

PLANNING COMMISSION MEETING

June 13, 2013

The Planning Commission convened in Courtroom No. 1 at Painesville City Hall for their regularly scheduled 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. Mark Wainwright, Ms. Carol Fleck, Mr. David Komjati, Ms. Christine Shoop, and Chairman Thomas Fitzgerald. Also present were, City Planner Russ Schaedlich, Assistant Law Director James Lyons, and Secretary Lynn White.

MINUTES:

Chairman Fitzgerald asked for additions or corrections for the Planning Commission Meeting of May 9, 2013. There being no comments, Chairman Fitzgerald asked for a motion. Motion by Ms. Shoop, seconded by Mr. Komjati to approve the minutes for the Planning Commission Meeting of May 9, 2013 as written. On roll call, Ms. Fleck, Mr. Komjati, Ms. Shoop, Mr. Wainwright, and Chairman Fitzgerald answered "aye". Motion carried.

Chairman Fitzgerald indicated the secretary would read a letter from Mr. David Komjati so it would be entered into the record.

Dear Mr. Fitzgerald:

Please find attached an affidavit explaining my relationship with KeyCorp and its subsidiaries. I understand that this relationship will not prevent me from serving on the Planning Commission for the City of Painesville. Nevertheless, I want to make certain that I disclose my interest publicly. Please have the attached affidavit entered as a matter of record in the minutes and transcript at the beginning of the next meeting of the Painesville City Planning Commission. I also request that any materials related to KeyCorp and its affiliates not be distributed to me. I greatly value the opportunity to serve and will do so while abiding with the highest ethical standards. Very Truly Yours, David B. Komjati.

Mr. Komjati stated that this came from the KeyBank Compliance Officer as a matter of procedure and full disclosure that as an employee of KeyBank he may have to abstain from some items.

Mr. Lyons indicated that Mr. Komjati contacted him several years ago regarding this issue. Mr. Lyons stated that as long as Mr. Komjati abstained from any matter relating to KeyCorp and its subsidiaries there is no issue with him being a Planning Commission Member. He also received a copy of the letter that was read.

Chairman Fitzgerald moved onto the Public Hearing Item. He asked the secretary to read the Notice for Rezoning Application No. 79-13.

NEW BUSINESS (Public Hearing Items):

Rezoning Application No. 79-13

Location: 524-552 South State Street

Parcel Numbers: 15-B-009-0-00-049-0; 15-B-009-0-00-050-0; 15-B-009-0-00-051-0; 15-B-009-0-00-052-0; and 15-B-009-0-00-053-0.

From: B-2 General Business District to R-1 Single Family Residential District

An application has been submitted by the owner of 544 South State Street for the rezoning of Permanent Parcel Number 15-B-009-0-00-052-0. The City would also like to include Parcel Numbers 15-B-009-0-00-049-0; 15-B-009-0-00-050-0; 15-B-009-0-00-051-0; and 15-B-009-0-00-053-0 in the rezoning request. The parcels are considered to have a preexisting nonconforming use, which means the current use does not match the current zoning designation. The proposed change is from the current B-2 General Business District to an R-1 Single-Family District. The rezoning will bring the zoning of the properties into compliance based on their current use.

Chairman Fitzgerald asked if the City had any additional information to provide the Commission other than what was stated in the Staff Report. Mr. Schaedlich commented that his Staff Report was given to the Commission for their review. He indicated the applicants are present and he would like them to explain their situation for the Commission.

Ms. Janet Evangelista, 8231 Manor Gate Way, Mentor, indicated that she and her sisters own the property at 544 South State Street. This was a family home purchased in 1956 and at that time was

residential. The property was rezoned light commercial in 1961 when their mother decided to open a beauty shop in the home. It remained light commercial until 2008 when their mother passed away and there was no need for the business or the zoning for that business. Mr. Schaedlich commented that the zoning was not changed at that time; it is still zoned commercial. Mr. Evangelista confirmed that was the case. She indicated they would like to sell the property as a single family home. They have a buyer and are currently in a hardship situation due to the signed purchase agreement that will expire soon. There is no point for the property to remain commercial and they would like to have the zoning changed to residential. Mr. Schaedlich indicated the mortgage lender was not comfortable with the property having a nonconforming use. He explained the section of the zoning code that would prohibit the structure from being rebuilt due to its nonconforming status.

Chairman Fitzgerald went over the procedure for the Public Hearing for this request. He asked if there were any comments from members of the audience.

Mr. Hal Werner, 551 South State Street, stated that he lives directly across the street from this home. He asked what the reason is behind the rezoning request by the individuals purchasing the home. Ms. Evangelista responded that the people buying the home are not requesting the rezoning, they are as the owners. Mr. Werner asked why. Chairman Fitzgerald stated that the properties in the rezoning request are not businesses; they are homes being used as single-family residences. It only makes sense instead of having them as nonconforming uses. He stated that if they were to burn down they could not be rebuilt; a commercial business would have to be put in its place. As a city, we would like to see the area remain residential. Mr. Werner stated he assumes that everyone is aware that there is B-2 in the immediate area. Chairman Fitzgerald stated yes.

Mr. Werner spoke about the B-2 property known as Jackie's Bar and Grill. He spoke about the various issues he has with living next to a commercially zoned property. Mr. Werner stated that he has no objections to the rezoning request. He indicated people in the area need to take responsibility for their property whether rentals or businesses. He is concerned about the recent activity of the meth lab, drug busts, and shootings on the street. Chairman Fitzgerald explained that those issues are not related to the rezoning request before the Commission. He suggested that Mr. Werner speak with the Police Department about his concerns. Mr. Werner commented that he wants people to take responsibility for their properties.

Mr. Werner asked if by changing the zoning to an R-1 zoning classification the residents would have a better chance of having the noise issues dealt with from Jackie's Bar. Ms. Shoop stated that the five properties that are requesting the rezoning are acting responsibly since they are taking the steps necessary to protect their homes by dealing with the nonconforming issue. This makes a difference for the residents that live there so they can work together with the City and get some of the issues resolved.

Mr. Werner stated that he appreciated the Commission listening to him. He would like to see this information passed onto the Council since there is great concern about the situation. He believes this is a zoning and housing issue. Chairman Fitzgerald thanked Mr. Werner for bringing this forth for discussion.

Mr. Cimaglio, 477 Owego Street, stated that it makes more sense to have this as R-1. No one in this room is responsible for the meth lab or the shooting at Jackie's. To keep this as a business district the residents could open another bar establishment. The best thing is to bring it back to R-1 for these people.

Ms. Gillian Harris introduced herself and her brother Gerard. She stated they own 564 South State Street. Mr. Harris spoke to Mr. Werner and explained they had rented the house that had the meth lab. He apologized for the recent events at the house. He did not follow through with getting background checks on the tenants. He commented that he would be going through the police department classes so this will not happen again. Chairman Fitzgerald asked if they had something to add that pertained to the Rezoning Request. Ms. Harris questioned how this rezoning would affect their property since they have recently purchased in the area. Mr. Schaedlich responded they should see no change in their property. There was discussion regarding the regulations of a commercial zoning abutting the residential. Due to the fact the residential zoning is being placed closer to them there was concern about if they would be required to put in buffering or be limited on their parking areas. There may be some setback issues if they were to add-on to the existing structure. The building itself would not be affected by this rezoning.

Ms. Fleck commented that the area needs to pull together, work on keeping the area a safe place, and protect the value of their property. She believes that all parties have a common interest and they should work together on this matter.

Ms. Barbara Werner, 551 South State Street, spoke generally about a current issue involving the police department where she was told to address at a zoning meeting. Mr. Lyons interjected that the Chairman can limit the discussion to the item being addressed on the Agenda. The Commission normally does not allow a public forum to discuss neighborhood issues. Ms. Werner asked whom she should go to on this matter. The Commission agreed to allow general discussion under Other Matters to allow Ms. Werner to address her issue with the Commission.

Chairman Fitzgerald asked if there were any other comments on Rezoning Application No. 79-13. Ms. Karen Winslow, 6001 Marine Parkway, Mentor-on-the Lake, stated that she and her sisters would appreciate if this could be handled expeditiously as possible. They are at the 120-days for the purchase agreement on the house. Mr. Schaedlich indicated that this will go to City Council and they will hold a Public Hearing on the item. The applicant will be notified of the Public Hearing when it is scheduled. Mr. Lyons added that City Council has to approve any zoning classification change.

There was discussion regarding the City Council meeting schedule and the scheduling of the Public Hearing for their review. It was explained that the legislation that goes before City Council could be written with an emergency clause so the change will go into effect immediately rather than the typical 30-day requirement. Mr. Lyons further explained how an emergency clause works for legislation to be passed and how a super-majority is necessary to pass the item. This is typically not done for rezonings in the case where a rezoning has a controversial issue and the surrounding area is against it. He stated this does not seem to be the case for this request. Mr. Lyons stated that Council has the right to have an emergency clause added to legislation; it would give the request a bit of heft if the Commission recommends it in order to help the applicant.

Ms. Shoop asked if this were not passed with the super-majority would they have to start the process again. Mr. Lyons stated it would pass however, the emergency would not be in effect, it would take the 30-days before it became in effect. He commented that they applicant could then contact the lender for an extension which should not be an issue.

Chairman Fitzgerald asked if there were any other questions from the Commission. There being none, he asked for a motion on Rezoning Application No. 79-13. Motion by Mr. Komjati, seconded by Ms. Shoop to favorably recommend Rezoning Application No. 79-13 to rezone 15-B-009-0-00-049-0; 15-B-009-0-00-050-0; 15-B-009-0-00-051-0; 15-B-009-0-00-052-0; and 15-B-009-0-00-053-0 on South State Street from B-2 General Business District to R-1 Single Family Residential District. On roll call, Mr. Komjati, Ms. Shoop, Mr. Wainwright, Ms. Fleck, and Chairman Fitzgerald answered "yes". Motion carried.

Mr. Lyons stated the Commission could pass a separate motion asking that City Council place an emergency clause on this rezoning legislation. Motion by Mr. Komjati, seconded by Ms. Fleck requesting the legislation for the Rezoning is prepared with an emergency clause to permit the transfer of property to purchaser in a timely manner. On roll call Ms. Shoop, Mr. Wainwright, Ms. Fleck, Mr. Komjati, and Chairman Fitzgerald answered "yes". Motion carried.

Chairman Fitzgerald moved onto the next item on the agenda.

ADMINISTRATIVE REPORT:

- **Final Plat Approval** – Heisley Park Phase XIII – consisting of 30 residential lots.

Chairman Fitzgerald asked if the Administration had additional information to add to this other than the Staff Report. Mr. Schaedlich indicated this was review approximately one-year ago as a preliminary plat. The area has been constructed with utilities, roadway, and the lots are graded. The plat was reviewed and the recommendation is for approval.

There being no further discussion or comments, Chairman Fitzgerald asked for a motion. Motion by Mr. Komjati, seconded by Ms. Shoop to approve the Final Plat for Heisley Park Residential Subdivision Phase XIII. On roll call Mr. Wainwright, Ms. Fleck, Mr. Komjati, Ms. Shoop, and Chairman Fitzgerald answered "yes". Motion carried.

Chairman Fitzgerald moved onto the next item on the Agenda.

- **Zoning Code Amendment** – Proposed Text change – **M-2 Industrial District:** Places of Public Assembly/Party Center.

The Commission is in receipt of a letter from Mr. Paul Malchesky of Cannon, Aveni & Malchesky, requesting this matter be tabled and heard at the next Planning Commission Meeting. Chairman Fitzgerald asked for a motion to table this item. Motion by Ms. Shoop, seconded by Mr. Komjati to table the Zoning Code Amendment for the proposed text change in the M-2 Industrial District to the July 11, 2013 Planning Commission Meeting. On roll call Ms. Fleck, Mr. Komjati, Ms. Shoop, Mr. Wainwright, and Chairman Fitzgerald answered “yes”. Motion carried.

OTHER MATTERS THAT MAY PROPERLY COME BEFORE THE PLANNING COMMISSION:

Mr. Schaedlich indicated the Commission has received information on the Planning Commission By-Laws. He asked that the members review them and be ready to discuss at the July Meeting.

The Planning Commission heard comments from residents regarding zoning concerns in their neighborhood. It was suggested that the residents research the issue and find possible ways to regulate these concerns and bring it back to the City Administration for review. The Planning Commission would be willing to look at modifying the zoning code if done in an appropriate manner.

ADJOURNMENT:

There being no further business, Chairman Fitzgerald adjourned the meeting.

Lynn M. White, Secretary

Thomas Fitzgerald, Chairman