

PLANNING COMMISSION MEETING

July 12, 2012

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. Brian Temming, Mr. David Komjati, Ms. Christine Shoop, and Chairman Thomas Fitzgerald. 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 for additions or corrections for the Planning Commission Meeting of June 20, 2012. Mr. Komjati asked to clarify the minutes for the record. He indicated the last paragraph prior to the Administrative Report the minutes referenced a comment he made regarding the 48 signatures and he does not feel that this is a big issue. He realizes this is a big issue and he does not want it to be taken out of context that it seemed that he did not mean it that way. Chairman Fitzgerald asked if Mr. Komjati wanted the minutes amended. Mr. Komjati stated that was unnecessary, he just wanted to make that point. There being no other comments, Chairman Fitzgerald asked for a motion. Motion by Ms. Shoop, seconded by Mr. Temming to approve the minutes for the Planning Commission Meeting of June 20, 2012. On roll call, Mr. Komjati, Ms. Shoop, Mr. Temming, and Chairman Fitzgerald answered "aye". Motion carried.

Chairman Fitzgerald indicated a motion is needed to remove Rezoning Application No. 78-12 from the table. Motion by Mr. Temming, seconded by Ms. Shoop to remove Rezoning Application No. 78-12 from the table. Chairman Fitzgerald asked the secretary to call the roll. On roll call Ms. Shoop, Mr. Temming, Mr. Komjati, and Chairman Fitzgerald answered "aye". Motion carried.

Chairman Fitzgerald asked the secretary to read Rezoning Application No. 78-12.

TABLED BUSINESS: (Public Hearing Items)

Rezoning Application No. 78-12

Location: Permanent Parcel No. 15-C-019-0-00-005 & 006 (642 Mentor Avenue)

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

An application has been submitted by Mark Havel and Martha DiCello, Trustees for the rezoning of Permanent Parcel Numbers 15-C-019-0-00-005 and 006. Parcel Number 15-C-019-0-00-006 is currently zoned R-1 Single Family Residential and approximately 84-feet of Parcel Number 15-C-019-0-00-005 is also zoned R-1 Single Family. The remaining portion (123± feet) of Parcel Number 15-C-019-0-00-005 is currently zoned B-1 Business Residential. The applicant would like to rezone the two Parcels to B-2 General Business District. The rezoning of the parcels would bring the entire site into one consistent zoning classification.

Chairman Fitzgerald asked if the applicant was present. Mr. Havel responded that he was present. Mr. Schaedlich asked if he could speak first on this matter. Chairman Fitzgerald indicated the Administration would give a presentation first.

Mr. Schaedlich went through the history of the property beginning with the location of the property and the current zoning classification of the lot in question. The property currently has split zoning of B-1 Business Residential and R-1 Single Family Residential. He explained the surrounding land uses being R-1 Single Family Residential, B-2 General Business, B-1 Business Residential, and R-2 Multi-Family. The B-2 General Business area was changed earlier this year when the properties that include Eisler's and Perkins requested rezoning their property from B-1 to B-2 to eliminate their nonconforming use. Mr. Schaedlich explained that when zoning was instituted by the City in 1927, the subject property (Permanent Parcel # 15-C-019-0-00-005-0) was zoned U-4, Residential. In 1950, the property was designated as Residence District. Zoning was updated again in 1960 and the property was designated as R-4, Residential. R-4 Residential allowed one, two, and multiple family dwelling units. In 1963, City Council approved rezoning approximately 123-feet of the Mentor Avenue frontage of the 642 Mentor Avenue parcel to B-1, Neighborhood Business. The remaining frontage along Mentor Avenue totaling approximately 80-feet remained zoned R-4, One, Two, and Multiple Dwelling. Mr. Schaedlich indicated that a copy of the rezoning action, Ordinance No. 23-63, was given to the Commission for review.

Mr. Schaedlich explained that the purpose of the B-1 District is to provide a transition from residential to the commercial areas, and to prohibit those automobile related businesses and uses,

including drive-through commercial areas, that tend to make pedestrian circulation difficult or unsafe. Although the district may allow residential uses, it is not intended to offer a residential environment protected from the effects of usual and customary business activity. The permitted and conditional uses are those that will have a minimal impact on the adjacent residential property but will provide support activities to those adjacent areas. They are neighborhood commercial areas serving and supporting the local residential area.

The existing building on the property at 642 Mentor Avenue was built in 1948 and was built as an auto service/gas station building. The building is currently vacant. Since the building was constructed in 1948, it pre-dates the creation of the Set Back Maps by Ordinance 2060 on May 31, 1960. Per the Set Back Maps, the established setback line for the 642 Mentor Avenue Property is sixty-five (65) feet along Mentor Avenue and forty (40) feet along the east side of Grant Street. The building meets the required forty (40) foot setback from Grant Street; it is only setback forty (40) feet from Mentor Avenue instead of the required sixty-five (65) feet. The parking for the building is right at the setback line. Because of these two factors, the building and parking are nonconforming. The property as used under the B-1, Business Residential Zoning District guidelines constitutes a legal, nonconforming use.

Chairman Fitzgerald asked if the applicant would like to speak on behalf of this request. Mr. Mark Havel, 9471 Timberidge Court, Mentor, Ohio explained they are coming to the Commission to ask for some help. They have been involved with this piece of property since the 1940's. He stated that as he listened to Mr. Schaedlich's presentation he decided he is not old enough to document what this place used to be. This was the only place around with a full service station. This is a unique situation. This property is on the main corridor, Mentor Avenue, which is important. For years, they have tried to lease or sell the property and utilize it. They are still living with a B-1 use in a high traffic area. He indicated that it has come to their knowledge that the setback rule with an operation that has always been there long before the setback rule was put into place is grandfathered. As spokesperson, we need help to get this rezoned to B-2 that would broaden our capabilities in offering something to benefit our community rather than a vacant building. He stated the B-1 uses are extremely limited. He commented that they have tried for years to comply. The allowed uses are funeral home, which would be tough to do in a 1,200 to 1,300 square-foot building; daycare, which he would not want to have his children there. Of the uses that have approached him to locate there are mostly B-2 uses. Mr. Havel gave an example of offering reduced rent and lease options for individuals, which never seems to work out. He stated that he was in full support of the rezoning for the Perkins/Eisler properties. Mr. Havel asked that they be given the same opportunity; the zoning code needs to be relaxed for his property so they can have a little latitude with what they have to offer. The setback is too restrictive for this building. He stated that he has been approached by 19 people since December 31 to March 31. All of which have to be turned away because they do not fall into the B-1 district. He stated they understand the concern that some of the B-2 uses would not be desirable for the area like game room and pool hall. What they want to have is a coffee shop, pizza place, which are only allowed in the B-2 uses. They are sensitive to the college being in the area, whether for sale or for lease they are coming for some help.

Mr. Havel stated that to the north the lot would remain an empty lot zoned R-1, which creates a buffer to the residential. The east, the neighbors are in favor of the B-2 with the 10-foot setback for parking within the 80-foot area on Mentor Avenue. The west, are the two properties that were recently rezoned from B-1 to B-2. On the south side there are no single-family homes, there is an apartment complex and the funeral home. To his knowledge there is no one opposing this request in the immediate area. He stated he does know that some are supporting this request. He stated this is a unique situation and he is asking for some latitude for the setbacks required if rezoned. This is mainly due to Tiber Creek that is immediately to the north of the building. This is a huge valley that runs through the property. There is a State of Ohio easement for this creek to allow storm water drainage for the area. In order to build on the site there would be a huge expense to prepare the site. There should be no detrimental impact to the area in regards to traffic in the area.

Mr. Havel referenced an article that was in the Plain Dealer that spoke of old gas stations serving new roles in communities. This has taken on new light. This is a unique situation; a small family owned business and this economy people are trying to make it work. He believes that this is the way of the future. He stated he just wants to utilize his property and make it part of the community.

Ms. Shoop asked about the businesses that have approached the applicant to locate on the property. Mr. Havel read to the Commission the business interests from a list; they are wireless phone sales, coffee express, concrete business, landscaping business, mechanic, auto diagnostic, counter refinishing, cabinet refinishing, construction business, pizza shop, pizza shop, mechanic, construction, pizza and ice cream, auto sales, informational purposes, mechanic, construction shop,

specialty shop, brickabrack. Ms. Shoop stated that none of the uses would be eligible for a conditional use permit. Mr. Schaedlich indicated that some of them could be transitional retail. The building is about 1,200 square feet. Mr. Havel explained why the people are not interested. The process in order to get a conditional use permit takes too long and the applicants are frustrated. He would like to have the zoning changed so there is no time wasted in waiting for a permit to be approved by the Commission. This property could be used since it has a 1,200 square foot building and about an acre of land.

Ms. Shoop commented that if the property is rezoned with conditions of no pool hall or game room, if the property is sold those conditions no longer apply. If sold to someone, anyone of the allowed uses could be placed on the property. However, if the property were leased then the conditions would be applied to the applicant as the owner of the property. Mr. Havel commented that is true, we have put the property up for sale but an acre of land on Mentor Avenue; they are not interested in just giving the property away. He stated that as upstanding people, they want something good for the area, and that means a B-2 use in order to get a tenant in there.

Chairman Fitzgerald asked if the property were rezoned to B-2 would the applicant be more likely to keep the property or sell the property. Mr. Havel replied yes, they have been there a long time.

Chairman Fitzgerald asked if there were any other comments from members of the Commission. There being none, he indicated that he would open the meeting up for public comment. He explained that anyone wishing to speak needs to state their name and address for the record.

Mr. Kevin Lynch, 596 Mentor Avenue, stated that he lives three houses east of the property. He has not spoken to the property owner and has not given a statement for or against this request. Mr. Lynch asked to approach the map. He explained the location of Tiber Creek in relation to the property and the building. He is concerned about the parking on the property and the large volume of pedestrian and vehicular traffic during school times that is seen at the corner of Grant and Mentor Avenue. There is a time in the morning where it would be difficult to get egress out of the property because of the constant flow of cars and people by the property. Mr. Lynch stated that he did not realize the rezoning would not go with the owner. He stated the other thing to be considered is the fact that this was a gas station. The potential, with the creek in the rear of the property, in the 40's and 50' they were not made to remove the gas tanks. The ground has remained as long as the building has been there, what happens when it is rezoned and they dig and it is found to be contaminated soil. Then whoever has the option on the property decides it is too expensive to clean up; where is it going to go.

Mr. Komjati asked if there were tanks still on the property. Mr. Havel responded that the tanks were removed in the 80's with a clean statement by the EPA, sandy loamy soil; tanks came out of the ground. There is no contamination. He stated that Tiber Creek actually runs straight east and west, it does not curve. Mr. Lynch interjected that there is an old guardrail located on the property by the creek to keep customers from driving into the creek. Since the area has been left undisturbed, there are many places where the creek breaks away and there is no depth to be gained for the site. There are so many regulations in place that would prohibit building in that area. The area would have to be filled in to be developed and there will be more variances needed to do this. Even though the applicant is asking for the B-2, they will not be able to comply with the regulations. Mr. Lynch stated that he believes that filling in the area might cause a problem. He stated those are his concerns. This is a buffer from the residential area and he believes it was zoned B-1 for a purpose. To keep the service station on the side it was located with the residential as a buffer. Mr. Lynch does not see this rezoning as a positive for the neighborhood; it is a negative for the neighborhood.

Mr. Havel commented about the guardrail mentioned. There is another guardrail on the other side of the building and there is a slow gradual slope behind the area where the guardrail is located. He stated that he has a letter that he would like to present to the Commission and asked the secretary to read it for the record.

Chairman Fitzgerald asked the secretary to read the letter. The letter read, "Dear Sirs, my name is William Jamison. I have lived in the Painesville area for over 60 years and have owned and operated the Perkins Family Restaurant and Bakery located at 700 Mentor Avenue since 1976. I recently came before your board to request a change in zoning affecting our location and that of Lance Eisler. We were concerned that if something should happen to our businesses that forced us to close for a long period or the buildings were damaged by fire or other events we would lose the right to operate as we currently exist. We are grateful that the city agreed to our request to change the zoning. I am sure that Mr. Havel has the same concerns. It is for the above reasons that I ask the Planning Commission to approve his request. Mentor Avenue is a primary corridor into Downtown Painesville. Mr. Havel's

building has been vacated for many years. With proper zoning, the potential to put a good tenant in place is much greater. With this approval and a new productive tenant the Mentor Avenue business corridor would be complete. I know that Mr. Eisler, Spear Mulqueeny Funeral Home and I are trying to protect a positive image for businesses and for Painesville. I am sure Mr. Havel will also. Thank you, Bill Jamison.”

Ms. Carol Fleck, 613 Mentor Avenue, stated that she has not been before this Board for over a decade. She stated that she is here today because she feels very strongly about this issue. Ms. Fleck approached the map to show where her property is located. Her property is a single-family residence. She indicated that she is opposed to the request to change from a B-1 to a B-2 zoning. Ms. Fleck asked that the Commission hold true to the Master Plan that has been set forth by this City that asks for the preserving of the corridor into the City as a residential corridor. This has been stated in the plan and you hear there are people barking at the door to put businesses all along that area. The Master Plan supports a business corridor in the Richmond area of downtown. In the most recent article put out it states how we are supporting those businesses. There is a Downtown street plan to support future growth in the Downtown area. It is not for this corridor, which would destroy the uniqueness of our City. The businesses that are there, Perkins, have been long-time residents and the rezoning was for long-time usage. She stated the article states that a business corridor is to be created on Main and State Streets. These are the areas the City has designated to encourage businesses. If you look at Mentor Avenue in Painesville Township, many empty storefronts are trying to be filled. We have a unique corridor that the City has to preserve for the people that come into Painesville. This is like a stack of dominoes. How many residences are still left in this area or even potential residences. Ms. Fleck indicated that she receives notices telling her to sell her house to become a business. She says no to that. She is not anti-development; she has worked in soil and water for years. She believes that development should be done right and in the right place. She is a homeowner and as a homeowner, her house is down in value by the fact it is in a mixed zoning area. She stated by changing the zoning in the area it would further devalue nearby homes. Ms. Fleck indicated this is already a high traffic area as has been pointed out. The B-1 allows for a pedestrian look and usage. She suggests that they look strongly at the B-1 people who are interested in the area. The Creek has had numerous flooding issues over the years. It runs next to her property, across the street and behind the property. The reason she brings this up is where she lives they put in a culvert and paved over it. This is not good for the creek. The culvert needs to be cleaned up regularly. The Commission is making a decision that not only affects the current owner but whoever has it years from now. This is near Lake Erie College; they are a major player in the City. The area still has a nice small college look. The Commission’s job is not to remediate problems of an owner having to unload a property. It is to preserve the character of our city. She stated she sees this as a test to find out if we truly want to keep Mentor Avenue as a unique corridor into our city. Will there be no transition between Mentor Avenue in the Township coming into the center of town. Are we going to lose something we cannot get back. Ms. Fleck stated that she would like the Commission to resolve this by using the Master Plan and not by a quick fix for one owner.

Mr. Anthony Torre, 158 Sanford Street, stated he was born and raised in Painesville. He wants to see Painesville get big again. He has not heard anything that was firm. Of all the 20 people mentioned they could go anywhere in Painesville and maybe had a better location than this. He asked the Commission to be careful and bring in anything that will help Painesville grow.

Mr. Neil Conway, 10934 Bradley Court, Concord, spoke on behalf of the trustees, Mark Havel and Martha DiCello. He commented it seems the issue is about this area being primarily residential. He explained that the request was changed from rezoning of two parcels to the B-2 District to only rezoning one. This addresses some of the concerns. The request is only for parcel number 5. This has two zoning districts of R-1 and B-1. Therefore, the 85-foot front parcel is next to the property zoned currently zoned R-1, which will be kept to create a buffer. Mr. Conway stated that was done to address some of those concerns. They had met with the City and got the impression that they were resolving two issues. One issue being the rezoning of the parcels into one zoning category and the other issue being the setback lines. The setback is at 65-feet and there is no indication of why that was put into place. They believe that if the rezoning were successful that issue would be resolved. Mr. Conway presented a map showing the two lots with the three zoning districts owned by the applicant. He indicated that they would keep the buffering next to the residential uses and they would like to get the highest and best use of the property by rezoning.

Ms. Fleck commented about businesses being lost. She stated a number years back they wanted to put a Rite-Aid in that location and the neighborhood said no because it was too big for that area. That business was not lost; it is now down on State Street. She stated there are better places for those types of businesses. This is a small neighborhood situation and it will fit somebody’s needs.

Mr. Ray DelaMotte, 616 Mentor Avenue, stated that Mr. Havel did approach them and had stated he was requesting the property be rezoned. He stated that he and his wife said they would not oppose the request because they knew that with the property zoned B-2 it would be difficult to place a business there with the zoning requirements. It was a moot point for them. Also at that time, Mr. Havel said they were selling the property. Now Mr. Havel said if it were to be rezoned that he would keep the property. Mr. DelaMotte stated that is the issue they have with the request. They have had five dead trees fall from the property and damage their fence, landscaping, and cars. They are told that nothing can be done about it. The property has never been maintained. Mr. DelaMotte was hoping with a new owner they could work out an agreement to have the place cleaned up. He stated that he would like to backup and stated they are not in favor of the rezoning request if the ownership is maintained.

Ms. Shoop asked Mr. DelaMotte if he would be comfortable with the B-2 zoning if the property were sold. Mr. DelaMotte responded that in order to do any of the uses in the B-2 District variances would be required. He does not believe they should be granted. He stated that they had heard a coffee shop had approached the owner under the B-1 zoning and that deal went sour. Ms. Shoop stated that the idea is if rezoned nothing will be able to go into that property. Mr. DelaMotte indicated that is correct and if variances are requested, he will be at those meetings.

Ms. Fleck commented that when the Goodwill Store was still here there were more break-ins in the area than ever.

Mr. Komjati asked how many square-feet is the building. Mr. Havel responded that it has been the same since the 40's; it is about 1,200 to 1,300 square feet.

Ms. Shoop asked about the R-1 zoned property next to the DelaMotte's and if it is remaining as an R-1. Mr. Conway replied that is part of the B-2 zoning request. Ms. Shoop asked since it currently has split zoning, why not make it all B-1. Does that not make sense? Mr. Conway indicated that is not what they want. Mr. Havel commented that it becomes a circle. Ms. Shoop stated that with the split zoning it might be causing issues for it currently. Mr. Conway replied that from an administrative standpoint the City would like to see one classification on a parcel. He stated that they requested leaving the one parcel for the benefit of the surrounding property owners. Mr. Havel replied about the comment of someone cleaning up the fallen trees, they want to keep the trees there as a buffer.

Chairman Fitzgerald asked Mr. Havel how much he is asking for the property. Mr. Havel indicated that his asking price is \$250,000 for the two parcels of land or the entire corner.

Mr. Komjati asked about the transitional retail listed in the conditional uses and what that means. Mr. Schaedlich explained that is found under the definition section of the code. He read that transitional retail is any generally recognized retail business, which supplies commodities on the premises within a completely enclosed building including, but not limited to, antiques, clothing, collector coins/cards, notions, books, flowers, or jewelry. He also stated permitted uses under the B-1 are Personal services or establishments that provide services directly to customers at the site of business. Mr. Schaedlich read the definition, personal service establishments shall include but not be limited to, travel agencies, dry cleaning and laundry drop-off and pick-up stations, coin operated laundries, tailors, hair stylists, health, fitness and other self-improvement facilities, photography studios, handicraft or hobby instruction, driving schools, photocopying services, postal substations, package delivery drop-off and pick-up stations, or shoe repair.

Ms. Shoop asked if a parking lot would have a setback issue for these uses. Mr. Schaedlich explained that the property currently has a legal nonconforming status and can be utilized. Ms. Shoop stated that if the zoning were changed then variances would need to be granted for the property to be used within the required manner. There was discussion about the types of variances that would be necessary if the property were rezoned.

Mr. Havel stated his hands are tied with using this property. He commented that he appreciated everyone's concern. The flooding issues caused by Tiber Creek have been dealt with over the years. He stated that he had met with the City Engineer and given access to his property to help alleviate the water issues. He has been more than cooperative. The other issues with the falling trees he has not been aware of until now. In order to get someone on the property he needs help. He would like to have the property rezoned so he can have a viable business to help improve the corner and the community. Mr. Havel asked how satisfied is the neighborhood with a vacant building.

Mr. Conway asked about the analysis given by the City. He was given the impression that with the B-

2 zoning it would solve the setback issue at the same time. He stated that if the most they can get is the B-2 and then they have to come back for additional requests, what does that do for them.

Mr. Temming indicated that the Commission only recommends the rezoning to City Council. They would still have to go before City Council. Mr. Conway indicated that if the rezoning is in place then with the addition of having to apply for variances the end user could be controlled. Ms. McMahon stated that the variances are granted by a different Board. Mr. Conway stated that if opposition to the rezoning is because the end user is not known, this could be the way to control that. Ms. McMahon replied that variance have a completely different set of criteria based on standards of the code to determine whether to be granted and have nothing to do with use.

Ms. Shoop stated her biggest concern is not with controlling the end-user, it is the fact she does not know who the end-user is going to be. In looking at the integrity of the neighbors and the neighborhood, her biggest fear is that something that does not fit into that place. She commented that in the seven years she has been on the Commission the requests are based on an end-user.

Mr. Lewis stated that a lot of this came out in a meeting with Mr. Havel, Mr. Conway, and their realtor. He indicated they went through the allowed uses for the property. They asked that if there was someone interested in the property to meet with the City to determine if they comply with the zoning district and, if they did not, what would be necessary to fit into a B-2. Mr. Lewis stated they have the option of making an offer with a contingency of the rezoning going forward if they so wished. The issue seemed to be the time of getting through the process of the rezoning. Mr. Lewis indicated to his knowledge not one of the twenty companies had approached the City to discuss the use of the property.

Mr. Conway stated the City has been more than generous with meeting with them. He indicated that as they meet with people they get the sense that they do not want to wait or go through the processes. They want to be able to offer all that is allowed in the B-2 zoning district. Mr. Havel added that this is why they are asking for help. This will open up the door to more opportunities.

Chairman Fitzgerald asked if there was any other discussion or comments. There being none, he asked for a motion. Motion by Mr. Temming, seconded by Mr. Komjati, to approve Rezoning Application No. 78-12. On roll call, Mr. Temming, Mr. Komjati, Ms. Shoop, and Chairman Fitzgerald answered "no". Motion failed.

ADMINISTRATIVE REPORT:

Chairman Fitzgerald moved onto the next item.

Preliminary Plat: Heisley Park Subdivision – Phase XIII – consisting of 28 sublots.

Chairman Fitzgerald indicated that this item would remain tabled. Mr. Lyons stated that is correct. The owner has requested to waive the 60-day approval period, which the City has accepted. There is no action necessary on this item.

OTHER MATTERS THAT MAY PROPERLY COME BEFORE THE PLANNING COMMISSION:

Chairman Fitzgerald asked if there were any other matters. Ms. McMahon indicated that the Conditional Use Permit for the Steele Mansion was issued it would not be heard by City Council. This project is now ready to go forward.

ADJOURNMENT:

Chairman Fitzgerald adjourned the meeting.

Lynn M. White, Secretary

Thomas Fitzgerald, Chairman