review from the county. Traffic studies are a science with counting at different times of the day. Route 43 has had some major improvements. The additional road letting out onto 43 will be helpful.

Mr. Etling noted that Town Center Dr. was never designed to handle that amount of traffic.

Mr. Popik stated that Route 43 was designed to move traffic through the area and moving traffic onto and off 43 in the section stated can be dangerous. Mr. Popik restated that a lot of discussion has been built around this fact for a month.

Mr. Knippenberg opened the floor to Mr. Marcus Pryor.

Mr. Pryor began by stating that he an attorney and a neighboring landowner of the proposed apartment site. He was representing himself, his family, and many neighbors, who sent in over 20 pages of letters in opposition to the project. Mr. Pryor requested to attend the meeting on legality, rather than just on the general opposition that had been expressed. He hoped the board would act as a quasi-judicial administrative body. The board is charged with making decisions and rulings that have the force of law. In turning to his legal argument, Mr. Pryor referenced section 400.10 of the Brimfield Township Zoning Resolution and the 33 additional criteria outlined in subsection A and subsection B. Mr. Pryor argued as a matter of law, neither conditional use application will comply with the Zoning Resolution Subsection A.2 of section 400.10.

Mr. Knippenberg asked if there was a rebuttal

Mr. Simino began by thanking Captain Pryor for his service. Mr. Simino stated that the bottom line was that both the H-C and I-C districts have the conditionally permitted use portion of the Zoning Resolution. Each application would be permitted as long as the conditions were met. The first parcel is in the H-C district and deals with the idea of 310.02.b.12, that any uses not covered come before the Board of Zoning Appeals for a ruling. The second parcel is in the I-C district and deals with Section 311.02.B.1.a in that high-density multi-family residential can be approved as a permitted use. Both of those provide the board with jurisdiction, on basis to develop this property. The I-C purpose lists high density and multifamily in 2 separate instances in the purpose of the I-C district. It is also indicated that development has to comply with the Comprehensive Land Use Plan. The first Comprehensive Land Use Plan was created in 1988 and was modified in 2004 creating the I-C district. There is a direct conflict between the Zoning Code, and what paragraph 4 of the Comprehensive Land Use Plan states. The Township created the code in reference to Section 400.10.A.2. Meaning they would have had to take that fact into account in the matter of which they created the zoning district. The general is governed by the specific, and Section 400.10.a.2 is a general statement while the Zoning Code tells you exactly what you can do on that parcel of land. The parcel is below 76 but it was a decision made with full knowledge of the Comprehensive Land Use Plan when that district was created and zoned I-C. Mr. Simino argued that it was not inconsistent with the Comprehensive Land Use Plan because it was done in full knowledge. The Land Use Plan operates more as a guide for future goals, rather than what is legally permitted. The I-C district was created and available for development by these individuals.

Mr. Peetz stated that he had a correction to what Mr. Pryor said, that everything has to be north of Interstate 76. The key word within the text is predominantly, not shall be. The majority, but not all.

Mr. Simino reiterated that the word predominantly is an important word, that it did not exclude that anything could not be done south of the interstate in relation to the high-density multifamily. Also, in the R-4 district where Caption Pryor's home is located, multifamily is as permitted use in that district as well as being a conditionally permitted use.

Mr. Knippenberg questioned about Caption Pryor's comments regarding the amended applications, that section B was not replied to. Specifically, number 8 and number 9. Mr. Knippenberg questioned why they thought the high density was being applied for, when the permitted use is 4, as opposed to the 12 being requested.

John Walsh - GBC Design – stated that the way he interpreted the zoning code was that it was a conditional use subject to Section 400.10.A and under that it has 11 items to be reviewed by. Mr. Walsh then stated that the way he interpreted Section 311.02.B.1 is that a multifamily dwelling up to 12 units and acre is subject to the provision of Chapter 4 Section 400.10.B.53. It was interpreted that only Subsection 53 was to be used to review and judged for conditional use.

Mr. Knippenberg explained that it actually states the provisions in Chapter 4, in Section 400.01.B and that was what he was referring to.

Mr. Walsh responded that it was only the subsection of part B and that he interpreted it that it was a collection of everything that could be a conditional use in the township. In this case, the only subsection in B that is applicable is 53.

Mr. Simino interjected by adding that in Chapter 4, Section 400.10 General Requirements for all conditional uses, in addition to the specific requirements for conditionally permitted uses as specified in section 400.10.B, the BZA shall review the particular facts and circumstances of each proposed use in terms of the following. Section A talks about the 11 items that are to be addressed. It states that in addition to those, you have to go through the ones that are specified in 400.10.B. In referring to that code, it talks about multifamily residences up to 12 dwelling units per acre. Mr. Simino stated that he believed the comments about interpreting the code to the specific subsection that is being itemized under 400.01.B is an accurate interpretation

Mr. Pryor argued in the opposite, that 400.01.B every conditional use shall meet the following specific requirements as specified, in addition to the general requirements as specified in Section 400.10.A. The Zoning Resolution is black and white and states that you must address all of them.

Mr. Simino stated that what they were saying under A is that in addition to the requirements for conditionally permitted uses, as specified in 400.10.B the board shall review the circumstances after each proposed use in terms of the following general requirements. As interpreted, A sets forth general requirements and B sets forth specific requirements. Therefore subsection 53 is an additional requirement to the additional 11 in subsection A.

Mr. Guidetti noted that the language is vague, more accurately worded is how has the board applied this traditionally in the past. Mr. Guidetti stated that it sounded like in the past, that some sections of subsection B have been required to be met by the board. Everything after the initial 11 requirements

Mr. Walsh stated that going back to Section B, Chapter 3 only specifies section 53

Mr. Knippenberg stated that on page 86, all of the first 22 in B are specific conditions that can be applied to any projects that come in as a conditional use.

Mr. Simino explained that he did not believe that was an accurate interpretation. The authority to act is set clear and the sections say what the conditionally permitted uses are.

Mr. Knippenberg questioned that as a conditionally permitted use, it is permitted 4 units per acre. What would be the difference between the two designs that would encourage the board to look at it as a conditionally permitted use.

Mr. Simino stated that there is no question that it can be a conditionally permitted use under the code. Mr. Simino explained that he believed strongly that the application addresses the 11 requirements set forth and addresses the other requirements as well. When revised, both the Zoning Resolution and the Comprehensive Land Use Plan were simultaneously adopted by trustees. That section is predominantly specific and zoned for I-C. Both parcels are south of 76, but the language is not specific and does not predominantly preclude the only zoned district that you have to allow multifamily residences to be constructed on the already established districts.

Mr. Kremer questioned how close the apartments were to the single-family residences.

Mr. Costin explained that the buildings range from 40-120 feet from the property lines

Mr. Kremer questioned if there was an example in the township of apartments of this density being permitted next to single family housing

Mr. Hlad stated that there were already apartments in the area.

Mr. Kremer asked where they were located.

Mr. Hlad noted that in addition to the apartments already there, that Copper Creek Apartments were also in the area. The space was approved recently and was originally in an O-C district before it was changed on the zoning map.

Mr. Pryor noted the distance from his backyard to the proposed site was the width of a side street and was concerned with the height of the building with being able to see into the 2nd story of his home.

Mr. Costin explained that they would do mounding with trees, around entrances and provide trees to block the view from the neighboring houses. He explained that they could also do buffering between the apartments and the adjacent neighborhood.

Mr. Pryor reiterated that the apartments are 2 story apartments and his concerns regarding privacy and looking down onto his homes 2nd floor.

Mr. Simino noted that the area would be built up and that the mounding can be addressed to block the view from the neighboring properties. Just north of the property is an open space, to the West is more apartments, a school building, and a playground. There is a lot of development in that area that would not be disturbed. The mounding would be able to suffice for the preclusion of the site and area concerns. The developer is willing to work with the concerns and create a solution that would work for everyone in an area that has unrepresented growth potential. Mr. Simino questioned Mr. Peetz on what would best fit the development of this property if it were not to be developed as multifamily residential.

Mr. Peetz stated that if you didn't do a multifamily project there, it would have to be a project that was properly buffered due to the proximity of the residents.

Mr. Knippenberg voiced his disagreement that the apartments would not change the area stating that it would be an increase of over 200 vehicles using that road daily.

Mr. Etling echoed Mr. Knippenberg's concerns that the apartments would congest the area

Mr. Popik agreed with Mr. Etling and Mr. Knippenberg that the buffers are very important

Mr. Kremer questioned about developing the land for condominiums instead.

Mr. Costin stated that they did not believe that the current market warranted condominiums and that apartments were the best use for this property.

Mr. Pryor suggested selling the adjacent property as parcels for more single-family homes.

Mr. Costin responded that they did not believe the property accommodates that.

Mr. Simino pointed out that the property has been for sale for 30 years and that the proposed apartments are a great opportunity for development. Traffic is going to increase no matter what is developed in the area. The bottom line is that this is a project that is currently available. Mr. Simino did not see how zoning which allows it, should be ignored.

Mr. Pryor noted that the board has the power to deny if not all the criteria are met.

Mr. Simino stated that the current application addresses all sections and is complete. All voiced concerns can be complied with by the developer and can be permitted as a conditionally permitted use.

Mr. Popik questioned if fire and police can support the increased capacity and how many bedrooms per unit were being proposed.

Mr. Costin explained that the apartments would be built as 1- and 2-bedroom units

MOTION#2020-74

Scot Etling made a motion to enter the letters in opposition into record. **Vince Murdocco** seconded his motion. All members were in favor. Motion passed.

John Flynn – Property Owner – stated that the board has made property, that is 19 acres, unusable and that its unfortunate for Mr. Casamento.

Mr. Knippenberg noted that it is permissible for 4 units per acre. He did not believe that the criteria fit at 12 units per acre next to single-family residential homes. It is up to the board whether to make a decision or to continue the discussion.

Mr. Guidetti stated that Mr. Simino, in his opening statement, accurately and objectively summarized some of the history and interpretation involved with the Zoning Regulations of the Township. The board has noted a couple specific issues with the code, including buffering and its impact on the neighboring properties from a privacy aspect. At this time the board can allow the applicant time to resolve these issues or obviously the board can call the question.

Mr. Knippenberg asked the board for a motion

Mr. Etling asked that in asking for a motion, he was reiterating that the code allows for 4 units per acre when the applicant is requesting 12 units per acre as a conditional use.

MOTION #2020-75

Scot Etling made a motion to deny the Conditional Use Permit. **Clayton Popik** seconded his motion. All members were in favor. Motion denied.

MOTION #2020-76

Scot Etling made a motion to deny the Conditional Use Permit. **Vince Murdocco** seconded his motion. All members were in favor. Motion denied.

Mr. Knippenberg asked for any other questions or comments from the board or for the good of the order.

Set January meeting – January 20th, 2021

MOTION #2020-70

Bruce Knippenberg made a motion to adjourn which was seconded by **Scot Etling**. All members were in favor.

Chairman Bruce Knippenberg

Vince Murdocco

Scot Etling

Sean Phillips

William Kremer

Ed Shutty