

## PLANNING COMMISSION MEETING

*May 8, 2008*

The Planning Commission convened in Courtroom No. 1 at City Hall for their regular meeting. Chairman Fitzgerald called the meeting to order at 7:30 PM.

Members in attendance were, Mr. Andrew Eade, Mr. David Komjati, and Chairman Thomas Fitzgerald. Absent were, Mr. Brian Temming and Ms. Christine Shoop. Also present were, City Manager Rita McMahon, City Planner Russ Schaedlich, Assistant Law Director James Lyons, and Secretary Lynn White.

**MINUTES:** None

### **NEW BUSINESS: (Public Hearing Items)**

Chairman Fitzgerald asked the secretary to read the notice for the first item under New Business, Refusal No. 2147 for a Conditional Use Permit.

#### **REFUSAL NO. 2147                      CONDITIONAL USE PERMIT REQUEST**

**Applicant:** J. Natividad Soto Rodriguez  
**Owner:** John Grogan  
**Location:** 33 Stage Avenue (Parcel Number 15-D-018-0-00-014-0)  
**District:** B-2 General Business District  
**Section:** 1143.06 (a)

The City of Painesville has received an application from J. Natividad Soto Rodriguez for a Conditional Use Permit. The applicant is proposing to locate retail sales of automobiles and related services at 33 Stage Avenue (Permanent Parcel Number 15-D-018-0-00-014-0). This is a new application for the property due to the expiration of the permit issued on May 10, 2007. The property is located in the B-2 General Business District. Section 1143.06 (a) requires a conditional use permit for similar uses as approved by the Planning Commission in the B-2 General Business District. The use that is being proposed is similar to the permitted use; retail stores.

Chairman Fitzgerald asked if there was anyone present to speak on behalf of this request. Mr. Rodriguez, 154 Chester Street, indicated he would like to wait to hear the comments and questions prior to speaking.

Chairman Fitzgerald asked for comments and questions from members of the Commission. Mr. Komjati indicated he looked over the photographs that were submitted to the Commission at the beginning of the meeting. The photos show that a lot of work has been done on the inside of the building. Mr. Komjati asked what the plans for the outside of the building are. Mr. Rodriguez indicated they are waiting for better weather so they can finish the stucco and the painting. The landscaping will also be put in place once the exterior finish is put on. Mr. Rodriguez stated they are waiting for the business across the street to move because they have a lot of traffic coming and going and a lot of dirt and dust is created over there. Mr. Komjati asked what the expected time would be to have it finished. Mr. Rodriguez replied it should be completed in a couple of weeks.

Chairman Fitzgerald asked when Mr. Rodriguez expected to be open for business. Mr. Rodriguez replied if everything goes as planned in a month no later than two months from now. He indicated they have everything ready to receive their license from Columbus.

Mr. Komjati indicated during the last meeting exterior lighting was discussed. He asked what the plan was for the lighting of the parking areas. Mr. Rodriguez commented he had submitted a landscape plan showing the landscaping and awnings. Mr. Komjati asked if there would be big lights to illuminate the building and parking lot. Mr. Rodriguez stated he would do whatever the City wanted something that looks good for the area.

Ms. McMahon indicated one of the original conditions on the permit was for the applicant to submit a lighting plan. She stated the City has not received a lighting plan from the applicant. This will be necessary before the use can be approved. This is also a suggested stipulation for this new request.

Chairman Fitzgerald asked if the applicant still needed to obtain a Certificate of Appropriateness for the landscaping. Mr. Schaedlich responded the applicant had submitted a landscaping plan, which was provided to the Commission in their packet. The landscape plan that was submitted has been approved by the City. The applicant also received a Certificate of Appropriateness for the stucco design and color scheme last year.

Chairman Fitzgerald asked what the suggested stipulations are for this current request. Mr. Schaedlich indicated the stipulations from the original request would be the same with the deletion of number 5 relating to the approval of a landscape plan and the possibility of deleting number 8. Ms. McMahon indicated stipulation number 8 was for the permit to be granted for one-year and the need for the applicant to re-apply. She suggested the Commission discuss this stipulation for this request. The Commission discussed the one-year stipulation and the reasoning it was placed on the Permit. It was decided to have the same stipulation with a deadline of May 2009 in order to look at the operation of the business and its impact on the surrounding area.

Chairman Fitzgerald asked for additional comments or questions from the Commission. There being none, Chairman Fitzgerald asked for comments from members of the audience.

Mr. Tony Torre, 93 Burton Street, indicated he owns A&C Auto. He commented that he was at the meeting last year and he still feels the same. He does not like the idea of having a car dealer in such close proximity of his business. Mr. Torre indicated that he has a stipulation for his car dealership that he cannot have outside storage of his vehicles. He believes that he should have the same stipulations. Mr. Torre mentioned there are many large rocks located in front of 33 Stage Avenue and it does not look good. He indicated these rocks are on city property and he has complained about the rocks and nothing is being done.

Mr. Rusty Phillips, 430/436 Richmond Street, indicated the rocks have been placed on Mr. Rodriguez's property to keep the overflow of the recycling business off the property. There is an issue with garbage and rubbish being thrown out by the patrons of the recycling business. The rock issue was discussed in length. It was determined the rocks would be removed once the business is open to allow the parking area to be accessible.

Chairman Fitzgerald asked if there were any other comments from the audience. Mr. Torre reiterated that he does not like the idea of this business being located near his business. Mr. Komjati responded that looking through the minutes from the last meeting; Mr. Torre's permit was issued with the stipulation of indoor storage due to the zoning classification being industrial.

Chairman Fitzgerald asked for any other comments. There being none, he asked for a motion. Motion by Mr. Komjati, seconded by Mr. Eade to recommend approval of Refusal No. 2147 for a Conditional Use Permit with the following stipulations: 1) the use of banners, streamers, balloons, and pennants for advertisement purposes is prohibited on the exterior of the building and property. 2) The hours of operation shall be limited to daylight hours; hours shall be extended once an agreed upon lighting plan has been approved by the City Administration. 3) There shall be no outside storage of car parts. 4) There shall be no outside display or storage of inoperable or damaged vehicles. 5) There shall be no bodywork or painting permitted on the property. 6) The maximum number of automobiles displayed outside is twenty (20). 7) The Conditional Use Permit is granted for one-year at which time the Applicant must re-apply for another permit; Expires May, 2009. There being no further discussion, the secretary was asked to call the roll. On roll call, Mr. Komjati, Mr. Eade, and Chairman Fitzgerald answered "yes". Motion carried.

Chairman Fitzgerald moved onto the next item on the Agenda.

#### **ADMINISTRATIVE REPORT:**

##### **Walnut Ridge Condominium Project:** Final Plat extension request.

Chairman Fitzgerald asked if there was anyone present to speak on behalf of this request. Mr. Tom Winfield indicated that he is present and will answer any questions the Commission may have for him.

Mr. Komjati asked Mr. Winfield to give the Commission an update as to where he is in the process of this project. Mr. Winfield indicated that money is tight; banks do not want to spend a lot of money on residential properties. He indicated he is having a small dispute with his neighbors in regards to land. After all the years this project has been through, he believed it was cast in stone, but now this land dispute. He indicated he would like that resolved and for it to go away however, he does not believe it will. Mr. Winfield stated he would like the Commission to give him the extension that he is requesting of one-year from August.

Mr. Komjati commented that it is due to the financing issue that Mr. Winfield is requesting the extension. Mr. Winfield replied that yes that is the biggest issue along with the eighteen-inch dispute over the property line. He indicated he bought 21.63 feet in width, but exactly where that is, until someone will stand-up for, it remains a dispute. He indicated he does not understand this since the property has been surveyed at least fourteen times and approved through every agency of Painesville

a half a dozen times. It was approved for 32 apartments, it had to be surveyed, and now this dispute. He stated once again that until that is cast in stone he is not going to invest in the project and be left holding the bag, a year doesn't seem to be enough with the amount of time involved in this process one year is a small percentage for him to take to get this project buildable. He stated he is asking for anything the Commission can give him.

Chairman Fitzgerald asked Mr. Winfield what his plan is on pursuing this project. Mr. Winfield responded until it is built or sold. He stated he would also harbor the sale of the property if someone had a better use for the property. He commented that he thinks it has been resolved that this is the highest and best use of this property. Mr. Komjati asked Mr. Winfield if he has put out any feelers to see if there is an interest in the property. Mr. Winfield stated he has done this with some real estate companies and some internet work; the original principals were the Metro Parks and the Painesville School system. He stated they did try eminent domain for three years when he was having the trouble and now it is all approved and they dropped their eminent domain, apparently they have enough park. He stated he had some interest from Metro Parks who are adjacent property owners and he believes this would be a great place for a ranger's station. Mr. Winfield commented that it would make his day for someone to do something with that piece of property. Mr. Komjati asked Mr. Winfield if he could get out from under the property, he would do so. Mr. Winfield responded definitely, but it is tough right now. He stated that when he started this project it made a lot of sense and believes that it would enhance the school. If he were a teacher, he would want to live there and walk to school with the price of gas. He stated he feels it is a nice place to be, right there in the middle of the educational block with the College and Schools. He stated his banker has gone south and no one wants to touch this project right now. If something changes in the economy, it might be a different story. He is just looking to buy some time.

Chairman Fitzgerald asked for further questions. There being none, he stated that he feels the one-year extension is a reasonable request. The other Commission members agreed to the one-year extension. Chairman Fitzgerald asked if a motion was necessary on this request.

Mr. Lyons stated he would like to make a couple comments. He stated that Mr. Winfield had made some statements and that he wanted to be sure the record was clear on those statements. Evidentially there is some type of dispute in terms of some boundaries. Mr. Winfield mentioned that the place has been surveyed a number of times and has been approved by the city. The city has not surveyed the property. They have not gone out and checked the surveys that Mr. Winfield has submitted. That is not the city's job. One of the requirements is the applicant has to submit a survey by a registered surveyor with a survey seal on the survey. This is an important issue in this particular issue. The city accepts a survey from a registered surveyor. If there later turns out to be a dispute between adjacent property owners, that is a private issue that has nothing to do with the city and the city is not in a position to rule on this.

Mr. Lyons stated secondly, he learned some new information. Mr. Winfield stated the school system had tried to eminent domain his property. Mr. Lyons stated he tries to follow eminent domain issues because there are Supreme Court decisions that affect those types of cases. He did not realize that the Painesville City Local Schools had actually filed an eminent domain action against him in Probate Court. Mr. Lyons asked if they had actually filed papers in Probate Court, or were they discussing the eminent domain power that they have. Mr. Winfield responded that for three years in every documentation they threatened using eminent domain. Mr. Lyons stated but they did not actually file. Mr. Winfield stated they never filed. Mr. Lyons continued that he wanted the record to reflect what actually happen so that a year from now we do not look back and say there was an eminent domain procedure because we do not know who will be here at that time. This is more correct as to what has happened.

Chairman Fitzgerald indicated he is a little confused on the whole surveyor issue. If a surveyor comes and surveys a lot is that not adequate. Mr. Lyons replied no. He explained a case that he was involved in that 300-foot of property was essentially missing. It depends on which side the survey started. One survey started three miles away in terms of what their fixed point was and the other started from a mile away in the other direction. There are 300-feet missing when you put the two surveys together, so there is an extra lot or there is not a lot that has caused problems. If the surveyors cannot agree then ultimately it is up to a Court of Common Pleas to rule which survey is correct. If either party does not agree with that decision, they can appeal to the Ohio Supreme Court.

Mr. Winfield stated the irony to him and the City involvement is there is actually a variance because of the width, it is not 22-feet, there is a variance approved by council for that piece of property. He

does not understand since there should be some involvement there. Mr. Lyons stated he does not know if there was an actual variance, there was a variance granted by the court in terms of the parking situation, but in terms of the width of the private road, he did not recall that a variance was granted. Mr. Lyons stated he could be wrong on that, but that issue is not in front of the Commission. We are not part of a private dispute as to where the property lines are or should we be; and we should not be favoring either Mr. Winfield or the other party in the dispute.

Mr. Winfield indicated he was speaking of the variance that Mr. Betteley received that followed the property. Mr. Lyons questioned the variance. Ms. McMahon indicated this variance did follow the property until a certain period in time and that has been since changed by code. Mr. Winfield indicated there is a memo from Ms. McMahon to Mr. Elliott, previous Assistant City Manager, regarding the variance ruling.

Mr. Lyons stated that the approval of the Final Plat is broader than the subdivision regulations in terms of granting property rights to build; it is broader than the subdivision regulations. Chairman Fitzgerald indicated the Commission is only granting an extension. If there were changes to the subdivision regulations within this one-year period, Mr. Winfield would be grandfathered in under the change. Chairman Fitzgerald asked what types of changes would be of concern for this project. Mr. Lyons stated the memo refers to subdivision regulation changes or the technical requirements for subdivisions. Mr. Lyons stated it could go to zoning type issues also. There is no way to know what types of changes could happen over the year.

Ms. McMahon stated that the extension gives the applicant the same rights that he has currently to continue to whatever period the Commission identifies. This would be for one-year from August 20, 2008.

There being no further discussion, Chairman Fitzgerald asked for a motion on this request. Motion by Mr. Eade, seconded by Mr. Komjati to grant a one-year extension from August 20, 2008 for the applicant to file for the Final Plat of Walnut Ridge Condominium Project. There being no further discussion, the secretary was asked to call the roll. On roll call, Mr. Eade, Mr. Komjati, and Chairman Fitzgerald answered "yes". Motion carried.

## **ADJOURNMENT**

There being no further business, the meeting was adjourned.

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Lynn M. White, Secretary

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Thomas Fitzgerald, Chairman