

**PLAIN TOWNSHIP BOARD OF ZONING APPEALS
PLAIN TOWNSHIP HALL
2600 EASTON STREET NE, CANTON, OHIO 44721
MINUTES OF REGULAR MEETING
JANUARY 5, 2005**

The meeting was called to order by Chairman Bob Soles, with Timothy Reichel, James McVay, Bob Stewart, Ginger Ferencz, Fred Rossetti, Michelle Mahoney, and Stephanie Metzger present.

Mrs. Ferencz made a motion to keep Bob Soles as the Chairman. Mr. Stewart seconded the motion. All members were in favor.

Mr. Rossetti made a motion to keep Tim Reichel as the Vice Chairman. Mr. Stewart seconded the motion. All members were in favor.

Motion made by Mr. Reichel to approve the minutes of December 1, 2004. Mr. Stewart seconded the motion. All members were in favor. Mrs. Ferencz abstained.

Mr. McVay read the statement of duties. Mr. Soles expressed the fire department comments into the record.

The following Appeals were heard:

APPEAL #1150-05-A

Applicant/ John Toomey, 3922 Clock Pointe Trail, Suite 103, Stow, Ohio 44224; Owner/ Marathon-Ashland petroleum LLC, 539 South Main Street, Finley, Ohio 45840; Lessee, Spee-D Foods Inc, 9817 Cleveland Avenue NW, Greentown, Ohio 44630; Requests the following for a 36 ft. x 17 ft. (612 sq. ft.) commercial addition at 3002 Market Avenue North:

- 1) Permission to expand a nonconforming use.
- 2) Change of a Nonconforming Use (auto repair garage) to another Nonconforming Use (car wash).
- 3) 20 ft. north, side yard variance (25 ft. required – 5 ft. requested).

Article VII, Section 712.4, Yard Requirements.

Article X, Section 1001.1, Nonconforming Uses.

The property is zoned B-1, Neighborhood Business District and is located in the Southwest Quarter of Section 27.

There were no attendees for or against the Appeal.

Mr. Soles administered the oath.

Mr. John Toomey, 3922 Clock Pointe Trail, stated that he is the Architect. The owner of the gas station would like to move the existing pumps to be under one canopy, which would eliminate the other canopy. The entire building will now be a convenience store, and they would like to remove the auto shop and put in a car wash. They are requesting a few variances. According to Section 1001.1 A in the Plain Township Zoning book they are allowed to alter and enlarge the business by 25%, this adjustment will only be 23.8%. They would like to change one nonconforming use, auto shop, to another nonconforming use, car wash. This change will clean up the old tires and various car parts that now exist. Also the entire building will be renovated.

Mr. Reichel asked if they are adding the car wash to the end of the building, have they checked into the water run off.

Mr. Toomey said that he will meet all required codes. They went to RPC on Monday and they were granted conditional approval. The three conditions that had to be met are; 1. Meet health department issues regarding handicap accessibility, 2. There is a conflict of what the address is down at house numbering, and 3. Get variance approval from Plain Township.

Mr. Stewart asked where the entrance would be, and if they would maintain the same traffic pattern.

Mr. Toomey said yes they will exit onto Market Avenue.

Mr. Stewart asked if they would tear out the tanks under the canopy.

Mr. Toomey said that there will be minor modifications to the tanks.

Mr. Soles said that part of the nonconforming use is they have to show the car wash will be in less conflict than the auto shop with the noise, tires, cars, etc.

Mr. Toomey said yes it will be.

Mr. Soles asked what the hours of operations will be.

Mr. Toomey said he is not sure.

Mr. Soles asked why he needed 5 feet from the property line.

Mr. Toomey said the existing building does not meet handicap codes. The car wash machines need a certain amount of space which would put the building closer to the lot line. And according to the zoning requirements they need to keep a 5' buffer yard of green space.

Mr. Soles asked what would happen if the car wash was not permitted.

Mr. Toomey said that believe it or not, there is actually a low profit in gasoline. Most of the money gas stations make is from their convenience stores and car washes. This in turn will make it more affordable for the owner to renovate the building.

Mr. McVay asked if the property to the North is all asphalt.

Mr. Toomey said that the Rite Aid property has a 5' buffer yard, which once Marathon has their 5 foot of green space there will be 10 feet total of green space in between the parking lots.

Motion by Mr. Reichel,

WHEREAS, Applicant/ John Toomey, 3922 Clock Pointe Trail, Suite 103, Stow, Ohio 44224; Owner/ Marathon-Ashland Petroleum LLC, 539 South Main Street, Finley, Ohio 45840; Lessee/ Spee-D Foods Inc, 9817 Cleveland Avenue NW, Greentown, Ohio 44630; requests the following for a 36 ft. x 17 ft. (612 sq. ft.) commercial addition:

- 1. Permission to expand a nonconforming use.**
- 2. Change a Nonconforming Use (auto repair garage) to another Nonconforming use (car**

wash)

3. 20 ft. north, side yard variance (25 ft. required – 5 ft. requested).

WHEREAS, the applicant or a representative has appeared in person before this Board at an adjudication hearing on said application and the Plain Township Board of Zoning Appeals has duly considered this application pursuant to Ohio Revised Code 519.14; and

NOW, THEREFORE, BE IT HEREBY RESOLVED, by the Plain Township Board of Zoning Appeals to:

 X grant the following:

1. **Permission to expand a nonconforming use.**
2. **Change a Nonconforming Use (auto repair garage) to another Nonconforming use (car wash)**
3. **20 ft. north, side yard variance (25 ft. required – 5 ft. requested).**

Seconded by Mr. Stewart,

DISCUSSION:

Mr. McVay said that the variance is in a commercial area and there are no homes around and this would be an improvement in the township.

Mr. Reichel said that the car wash would be in less conflict than the auto garage and this will be a benefit to the community.

Vote: Mrs. Ferencz, **YES**; Mr. Stewart, **YES**; Mr. McVay, **YES**; Mr. Reichel, **YES**; Mr. Soles, **YES**.

Appeal #1150-05-A is therefore APPROVED

APPEAL #1151-05-A

Applicant & Owner/ Dan Johnson, 6915 Lavonne Avenue NE, North Canton, Ohio 44721; Requests a 19 ft. west, corner side yard variance (20 ft. required – 1 ft. requested) for the 32 ft. x 24 ft. (768 sq. ft.) detached residential garage constructed in error.

Article VI, Section 602.7; Corner Lots.

The property is zoned R-1, Single Family Residential District and is located in the Southwest Quarter of Section 12.

There were no attendees for and one against the Appeal.

Mr. Soles administered the oath.

Mr. Dan Johnson, 6915 Lavonne Avenue NE, stated that he is the owner of the property and where the garage was constructed was simply a mistake. He applied and received all building and zoning permits. To his understanding, he was far enough off the road. He and the builder measured 50 feet to be safe. The building inspector came out and approved the post holes and then the Zoning Department said that his garage was too close. He built the garage at an angle to line up with the road. The garage will be sided and look the same as his house. He has spoken to all of the neighbors and they like the garage better than the pine trees that were there before.

Mr. Soles administered the oath.

Mr. Guss Arrendale, 6851 Pinetree Street NE, stated that the garage is sitting inside of the front yard setback requirement. All of the houses on that street are set back 50 feet.

Mr. Soles said that the garage setback is 20 feet.

Mrs. Mahoney said that the setback is 45 feet from the center of the road. This is Mr. Johnson's rear yard, so front yard and rear yard setbacks are different.

Mr. Soles said that the garage is only 1 foot from the property line, he is asking for a 19 foot variance.

Mr. Arrendale said that the garage looks out of place.

Mr. McVay asked if the garage is 50 feet from the pavement.

Mr. Johnson said that the garage is supposed to be 45 feet from the center of the road, but he made it be 50 feet from the center of the road to the front of the garage. The corner of the garage is in question because the road curves.

Mr. McVay said that in his application it states that he has lived there for 26 years. So he should know where the property line is.

Mr. Johnson said yes, he knows where his property lines are. The garage is inside the fence which meets the zoning setbacks. The building inspector came out and said that everything was okay.

Mr. McVay said that the building inspector is from Stark County and has nothing to do with the zoning regulations.

Mrs. Mahoney said that the Stark County Building Inspector only checks the footers, not the location of the building.

Mrs. Ferencz asked why he used the front of his garage as the measuring point.

Mr. Johnson said it was a mistake.

Mr. Soles said that the corner of the building is only 27 feet away.

Mr. Johnson said that the building is at an angle and so is the road, he measured straight out 50 feet.

Mr. Soles asked who his builder is.

Mr. Johnson said Ed Rohr.

Mr. Reichel asked if the builder gave him any guidance on setbacks.

Mr. Johnson said no, that he and the builder laid out the location of the garage together and got the permits together.

Mr. Soles asked if the garage could have met the required 20 foot setback.

Mr. Johnson said yes and he would have if he knew that he was doing it incorrectly.

Mrs. Mahoney said that the original application stated that Mr. Johnson's garage was only going to be 25 feet from the center of the road. She called Mr. Johnson and told him that the garage had to be 45 feet from the center of the road, not 25 feet. She was under the impression that he understood the setbacks, and if he needed any help all he had to do was call the zoning office and she would have gone out and helped him measure the setbacks.

Mr. Soles asked Mr. Johnson if that phone call occurred.

Mr. Johnson said yes.

Mr. Soles asked why he measured from the center of the building then.

Mr. Johnson said that he measured from the front of the building.

Mr. Soles said that just by looking at the garage it is pretty obvious that the corner of the building was way too close to the road.

Mr. Johnson said yes, but the garage was still inside of the fence line which he thought the fence was within the zoning guidelines.

Mr. Soles asked what all would be involved in moving the garage to meet the setback.

Mr. Johnson said that the garage is 90% complete. He only needs to have the concrete poured and the doors put on.

Mr. Soles asked how much money he has into this garage.

Mr. Johnson said \$19,000.

Mr. Soles asked if this issue was discussed with Mr. Rohr.

Mr. Johnson said he does not fault him.

Mr. Reichel said that the builder did not do his homework and research about the setbacks of Plain Township and then good people like Mr. Johnson are put into this type of situation. This Board has made people move buildings before because of builders not knowing the rules of the township.

Mr. Soles asked that if the builder came with Mr. Johnson to get the permits, then why wasn't he aware of the setback requirements.

Mr. Johnson said that he and the builder did not discuss it.

Mr. Stewart said that he has a real problem with the builder.

Mr. Soles asked that when they staked out the garage together, did they talk about setbacks at all.

Mr. Johnson said yes they talked about the 50 foot setback.

Mr. Soles said that he is concerned since the builder does this as his job, yet he doesn't know the rules and setbacks.

Mr. Johnson said no he is mad at the person that came out and told him that everything was ok.

Mr. Soles asked what all was done at that time.

Mr. Johnson said that the post holes and the concrete was done. He said that he did push the limit to be as close to the road as he could legally be. He would not have continued to build if he knew it was wrong, but the building permit guy said it was okay.

Mr. McVay said that the Stark County Building Department and the Inspectors only deal with construction of buildings, not setbacks.

Mr. Johnson said that he had the septic people, road people, Michelle and County people out there. He was not trying to get away with anything. Now he cannot move the garage, he can only tear it down.

Mr. Soles asked why he cannot move the garage.

Mr. McVay said that he has seen plenty of people move things, houses, garages, etc.

Mr. Johnson said that he doesn't know how and doesn't think that there is any way to move a pole building.

Motion by Mr. Stewart,

WHEREAS, Applicant & Owner/ Dan Johnson, 6915 Lavonne Avenue NE, North Canton, Ohio 44721 requests the following for a 32 ft. x 24 ft. (768 sq. ft.) detached residential garage constructed in error:

- **19 ft. west, corner side yard variance (20 ft. required – 1 ft. requested).**

WHEREAS, the applicant or a representative has appeared in person before this Board at an adjudication hearing on said application and the Plain Township Board of Zoning Appeals has duly considered this application pursuant to Ohio Revised Code 519.14; and

NOW, THEREFORE, BE IT HEREBY RESOLVED, by the Plain Township Board of Zoning Appeals to:

 X grant the following:

- **19 ft. west, corner side yard variance (20 ft. required – 1 ft. requested).**

Seconded by Mr. Reichel,

DISCUSSION:

Mr. Reichel said that he understands the financial aspects of this, Mr. Johnson has put \$19,000 into this building and he still needs to pour the concrete. He did not receive proper guidance from his builder.

Mr. Stewart said that he understands the frustrations, but just because the Stark County Building Department said that things were okay, they don't speak for the Zoning Department. The contractor should have known better.

Mr. McVay said that in the application it states the cost of the garage was \$9,000 how is it now \$19,000.

Mrs. Mahoney said that she believes that was a typo that Mr. Johnson made before he submitted the application to the Zoning Department.

Mr. McVay said that he has been on the Board for 15 years or so and he feels sorry for the property owner, but if this variance is granted that just puts a big hole in the Zoning Resolution. This is a difficult situation.

Mr. Stewart said that he is in favor of the variance. He feels that the Board owes it to the resident to not create a hardship for him.

Mrs. Ferencz said that this is a sad case and it will cost some money to move the garage, but the Board needs to set precedence. Only having a 1 foot setback from the property line is not a lot.

Mr. Soles said that this is a clear mistake that was made, given the testimony presented. He agrees with the Board in both respects. This is a difficult situation that the Board, fortunately, does not have to face very often.

Mr. Reichel said that there were no comments to the Board from the Road or Fire Department concerning this garage.

Vote: Mrs. Ferencz, **NO**; Mr. Stewart, **YES**; Mr. McVay, **NO**; Mr. Reichel, **YES**; Mr. Soles, **YES**.

Appeal #1151-05-A is therefore APPROVED

No further business pending the meeting adjourned at 7:55 pm.

PLAIN TOWNSHIP BOARD OF ZONING APPEALS

STEPHANIE A. METZGER, SECRETARY