

PLANNING COMMISSION MEETING

December 12, 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 Manager Anthony Carson Jr., Assistant City Manager/Community Development Director Douglas Lewis, Assistant Law Director James Lyons, and Secretary Lynn White.

MINUTES:

Chairperson Fitzgerald asked for additions or corrections for the Planning Commission Meeting of November 20, 2013. There being no comments, Chairman Fitzgerald asked for a motion. Motion by Ms. Shoop, seconded by Mr. Wainwright to approve the minutes for the Planning Commission Meeting of November 20, 2013 as written. On roll call, Ms. Fleck, Mr. Komjati, Ms. Shoop, Mr. Wainwright, and Chairman Fitzgerald, answered "aye". Motion carried.

NEW BUSINESS (Public Hearing Item):

Chairman Fitzgerald indicated there is one Public Hearing item on the Agenda. He asked the Secretary to read the notice for Refusal No. 2245.

REFUSAL NO. 2245 CONDITIONAL USE PERMIT REQUEST

Applicant: Baldev S Dod

Owner: C. H. Trust – Mark Havel & Martha Dicello

Location: 642 Mentor Avenue (Parcel Number 15-C-019-0-00-005-0)

District: B-1 Business/Residential District

Section: 1143.06 (a)

The City of Painesville has received an application from Baldev Dod for a Conditional Use Permit. The applicant is proposing a Mini Food Mart (Convenience Store) at 642 Mentor Avenue (Permanent Parcel Number 15-C-019-0-00-005-0). The property is located in the B-1 Business/Residential District. Section 1143.06 (a) requires a conditional use permit for transitional retail with no more than 2,000 square feet of gross ground floor area in the B-1 District. A conditional use permit is being requested to be approved by the Planning Commission.

Chairman Fitzgerald asked if the applicant would like to speak on behalf of the request. Mr. Baldev Dod gave his address of 8271 Lanmark Drive, Mentor. He indicated that he would like to open a small grocery store. He would have groceries available: milk, bread and beer and wine sales.

Chairman Fitzgerald asked if the members of the Commission had any questions for the applicant. Mr. Komjati stated that the building is rather small. He asked if there were any plans to expand, renovate, or making any improvements. Mr. Dod responded that they plan to utilize the building space but will renovate the inside only.

Ms. Shoop asked the applicant if he were purchasing the building. Mr. Dod commented that he is leasing the building only if the permit is granted.

Ms. Fleck inquired about the property that is next to Tiber Creek. Is that property included with the lease of the building? Mr. Dod replied yes.

Chairman Fitzgerald questioned the parking on the property. There was discussion among the members of the Commission regarding the parking requirements. Mr. Lewis reviewed the regulations for parking spaces. Spaces must be a minimum of 9-feet, with a total of 180-square feet; spaces would have to be 10 by 18. He explained the distance between the building and the sidewalk is 35-feet. Parking spaces for this use are calculated on the building size. The building is 1176 square feet, which requires four parking spaces. The plan shown has the spaces indicated.

Ms. Fleck questioned the use of the buffer area between the building and the residential property. Mr. Baldev indicated that he would not be using that area. Chairman Fitzgerald reiterated that the applicant is only renting the building.

Chairman Fitzgerald asked if there were any questions from the audience. Mr. Ray DelaMotte, 616 Mentor Avenue, stated this is a conditional use. He inquired which zone are they asking, the business or residential property. Mr. Lyons responded that the B-1 property is for the conditional use request. Mr. Lewis stated they would be using the existing hard surfacing. They will not be using any of the residentially zoned site. Mr. DelaMotte asked if all the parking that is required would be located there. Mr. Lewis responded that is correct.

He explained there are four parking spaces currently off Grant Street. They are proposing to put an additional five diagonal spaces in front of the building. Mr. DelaMotte commented that this property has a unique zoning setup. He inquired if the residential property that is part of this application would be subject to the screening requirements. He stated this would mean they would have to screen their property from this business. This would mean they would have no room for their parking. There was lengthy discussion on the split zoning upon this property and the screening and buffering requirements. Mr. Lyons read the zoning code language regarding the screening and buffering adjacent to residential for off-street parking spaces.

Ms. Fleck asked if the parcel were zoned entirely B-1 what type of buffer would be required next to the residential. Mr. Lyons stated there would be a 25-foot setback to the residential zoning. Chairman Fitzgerald asked why the zoning split on this property is. Mr. Mark Havel stated that he owns the property. The zoning was done when the service station was constructed. The residential area is not big enough to build a home. He stated the split zoning issue is unknown. Mr. Lyons stated that this might have been this way since the 1950s.

Ms. Abby DelaMotte, 616 Mentor Avenue, indicated that last year when Mr. Havel sought to rezone the property it was brought to the City's attention that the property had the split zoning. The residential portion is only a sliver of property.

Mr. Lyons stated that if the Commission approves this request, it is the Administration's request to have a stipulation on the screening. The stipulation would be that screening and buffering shall be required as specified by the zoning code under Section 1133.01. This would be acceptable. There was discussion on what would be appropriate for this area. Mr. Lyons stated the applicant would have to submit a site plan with the screening and buffering to be approved by the administration. Mr. Havel cautioned that screening might cause a site clearance issue with the parking lot.

Ms. Fleck asked if the applicant is planning to have delivery services available at this site. Mr. Dod indicated no, it will only be a mini mart. Chairman Fitzgerald questioned the delivery of the products. Where will this occur? Mr. Dod responded the trucks will have to deliver to the front of the store.

Ms. DelaMotte inquired about the hours of operation for the mini mart. Mr. Lewis indicated the hours proposed are Monday through Saturday from 7 AM to 10 PM and Sunday from 8 AM to 8 PM. He stated the recommendations are different from the proposed. He would like to address this under his recommendations.

Chairman Fitzgerald asked if there were any other comments on this request from the audience. There being none, he asked for comments or questions from the Commission. There being none, he asked for the Administration's comments. Mr. Lewis made the following comments. The applicant is requesting a conditional use permit for transitional retail of no more than 2,000 square feet. As the Commission may remember, there was a rezoning request six to twelve months ago. The applicant requested to rezone from B-1 to B-2. At that time, the commission decided to deny the request based on the number of uses that would be allowed in the B-2 District at that site without knowing what was proposed for the use. Mr. Lewis stated that the current zoning of B-1 allows this use as a conditional use. Mr. Schaedlich had written the Staff Report and he addresses some of the concerns of this use next to a residentially zoned area. Mr. Lewis stated that the recommended stipulations deal with the concerns for buffering and landscaping. He stated that currently the property is a nonconforming property. The setback off Mentor Avenue is 65-feet. If there were any expansion plans for this building, the property owner would need to request a variance for the setback requirements. Additionally, an important issue was the ingress and egress off Mentor Avenue. This will need to be made clear for patrons entering and exiting the site.

Mr. Lewis stated there are several stipulations that the Staff has drafted for the Commission's review if they feel they would like to approve this request. Mr. Lewis went through each of the stipulations from the Staff Report.

1. The Conditional Use Permit shall not be transferrable to another party;
2. That the hours of operation be limited to 7:00 AM to 10:00 PM Weekdays and Saturdays and 9:00 AM to 9:00 PM on Sundays. Mr. Lewis commented the applicant submitted a letter indicating the hours would be 8 AM to 8 PM on Sundays. The stipulation should be changed to reflect that change. Stipulation number 3 states all items for sale shall be within the enclosed building. No products shall be displayed or stored outside;
4. Prior to the store opening, required parking spaces shall be striped according to the requirements of Section 1137.03(a), items 1 through 4. Mr. Lewis stated that he would like to add that the parking spaces should be improved and maintained in good repair, with cracks and holes repaired and sealed before July 31, 2014. Stipulation number 5 reads any and all permits and inspections required by the City and/or other related agencies such as the Lake County General Health District, Lake County Auditor, the State of Ohio, etc., shall be obtained prior done to any interior renovation or alteration being performed. Work shall be performed by contractors registered with the City of Painesville. Mr. Lewis indicated the applicant is proposing to modify the two bay doors by removing them and enclosing that area and adding windows. The City will require that any work being done will be done in a matter that will match the existing exterior. Stipulation number 6 states any other required licenses such as a liquor license shall be obtained and displayed;
7. An Occupancy Permit shall be obtained from the City prior to opening;
8. Should this conditional use permit be approved, the existing nonconforming pole sign, which has not been used for decades, shall be removed within ninety (90) days of said approval. Any proposed business signage shall conform to

current sign regulations and shall be reviewed, approved and issued a permit through the City of Painesville Community Development Department. As was discussed, an additional stipulation would be the screening be required as specified in the zoning code and the driveway along Mentor Avenue will be marked clearly for the ingress and egress from Mentor Avenue for safety reasons. This would identify traffic flow on the property and improve the safety of pedestrians and motorists alike.

Mr. Lewis indicated these are the recommendations from the Administration should the Commission approve this request. There were questions regarding a drainage analysis being submitted. It was explained that the site has little or no drainage issues. This will remain the case with no changes to the current structure or site. Mr. Havel expressed that was correct. The financial capabilities was discussed and explained this is contingent on the owner and applicant working out the lease for the property.

Mr. Havel questioned the existing pole sign. Could the pole be used with a different top? Mr. Lewis indicated that pole signs are not allowed in the B-1 district so the pole cannot be used. A new sign would have to be submitted and a new sign would have to meet the requirements for the zoning district. There was discussion about the signage that would be allowed and the removal of the existing pole.

Mr. DelaMotte questioned the location of the driveway in relation to the traffic light. He also questioned if the entrance of the parking lot could be moved onto the residential portion of the property. He indicated that he did not believe that would be allowed. Mr. Lyons stated that the regulations that are set forth in the zoning code will be adhered to in regards to the driveway access. The easement for Tiber Creek is located on the front portion of the property. The maintenance of the Creek was questioned as far as who is responsible. Mr. Lewis indicated the property owner is the responsible party for maintenance of the storm water easement.

Chairman Fitzgerald asked if members of the Commission had any comments or questions. There being none he stated there are ten stipulations before the Commission with two modified stipulations. He asked if there was a motion to approve the Conditional Use Permit Request with the stipulations as discussed. Motion by Mr. Komjati, seconded by Ms. Shoop, to approve Refusal No. 2245 for a Conditional Use Permit at 642 Mentor Avenue allowing a Mini Food Mart with the following stipulations: 1. The Conditional Use Permit shall not be transferrable to another party; 2. The hours of operation are limited to 7:00 AM to 10:00 PM Weekdays and Saturdays and 8:00 AM to 8:00 PM on Sundays; 3. All items for sale shall be within the enclosed building. No products shall be displayed or stored outside; 4. Prior to the store opening, required parking spaces shall be striped according to the requirements of Section 1137.03 (a), items 1 through 4 and shall be improved and maintained in good repair. The cracks and holes in the parking lot must be repaired and sealed before July 1, 2014; 5. Any and all permits and inspections required by the City and/or other related agencies such as the Lake County General Health District, Lake County Auditor, the State of Ohio, etc., shall be obtained prior done to any interior renovation or alteration being performed. Work shall be performed by contractors registered with the City of Painesville; 6. Any other required licenses such as a liquor license shall be obtained and displayed; 7. An Occupancy Permit shall be obtained from the City prior to opening; 8. Should this conditional use permit be approved, the existing nonconforming pole sign, which has not been used for decades, shall be removed within ninety (90) days of said approval. Any proposed business signage shall conform to current sign regulations and shall be reviewed, approved and issued a permit through the City of Painesville Community Development Department; 9. Screening/Buffering shall be required as specified by the zoning code under Section 1133.01; 10. The fully open drive along Mentor Avenue must be clearly marking for ingress and egress so that there is safe entry and exit onto Mentor Avenue. The plan should be presented to the City for approval. There being no further discussion the secretary was asked to call the roll. On roll call, Mr. Komjati, Ms. Shoop, Mr. Wainwright, and Ms. Fleck answered "yes"; Chairman Fitzgerald answered "no". Motion carried.

The applicant was informed the Planning Commission recommendation would be forwarded to City Council for their review. City Council has 15-days to request a public hearing on this matter. If no public hearing is requested the conditional use permit will be issued.

Chairman Fitzgerald moved onto the first item under Administrative Report.

ADMINISTRATIVE REPORT:

- **Temporary Structure and Uses:** Ohio Energy Inc. was granted temporary use of 305 West Prospect Street for an indoor sports facility on November 10, 2011 and October 11, 2012 for one-year. Ohio Energy Inc. is requesting to continue the temporary use permit for this location based on Section 1141.07 (c) of the zoning code.

Chairman Fitzgerald asked the City to comment on this item. Mr. Lewis stated that Ohio Energy Fast Pitch has requested an extension of the temporary use of the building at 305 West Prospect Street. He stated that currently under 1141.07 (c) of the zoning code temporary uses are allowed. If approved a certificate of compliance shall be granted for one year. As the Commission may recall, the reason the original temporary use request was approved and an extension was granted because the economy (and manufacturing) had slowed significantly and it represented the ability to occupy a vacant facility within the City during this economic slowdown. Although other communities allow this type of use the City of Painesville does not permit the above-listed types of activity

within its industrial districts because of limited industrial space. However, if the Commission does approve the request for an extension the Administration is recommending two stipulations on the approval. They are the temporary use be granted for no longer than 6-months, through June 30, 2014, and during the upcoming year the applicant search for and secure a new location where the activity is permitted.

Chairman Fitzgerald asked if the City is encouraging the applicant to look for a facility in the City of Painesville. Mr. Lewis responded that was discussed with the applicant last year. He directed the Commission to the copy of last year's minutes. A temporary use means temporary for a limited time and extending this more than two years becomes like to a zoning change.

Mr. Komjati asked if there was a potential tenant for this facility. Mr. Lewis responded that he is not aware of any currently. The stipulation of the six-months would allow the Economic Development Coordinator time to work with the applicant and help find an appropriate site. This location has two lots and has split zoning of light industrial and heavy industrial.

Mr. George Dutton, 6259 Seminole Trail, Mentor Ohio, stated that he is the property manager for this location. The current building was vacant for approximately two years before being occupied by Ohio Energy Fast Pitch. He explained the City along with Realtors and he was trying to find occupants then they came along and it has been rented. The back building has been vacant for 18-months. The City recommended a company who came and went and they are now in a lawsuit to collect back rent from them. When the buildings are vacant there is no city income tax. The current occupant has been good tenants, they keep the place clean, they pay the rent, and he understands the City wants income tax from a business that has employees. Ohio Energy Fast Pitch provides a service not only to Painesville but also to the surrounding communities. The patrons of this facility have been known to go on to college and get scholarships. There are no prospective tenants for these buildings.

Chairman Fitzgerald asked members of the Commission if they have additional questions or comments on this request. The applicant, Dan Fisher, asked about the stipulations on the request. What can be done so the zoning can include this as a use? They have kids involved in the organization that are eight years old. This is not a one or two year operation. Chairman Fitzgerald asked if anyone has approached the City about the zoning issue. Mr. Fisher stated that he does not want to rezone the property; he would just like the use to be allowed. He stated that last year Lakeview Bluffs was on their fifth year of a temporary permit. Mr. Lewis replied that is different since this request deals with a structure. The other is for removal of soil. Mr. Fisher commented that there is more to it than just moving the operation. The inside would need to be torn down. Mr. Komjati indicated that this should be no surprise, this was discussed last year. Mr. Fisher stated they like that building, it serves their purpose.

Ms. Shoop stated the question is what needs to be done to allow this use in this location. Chairman Fitzgerald asked if this were to be extended for six-month will this allow enough time for the applicant and the City to figure something out. Mr. Lewis stated that last year it was discussed. He read from the minutes where the applicant had been offered the choice to look for property in the appropriate zoning district or request a classification be added to the zoning district to allow this use.

Mr. Carson stated that if the industrial district were to be reclassified it changes for all not just this one piece of property. Mr. Lewis commented that any light or heavy industrial zoned area would be subject to the change. Mr. Fisher stated that industrial buildings are needed due to the ceiling height needed for the types of activities. He indicated that to purchase property and build a structure it would not be feasible. They are a nonprofit organization and operate only on user fees.

Mr. Dutton commented on the statement of the economy picking up. West Prospect Street has multiple vacant buildings and he believes that the economy is not on the upturn. There was discussion of the various areas of the City that have vacant industrial land.

Mr. Lyons asked if the organization had any employees. Mr. Fisher stated the organization is run by volunteers. Mr. Lyons stated that under the permitted uses for the light and heavy industrial zoning districts churches are not allowed in the area. They are allowed in the City; however they are in a differently zoned area. The use is not being singled out of the City. Mr. Lyons stated that as was indicated one-year ago the applicant has the right to have this use added to the classification of the code.

Chairman Fitzgerald commented that if the extension is granted the applicant has some work to do. Ms. Shoop asked if this were to move forward and the use were allowed in this area, would the party center request be allowed to request the same thing. Mr. Lewis stated that he does not believe that would qualify as a recreational use.

Chairman Fitzgerald stated that if there were no further comments or questions, is there a motion on this matter. Motion by Ms. Shoop, seconded by Mr. Komjati, to approve of the temporary use of 305 West Prospect Street with the following stipulations: 1) the temporary use be extended no longer than an additional six (6) months (through June 30, 2014); 2) during the course of the coming year, Ohio Energy Fast Pitch will search for and

secure a new location where such an activity is permitted or conditionally permitted. 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 under the Administrative Report.

- **Review of Conditional Use Permit (Refusal No. 2111)** issued to Lakeview Bluffs LLC and Tierra Solutions, Inc. for soil removal at Elm Street (Parcel Numbers 15-A-019-0-00-013-0; 35-A-002-0-00-002-0; and 35-A-002-0-00-003-0): Permit granted February 21, 2007; reviewed December 13, 2007; extension granted December 2008, November 2009, December 2010, December 2011; extension granted October 11, 2012 with the stipulation that Condition #18 be invoked so that a progress report be given to the Planning Commission by no later than the December Planning Commission meeting in 2013.

Chairman Fitzgerald asked if there was someone present to speak on this matter. Mr. Paul Boyce, of ? Engineering, stated he is present on behalf of Tierra Solutions. He thanked the City and the Commission for their approvals over the past. Tierra Solutions would like an additional one-year extension for the parcels listed on the permit. The site has been used over the past year. They have been doing work on improving the surface drainage; they have been maintaining the cap and cover on certain areas of the site. They have assisted the Lake County Utilities Department on the force main repairs. These activities will continue into 2014. Chairman Fitzgerald asked if there is an anticipated end date. Mr. Boyce indicated that the Ohio EPA certifications project to 2017 and those are updated on a regular basis. At this time there is no set completion date for the activity.

Chairman Fitzgerald asked if there were any questions or comments from members of the Commission. There being none, he asked for a motion. Motion by Ms. Fleck, seconded by Ms. Shoop to approve the request for an additional year, with the stipulations that were agreed upon for the original permit and that Condition #18 be invoked so that the applicant provides a progress report to the Planning Commission by no later than the December Planning Commission meeting in 2014. On roll call, Mr. Wainwright, Ms. Fleck, Mr. Komjati, Ms. Shoop and Chairman Fitzgerald answered “yes”. Motion carried.

OTHER MATTERS THAT MAY PROPERLY COME BEFORE THE PLANNING COMMISSION:

Mr. Komjati recognized Mr. Thomas Fitzgerald and his thirteen years as a Planning Commission member. Mr. Komjati wished Mr. Fitzgerald well as a new City Councilperson.

Mr. Fitzgerald presented the secretary with his letter of resignation from the Planning Commission. The vacant position has been advertised and a replacement will be appointed by City Council.

There were no other matters before the Commission.

ADJOURNMENT:

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

Lynn M. White, Secretary

Thomas Fitzgerald, Chairman