

PLANNING COMMISSION MEETING

August 12, 2010

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. He asked the secretary to call the roll. Members in attendance were, Mr. Brian Temming, Ms. Christine Shoop, Mr. David Komjati, and Chairman Fitzgerald. Absent was Mr. Andrew Eade. Also present were, City Manager Rita McMahon, Assistant City Manager/Community Development Director Douglas Lewis, City Planner Russ Schaedlich, Assistant Law Director James Lyons, and Secretary Lynn White.

MINUTES:

Chairman Fitzgerald asked if there were any additions or corrections for the Planning Commission Meeting Minutes of July 8, 2010. There being none, he asked for a motion. Motion by Ms. Shoop, seconded by Mr. Temming to approve the Planning Commission Meeting Minutes from July 8, 2010 as submitted. All members present said "aye". Motion carried.

NEW BUSINESS: (Public Hearing Item)

Chairman Fitzgerald asked the secretary to read the notice for the Public Hearing item.

Rezoning Application No. 62-10

Applicant: City of Painesville

Location: Condon Court/North State Street; Permanent Parcel No. 15-A-004-0-00-025-0 thru 028; 15-A-004-A-00-001-0 thru 003.

From: B-2 General Business District to R-2 Multi-Family Residential District

The above referenced properties are currently zoned B-2 General Business. The proposed reclassification of the properties would be to an R-2 Multi-Family Residential District. A review of the area indicates that a majority of the parcels in the area are residential units. The City of Painesville will be considering the rezoning of seven (7) parcels in the area to conform to current development.

Chairman Fitzgerald asked who would speak on behalf of the City of Painesville as the applicant. Mr. Russ Schaedlich indicated that at the July Board of Zoning Appeals (BZA) meeting there was an Administrative Appeal hearing on a non-conforming use determination for one of these properties. He stated the BZA decided not to hear the case. The City looked at the area and the properties located there to make a determination on the request. The properties are residential in use even though the area is zoned B-2. There was hope the properties could maintain their use as residential. Mr. Schaedlich indicated that the seven parcels that are being considered for rezoning about an R-2 Multi-Family District and are adjacent to the B-2 General Business District. He explained to the Commission they should have received a map showing the area and the two districts are outlined on the map. The area has been zoned commercially since 1927. However, the commercial zoning at that time also allowed for single-family dwellings. This pyramid-type zoning continued until 1984. The 1984 re-write of the Zoning Code created exclusive use zones so that the B-2 uses were then limited exclusively to commercial activities. At this time, the existing residential uses became nonconforming. This request to rezone the properties from B-2 General Business to R-2 Multi-Family Residential is reasonable and, although it is not in accordance with the Comprehensive Plan, will not affect the overall future vision for the area as commercial in use. This enclave of single-family residential use has successfully existed here for many decades and can continue for many more without negatively affecting adjoining properties, the neighborhood, or the vision for the area as presented in the Comprehensive Plan.

Chairman Fitzgerald asked about the businesses that are located in this area. Mr. Schaedlich indicated the rezoning has no effect on the businesses in that area, it is only for the properties that have homes and are used for residential purposes. The area extends from St. Mary's Church to the south up to Painesville Publishing.

Chairman Fitzgerald asked if members of the Commission had any comments or questions. There being none, he stated the meeting would be opened to the public. The public was instructed that if they would like to make a statement to please state their name and address for the record. Mr. Schaedlich stated that letters were sent to all seven-property owners. They did receive responses from all but one owner who are out-of-town.

Mr. Terry Castilyn, 791 Bank Street, indicated he owns property on North State Street in front of

this area and he does not have a problem with the rezoning request. He stated those properties have been residential for a very long time and this area would not support business.

Mr. Richard Tibbits, 190 Liberty Street, stated that he sits on the Board of Extended Housing who is in the process of purchasing property from the Church. The property is located behind this area and they do not have any problems with this rezoning request.

Ms. Natalie Gatchel, 381 Condon Court, stated that they purchased the home not knowing the property was zoned commercial. They were told they could not occupy the house since it had set vacant for over 12-months. They bought the house with the intent to live there and now they do not have a place to live. Ms. Gatchel stated they would like to have the property rezoned so they can move in and live there.

Chairman Fitzgerald asked if there were any other comments or questions. There being none, he asked for a motion. Motion by Mr. Komjati, seconded by Ms. Shoop to favorably recommend Rezoning Application No. 62-10 to City Council. There being no discussion, the secretary was asked to call the roll. On roll call, Ms. Shoop, Mr. Komjati, Mr. Temming, and Chairman Fitzgerald answered "yes". Motion carried.

Mr. Schaedlich indicated this request would be forwarded to City Council. The earliest date a public hearing can be held for this request is September 13 due to the notification requirements. The next regular City Council meeting is scheduled for September 20. City Council will have to decide if they will hold a special meeting on the 13th to hear this request. Once that is determined, the public hearing notices will be sent out.

ADMINISTRATIVE REPORT:

Chairman Fitzgerald moved onto the next item on the Agenda under the Administrative Report.

Parking Requirements - "Nothing But Net" Internet Café - Section 1137.04 (b) (3) Parking spaces not specifically listed shall be the same as a similar use as determined by the Planning Commission. The number of spaces shall be at least sufficient for vehicles of employees and patrons of any business.

Mr. Schaedlich commented that an application was received by Mr. Ron Skowronski for a Certificate of Compliance to use and occupy a 1,236 square foot commercial tenant space in the plaza located at 259 Richmond Street. This plaza is also home to the Dunkin Donuts/Baskin Robbins and Raw Styles clothing and phone establishments. In the parking section of the ordinances this use is not listed Mr. Schaedlich explained Section 1137.04 (b)(3) indicates that parking for uses not specifically listed shall be determined by the Planning Commission and shall be at least sufficient for the employees and patrons of a business so a similar use determination is necessary by the Commission. He stated that concern arose that the proposed use did not really conform to any of the categories in the Off Street Parking Schedule. The "internet café" concept has not been adequately addressed by the Code. The City has requested Planning Commission's determination of the adequate parking standard for his operation and for other internet cafés that may wish to locate in the City in the future. The plaza was developed in 2005 with twenty-nine (29) spaces of which two (2) are handicap spaces. There is also a drive-thru lane that can easily accommodate ten (10) vehicles. The current two businesses at this location require 16 parking spaces based on their occupancy as retail uses.

There was discussion of the current parking configuration and how the current occupants use the spaces in the parking area. Mr. Schaedlich stated that in his staff report he had listed several questions that might be helpful in the determination of use. They are hours of operation; the number of computer stations; the anticipated length of time per computer session by clients; how access time will be sold and in what increments; size of the proposed classes; etc. before establishing the standard. A determining the standard it should be considered whether it will be based on square footage of the unit as the retail or restaurant standards or based on number of seating or outlets as with places of assembly.

Mr. Ron Skowronski, 28060 Chardon Road, Willoughby Hills, Ohio, introduced himself to the Commission. He stated that the business is a retail internet café where they provide network access time to customers who would like to use the computers. There are many applications available like email, word processing, multi-media functions; in addition, there will be smaller simple fax and copy service.

Chairman Fitzgerald asked if this was similar to Copy Quest that was located on Main Street. Mr.

Skowronski indicated he was not familiar with that operation. Ms. McMahon indicated it would be similar to a Kinko's type operation. Mr. Skowronski stated Kinko's does a larger volume of copying than they would. Chairman Fitzgerald stated that it would be a place for people to come in and surf the net and leave. Mr. Skowronski replied yes.

Chairman Fitzgerald asked what the anticipated number of patrons would be at this location. Mr. Skowronski responded they anticipate 15 to 25 workstations. The staffing would be one person per shift. The employees would need to park in the front lot since there is no parking available behind the plaza.

Ms. Shoop asked if the 25 people would be for training sessions or if the average day would bring 25 people in at one time. Mr. Skowronski stated he believes the training classes would be substantially less than 25. She asked about the notation of merchandise for sale at this location. Mr. Skowronski indicated they would have for sale items like thumb drives, notebooks, pens, presentation folders, and the like. Mr. Schaedlich asked how many workstations would be at this location. Mr. Skowronski responded they would like 15 to 25 workstations.

Chairman Fitzgerald asked if the City has heard any comments from the surrounding businesses in regards to parking. Are these their spaces that they would be losing if this goes forward? Mr. Schaedlich responded that everyone shares the spaces. He explained the space requirements for each business and they did not receive notification of this request since it is an Administrative Item.

Mr. Rick Favazzo introduced himself and his brother Mr. Mike Favazzo. He indicated his family owns the plaza in question. He stated that Dunkin Donuts business is 60% drive thru at that location. They do not use the parking spaces; the business has been there for five years and has never been close to being filled. Additionally, the hours they generate the most traffic is in the morning until about 11:00 AM. Mr. Favazzo commented that Raw Style has minimum traffic and their hours are 12:00 PM to 9:00 PM.

Mr. Komjati asked about the hours of operation and the number of employees for the Internet Café. Mr. Skowronski stated the hours are 10:00 AM to Midnight with two employees, one for each shift.

Ms. Shoop asked Mr. Schaedlich what the minimum parking spaces would be for this space. Mr. Schaedlich indicated that based on square footage alone they need to have a minimum of six spaces; thirteen spaces for a retail use at this location. There was discussion of the parking space requirements for the different types of uses.

Ms. Shoop inquired about how access time will be sold and in what increments. Will there be a lot of turn over and/or is there a time limit on access time. Mr. Skowronski responded they sell the increments in minutes. It is hard to tell how long someone will stay; some are only there a few minutes while others are there a couple hours. The cost will be 25¢ per minute.

Mr. Lewis asked if Mr. Skowronski could explain to the Commission how his other operation works. Mr. Skowronski indicated that he operates a similar operation in Willoughby Hills in a large shopping plaza; there are 60 workstations with over one hundred parking spaces. Ms. Shoop asked if all 60 stations are filled at once and if there are waiting lists. Mr. Skowronski responded occasionally. There was a question of the possibility of leasing parking spaces from area businesses that do not use all of their spaces. Ms. McMahon indicated that is a possibility and can be done.

Ms. McMahon commented that it seems the hours of operations for the various businesses at this location complement each other. When you get in retail plazas, you set a standard and you hope the mix that is in there works together so the usage of the spaces is shared. She explained that when given what is there the more restrictive use requirement of one space per thousand square feet seems to be the best fit so the area is not overloaded.

Chairman Fitzgerald asked about what the City wanted from the Commission. He asked if the standard established could be looked at in one-year to see if this works or would the requirement be set on an as needed basis. Ms. McMahon replied that the Commission needs to establish a standard that the Administration can apply to similarly situated facilities. Under 1134 (b) (3) the Commission can determine what similar type uses should be applied to this requirement. The most appropriate use would be the restaurant/café standard. There was discussion of how the parking regulations are determined based on square footage, which also takes into consideration the staffing of the businesses.

Mr. Lyons clarified that the Commission needs to determine what an internet café is similar to based

on the listing of uses within the code. Mr. Lyons asked the applicant some questions. He determined the current business operation Mr. Skowronski has is in Willoughby Hills. That operation is located in a plaza. He asked if the applicant had to meet parking requirements at that location. Mr. Skowronski stated no, he did not. Mr. Lyons cited the business plan submitted by the applicant. The plan indicates the public is invited to participate in a free sweepstakes promotion to create more traffic. Mr. Lyons inquired how long the sweepstakes would last. Mr. Skowronski indicated the promotion is schedule for one-year and this is being done at the Willoughby Hills store. Mr. Lyons inquired, what is the free sweepstakes promotion? Mr. Skowronski explained how the sweepstakes promotion works. As internet time is purchased, the customer receives points. The customer can play games on the computer and if they have good luck in the games, they win points that they are able to get cash for winning. Mr. Lyons asked if the cash is paid out at the store. Mr. Skowronski responded, yes and it works the same in Willoughby Hills. Mr. Lyons questioned the ability to limit the sweepstakes to one-year. Mr. Skowronski replied that the sweepstakes is renewable. Mr. Lyons asked who offers the renewal. Mr. Skowronski stated the owner of the sweepstakes is VS2 World Wide Communications located in New Jersey. Mr. Lyons asked if they are involved in any litigation in Ohio about the operation of sweepstakes. Mr. Skowronski stated that he was not aware of anything. Ms. McMahon asked if this was the internet provider. Mr. Skowronski stated the internet provider would be Time Warner. Mr. Lyons asked what the maximum payout on the sweepstakes is. Mr. Skowronski stated the maximum is \$2,500 dollars that would be paid in the store.

Ms. Shoop commented that there will be only 15-25 stations and the sweepstakes intent is to fill all of the stations. Once they are filled, people will have to find another location for internet access. Chairman Fitzgerald asked if this is the exact same sweepstakes that is being offered at the other location. Mr. Skowronski responded that this is separate; it is an independent sweepstakes for each store.

Mr. Lyons questioned how the sweepstakes payout worked. Mr. Skowronski indicated that if a customer were fortunate enough to win the sweepstakes prize they would win. There is a finite pool of prizes and there is no skill involved. He explained that the prizes are handed out randomly and it does not matter if they are a good or bad game player. Mr. Lyons asked for information on the copier service being provided. Mr. Skowronski indicated the copier is more than a home copier but not a large commercial copier. Mr. Lyons asked if customers come into the store and get copies would they be eligible for the sweepstakes. Mr. Skowronski stated the sweepstakes is connected to the purchase of internet time. Ms. Shoop asked about the printers that will be available. Mr. Skowronski indicated they would have one network printer available for the customers.

Mr. Lyons determined the applicant did not have any operations other than in Willoughby Hills. Mr. Lyons asked if the sweepstakes provider had any other operations and if they provided the sweepstakes for Willoughby Hills. Mr. Skowronski responded yes. Mr. Lyons asked if they have other internet cafes in which they provide sweepstakes. Mr. Skowronski replied yes. Mr. Lyons questioned if Mr. Skowronski knew how many there are in Lake County? Mr. Skowronski replied that he believes they are the only one in Lake County with this provider. Mr. Lyons asked if he knew how many other providers there are in Lake County. Mr. Skowronski commented that he believes there are three or four in Lake County. Including the Willoughby Hills location, there is one in Painesville Township, Geneva on the Lake, and Wickliffe. He stated there are two or three being built in Willowick currently. Mr. Lyons asked if a customer is doing word processing on one of the computers, paying 25¢ per minute, are they eligible for the sweepstakes. Mr. Skowronski stated yes, they do not have to be playing the games. He explained that when you pay for your service you receive a card. The customer then swipes the card and it tells whether it is a winner; it is called validation.

Chairman Fitzgerald asked if there was a motion in regards to the parking regulation standard that should be set for this use. Motion by Mr. Komjati, seconded by Ms. Shoop to set the parking standard for an Internet Café as a similar use to restaurant, bar or nightclub with the provision of 1 space per 100 sq. ft. to allow for sufficient parking for the business. There being no further discussion, the secretary was asked to call the roll. On roll call, Mr. Komjati, Mr. Temming, Ms. Shoop, and Chairman Fitzgerald answered "yes". Motion carried.

OTHER MATTERS THAT MAY PROPERLY COME BEFORE THE PLANNING COMMISSION

Chairman Fitzgerald moved onto the next item on the Agenda.

Conditional Use Permit Review – 170-174 Main Street: 1143.04 (c) STANDARDS FOR EVALUATING APPLICATIONS - review of the imposed conditions.

Mr. Schaedlich explained the building at 170-174 Main Street was occupied by Artful Hands Studio. Mr. Urbanick submitted an application in 2005 for a Conditional Use Permit to allow residential uses on the second and third floor of the building. Mr. Urbanick completed most of the work to create apartment suites on the second and third floors shortly thereafter. Unfortunately, due to the economic downturn, the property was foreclosed upon and the project halted. Mr. Schaedlich indicated the structure and the units remain. The applicant would like to provide retail and office uses on the first floor, additional office suites on the second floor, and three apartments on the third floor.

Chairman Fitzgerald asked if this applicant was the owner of the property. Mr. Schaedlich replied that they are not the owner of the building at this point. They are looking to transfer the Conditional Use Permit previously granted to Mr. Urbanick. The applicants, Paul Kratochvill and Peter Lee, are aware of the conditions that were placed on the permit. Mr. Schaedlich indicated the first condition would need to be modified to state the residential use shall be limited to the third floor and all the remaining condition would be the same.

Chairman Fitzgerald asked if the structure would be subject to inspection by the City prior to rental. Mr. Schaedlich indicated that yes, it would be inspected.

Mr. Komjati commented that he has had conversations with Mr. Kratochvill through banking related issues and financing options for this property. He asked if it would be appropriate to abstain from the discussion. Mr. Lyons questioned Mr. Komjati in regards to how the two individuals have been corresponding. Mr. Lyons responded that it would be best for Mr. Komjati to abstain from this issue.

Chairman Fitzgerald indicated that he felt this was an acceptable modification to the Conditional Use Permit. Ms. Shoop inquired about the length of time this type of permit was valid. Ms. McMahan replied the permit is good forever. The applicant is changing one of the conditions, which is the reason it is before the Commission. If the conditions were to be kept the same, it would not require Commission action. The permit transfers with the property since it is based on the use of the property.

Chairman Fitzgerald asked if there were any comments. Mr. Schaedlich indicated the staff recommends approval. There being no other comments, Chairman Fitzgerald asked for a motion. Motion by Mr. Temming, seconded by Ms. Shoop to modify the Conditional Use Permit for 170-174 Main Street with the following stipulations: 1. The residential units shall be in compliance with the floor area size requirements established in the R-2 Zoning District and shall be limited to the third floor; 2. The applicant must provide a minimum of two off-street parking spaces for each residential unit. The spaces may be contracted from the City or other property owners. The parking spaces in front of the building on Main Street shall not serve as parking spaces for the residential units.; 3. The applicant shall not permit Section 8 or other state of federal subsidized units in this building. There was no other discussion; the secretary was asked to call the roll. On roll call, Mr. Temming, Ms. Shoop and Chairman Fitzgerald answered "yes". Mr. Komjati abstained. Motion carried.

Mr. Angelo Cimaglio asked to make a comment. He inquired about the internet café and the Commission approving that business. Chairman Fitzgerald responded the Commission approved the parking requirements for the business use at that location. Mr. Cimaglio commented on the proposed use and the legality of the use. Chairman Fitzgerald commented that Mr. Cimaglio should address his concerns on this use in a different forum. Mr. Lyons indicated the Commission only addressed the parking requirements of the proposed use and the question that he asked help to determine the amount of traffic that would be at this site.

ADJOURNMENT

There being no other items to come before the Planning Commission the meeting was adjourned.

Lynn M. White, Secretary

Thomas Fitzgerald, Chairman