

**PLAIN TOWNSHIP BOARD OF ZONING APPEALS
PLAIN TOWNSHIP HALL
2600 EASTON STREET NE, CANTON, OHIO 44721
MINUTES OF REGULAR MEETING
FEBRUARY 6, 2008**

The meeting was called to order by Chairman James McVay, with Dimitrios Pousoulides, Bob Stewart, Robert Soles, Tim Reichel, Steve Peroz and Stephanie Metzger present.

Motion was made by Mr. Stewart to approve the minutes of January 9, 2008. Mr. Soles seconded the motion. All members were in favor.

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

The following Appeal was heard:

APPEAL #1192-08-A

Applicant/ Anthony Psaris, 1721 Lancaster Gate, North Canton, Ohio 44709 & Owner/ D. L. Murray Enterprises, LLC 4155 Martindale Road NE, Canton, Ohio 44705; Requests a variance from an existing Mini-Storage or Mini-Warehouse Facility Conditional Use Permit on the property located at 4165 Martindale Road NE (Parcel #52-18194) consisting of the following:

- Outside storage adjacent to a Residential District variance requested.

Article VII, Section 713.2 B, Conditionally Permitted Uses.

The property is zoned B-2, General Business District and is located in the Northeast Quarter of Section 27.

There were two (2) attendees for and no one against the Appeal.

Mr. McVay did not administer the oath because the first speaker was an attorney and is an officer of the court.

Mr. Timothy Putman, 3978 Fulton Drive NW, stated that he is the attorney representing Mr. Psaris, the potential buyer. He is also the Real Estate agent for Mr. Murray, the seller. The intention is to put together a deal between these two parties for either a sale or a lease sale. The applicant, Mr. Psaris, can increase the opportunity for revenue on the property and better the use of the property most importantly by clearing the property and creating some outside storage. The property was approved by this Board in 1998 or so for two buildings, only one was built. The intention is in the near future to build that second building as applied for in the original permit. They have talked to Steve and were lead to believe by both Steve and Reva at Regional Planning that those permits are still good. So we have the right to build the second building, however, they would like to improve the quality of the facility there by putting a fence around it to secure it also to include outside storage. Most people have the image of self storage as being more secure and the fence will add to that image and increase the occupancy. The only question they have is if this Board or the Township would require a fence in this particular case across the back of the property since it is adjacent to the creek.

Mr. Reichel said that raises his first question, and he would have to go to Mr. Peroz for this one, is that area back there for the open storage currently in a 100 year flood plane.

Mr. Peroz said yes, the whole area is where the Canton Park is to the West through that whole area is a 100 year flood plane that whole are, the Nimishillen Creek.

Mr. Reichel said that is very relevant right now, it's flooded.

Mr. Putman said the site is not flooded.

Mr. Peroz said the site isn't but that whole area is a 100 year flood plane.

Mr. Putman said one thing that he has learned over the last few years especially even more so in the last six months to a year is many of these flood plane maps are not very accurate. The surveying and work that was done for those maps was done many many years ago and most of them need updated, corrected, or brought up to standard technology. This particular site did not flood when we had that 100 year flood five years ago. The essence is these 100 year flood maps are not very accurate.

Mr. Pousoulides said they may not be accurate; they may be underestimating what areas are flooding.

Mr. Putman said he believes they are inaccurate in both ways. They are both underestimated in some cases and overprotective in a sense in other saying certain areas are in a flood plane when in fact they aren't. In fact they have had cases in the last few years where they have had to have surveyors the property then submit to FEMA to get the maps amended and they have gotten that done almost every time.

Mr. Pousoulides said anytime he drives down whether it's Main Street, Easton, Applegrove, name a street in this area the Plain or North Canton area and he sees water rushing down the street or if he looks to his left or right he sees water then clients come to him saying their basements are flooded and then when we sue the defense says this is a 100 year flood. And it's happening almost, not every year, but fairly frequently with global warming and all of the precipitation that we have been getting over the last 10 to 20 years...doesn't that almost expand what the flood plane is, if we actually did have the flood planes updated it's going to expand where it's not just a 100 year flood, these floods are occurring more and more frequently. Wouldn't you agree with me?

Mr. Putman said he would agree that we are having problems because we have changed the topography around here. I think the point that Mr. Reichel was asking was whether or not this was at risk. And again, I don't know the answer to that. FEMA is the one who is the deciding factor, not me.

Mr. Reichel asked if we were putting the cart in front of the horse then, shouldn't we have FEMA come in and look at this before we take a vote on this.

Mr. Putman said that would take two or three years to have that done.

Mr. Reichel said he almost agrees with Mr. Pousoulides here, he lives in Plain Township, and he is on high ground too and when he let the dogs out the other day it's like walking on a wet sponge, and he's seen the floods down there. Say you are going to put campers out there, boats out there, what have you out there, say the flood occurs...are you going to be insured to take care of all of these people's private vehicles that are sitting out there under five feet of water?

Mr. Putman said that the parties are notified that they are at risk. They have a contract to sign that says that they keep the property insured, that's typically what happens in this situation.

Mr. McVay said that he has a question for Mr. Peroz and that is the back of this property, and I think that's the only reason we are here tonight, is because the adjoining property to the north is R-1 so he has to have a Conditional Use Permit because of the R-1. Does this also mean that the property is going to have to be landscaped according to our zoning code?

Mr. Peroz said this is a Variance on a Conditional Use so I guess whatever is attached to the Variance but he has a Conditional Use for what he has now and this is a Variance he is requesting on the Conditional Use that exists now. So those requirements for a Conditional Use in our book doesn't really apply to this because it's a Variance of...

Mr. McVay said if he puts a fence back there that would be all the barrier we would need then between the B-2 and the R-1.

Mr. Peroz said he doesn't think that he is really required to have a fence.

Mr. McVay said if he puts one in then we wouldn't ask him for trees...

Mr. Peroz said because this is a Variance he guesses that it is up to the Board, because it wouldn't follow the procedure for a Conditional Use because he already has that. So that becomes a permitted use, then he gets a Variance on the Conditional Use.

Mr. Soles said the issue is he has it and he's looking for two things. One, a Conditionally Permitted Use specifies there shall be no outside storage adjacent to a residential area, so that's why he's here tonight to see if he can get a Variance. He has to establish the prerequisites to meet a Variance. The second issue is, outside storage areas shall be completely enclosed by wall, fences, buildings, landscaping or a combination thereof. So consequently to the extent that we grant it we have to deal with that issue or grant a variance from that requirement.

Mr. McVay said that it asks for a fence, so if he put the fence in that satisfies that.

Mr. Putman asked if landscaping along the creek is sufficient. That's the question here, is a fence, the language is not clear.

Mr. Peroz said that is not a good thing to put along a creek anyway. It should have natural vegetation along a creek, that's why they have riparian setbacks along a creek anyway. Doing some type of landscaping unless you are planting a bunch of trees or natural vegetation or something like that...

Mr. Putman said right now it is natural vegetation.

Mr. Peroz said he saw what it has now and it's the best thing to have there, that natural vegetation.

Mr. Reichel said that leads him to another question then. This outside storage, are you going to go in and pave it, gravel it, are you going to put these things on just plain grass and dirt.

Mr. Putman said gravel it.

Mr. Reichel said what about the water run off from that type of operation.

Mr. Putman said gravel or any kind of surfacing changes the amount of water and the rate of keeping it absorbed, but generally if you talk to Julie at Stark Soil it's not the same as if it were paved. Talk to a soil engineer who is designing a site plan for the county for storm water run off that there are different factors apply for stone then there is for pavement. It's actually the preferred thing.

Mr. Stewart said he is a little confused as to who owns what. Does Mr. Murray own the building that's adjacent?

Mr. Putman said that Mr. Murray owns both the building that's adjacent and this building.

Mr. Stewart said he owns the whole thing. And Mr. Psaris wants to buy the whole package or just lease the land to put the storage on.

Mr. Putman said lease with the option to purchase just the storage area.

Mr. Stewart asked if it was just the one that is there now and the rest of the land.

Mr. Putman approached the board and showed Mr. Stewart where everything was situated.

Mr. Stewart asked why the two buildings weren't built like in the original plans.

Mr. Putman said it was just the way it was designed by the engineers and laid out to have the proper amount of flow of traffic around them and this was approved by Regional Planning as well.

Mr. Stewart said there is just a very narrow strip up along side of the existing building now and this is all brush and growth and so forth.

Mr. Putman said if the second building is built, that will all come down. It has to be, in accordance with your permit, it has to be right there where it shows on the map, and also in accordance with Stark County Regional Planning permit that was issued it has to be right there. And any changes from that location or dimensions would require that he comes back to this Board and back to the County.

Mr. Stewart asked when this was done, five or six years ago.

Mr. Reichel said 1998.

Mr. Stewart asked what the school board uses the property for behind this.

Mr. Putman said that it is Barr School and the baseball fields. Mr. Putman showed the Board where everything was located on the map.

Mr. Soles said that to the extent that this constitutes a use variance, a requirement is that he must show unnecessary hardship as to why the variance should be granted. What are you going to demonstrate from that prospective?

Mr. Putman said that without this variance this wouldn't be economically feasible for Mr. Psaris to buy. The cost of construction and the rents that are coming in over a period of time have demonstrated that in order to get a return of investment you would have to get some additional incentive on this property.

Mr. Pousoulides asked what the building is being used for that is there now.

Mr. Putman said mini storage. Again, Mr. Putman approached the Board to point out locations on the map. He said there are 10 x 20 and 5 x 10 units.

Mr. Pousoulides asked who was running that.

Mr. Putman said Mr. Murray.

Mr. Pousoulides said Mr. Psaris is not running it. He wants to lease or purchase this building. So it's not just merely doing this outdoor parking/storage, it's coming here for a variance to do the outdoor storage and parking along with a lease to option to buy this building.

Mr. Stewart asked what prevent building the second building when this was granted in 1998, other than the economic stuff.

Mr. Putman said that Mr. Murray was busy with his other business, selling tile.

Mr. Stewart said he is talking about legally if there was a variance granted then, why are we back getting another one.

Mr. Putman said it wasn't a Variance; it was a Conditional Use Permit. There's a difference. This was a permitted use in a B-2 zoning with a Conditional Permit it didn't require any Variances. What we are looking at today is something that could have been asked for at that time but it wasn't which is outside storage. And at the same time they are asking for direction from the Board to whether or not the back side of it would be required to be fenced or whether it would be better to leave it with natural looking landscaping. He thinks from Mr. Reichel's point of water flow and what not that natural landscaping would be preferable. Certainly nobody, that creek, if you are familiar with it gentleman is so wide that you're not going to wade across that thing and steal anything. They can't get anything out of there, that's a good size body of water.

Mr. McVay administered the oath.

Mr. Anthony Psaris, 1721 Lancaster Gate SE, stated that out of his own curiosity he did drive down there today, because he did drive by the park and the park was flooded, he was thinking he is not even interested in this property if it is flooded. That water was three feet below the back of that property. This property actually sits up and it's North of the area in which you were talking, he doesn't know the topography and the direction so to speak as well as they do. He is just saying there was not a bit of water. He actually walked back there to the creek. And you would hate to fence the thing in for one reason because there is deer living in there. You would hate to shove them off. There will be a whole section of the area still back there for them.

Mr. Stewart asked if this goes ahead and you put outside storage there, you're not going to put a fence around it.

Mr. Putman said not in the back.

Mr. Psaris said on three sides of the property.

Mr. Peroz said the best place to run the fence is this back yellow line. I think, and leave this area untouched as a riparian to protect Nimishillen Creek. Now you are using this area as outside storage, the yellow.

Mr. Psaris said correct.

Mr. Peroz said it would be better to run it, which would be a little shorter too, and leave this natural vegetation along the Nimishillen Creek.

Mr. Psaris said you could do that if you wanted to do that, he is just saying for cost effectiveness even if you didn't have to run that extra length of fence back there, nobody's going to get into that property if you ran it back to there.

Mr. Reichel said he doesn't know about that. Kids are pretty ingenious.

Mr. Putman said they would have to have a boat.

Mr. Reichel said when the water isn't as high as it is now; kids are ingenious to getting into trouble especially in this day and age.

Mr. Psaris said to be honest with you, if they really wanted to get in there they could climb the fence, jump the fence, either way it's not Fort Knox. The creek is 30 feet, 40 feet, it's fairly deep.

Mr. Putman said if you put the fence up.... (Not audible)

The question was the intent of the zoning code was to have this thing closed in a way where people aren't going to be able to get in and out easily. The code didn't contemplate a river or a creek on that side of the property such as this. The code could never have anticipated all of these different possibilities that would come up. So we are just saying in this particular case given the fact that that stream is so deep and so wide at that point, could we avoid having to run the fence. To put up an eight foot fence along the back of that property runs about \$12 a lineal foot, so times 320 feet or so that's a big investment that isn't really needed.

Mr. Reichel said he has one last question, are they committed to building this other storage building. Or who is going to build that building.

Mr. Psaris said if he purchases that property that would be something in the future.

Mr. Reichel said all he wants right now is outside storage.

Mr. Psaris said yes, as it sits right now. The outside building is already approved as far as he knows.

Mr. Reichel said right, but you're not going to build it.

Mr. Putman said to be honest with you it's a matter of getting the economics of the thing to a point where a bank would lend to do the second building. And we think that if we get this outside storage and he puts the investment in the fencing and does some other modifications to the mini storage as it sits, then he thinks he can get the occupancy level and the rent flow up high enough that he can get the lending to build the second building. So it's a matter of...

Mr. Reichel said it's a sense of practicality. He said his dad and Dick Gessner bought the old Perry Rubber Company over off of Harsh Avenue. They advertised for outside storage, behind that building is totally fenced in, they got hardly any takers whatsoever.

Mr. McVay asked Stephanie if she had a question.

Mrs. Metzger said her only question and concern is when she did the legal ad. When the application was submitted, the original site plan showed a fence around the entire property. So therefore she did not publish that a variance was requested for the fence in the rear. She does not know if this Board can approve that tonight. She is referring to the attorney's on the Board about this. If it wasn't published that a variance was requested for the fence, she doesn't know if they can grant that. She thinks the only thing they can grant tonight is the outside storage. That's her question.

Mr. Putman said that it does say landscaping or whatever... (Not audible)

Mrs. Metzger said that Section 138 states outside storage areas shall be completely enclosed by walls, fences, buildings, landscaping or a combination thereof. So that was her only question, she did not advertise anything about fencing.

Mr. Soles said he would think that they probably could, looking at the public notice because it does say outside storage adjacent to a residential district. The sections contemplate outside storage to include fencing or landscaping or whatever combination that we do. If it specified or didn't specify a variance relative to a fence then that would be different, but it's pretty broadly written outside storage adjacent, so....(Not audible)

Mrs. Metzger said she wasn't trying to cause problems, she just didn't know.

Mr. Pousoulides asked if Mr. Psaris was doing any business on this land right now.

Mr. Psaris said no.

Mr. Pousoulides said Mr. Psaris has no economic gain or benefiting over the last, or operating the existing storage units or doing something along those lines.

Mr. Putman said the agreement is contingent upon getting this approved.

Mr. McVay asked for anyone else that wanted to speak.

Mr. McVay administered the oath.

Mr. David Murray, 1730 Lancaster Gate SE, stated that he would like to address the question on the flooding. He has owned the property since 1993 and he has never seen water on his property since 1993. When he built the mini-storage area he had to re-divide the land because mini-storage said he has to have three acres dedicated to that. When he built that building, he had the grade brought up three feet above flood plane. Secondly, in that regard, FEMA does not require him to have flood insurance on the 4165 property, only the 4155 the office building. In the years he has been there, he has never seen water. He knows the park floods, but on his property he has never had a problem. And to the point on the fence in the back, as both of these gentlemen have said, there is a creek there. And then there is a right-of-way that you folks, Plain Township has to get back there from the center of the creek 30 feet towards the buildings. And the parcel on the other side was previously owned by the gentleman that he bought the land from. And because there was no way to get across the creek, he donated that to the school, the two acres. Because it was really landlocked, so I think the point of somebody trying to come across there at least to take anything, they might come across there. The other thing that he will state is that his years here in the community, he has had no vandalism to any of his property. Which he thinks is absolutely amazing. The neighborhood is good and the reason for all of this is he has just retired at the first of the year and he is looking to do other things.

Mr. Stewart asked if the warehouse part of that building for own business or is it rented out to someone else.

Mr. Murray said he uses some of it for his own business, and he had rented some of it.

Mr. Stewart said the warehouse part; he is not talking about the storage units.

Mr. Pousoulides asked if the warehouse right now, is it being rented right now.

Mr. Murray said no, the tenant he had was there for the past two years and they just moved out.

Mr. Pousoulides asked how long they were there.

Mr. Murray said two years.

Mr. Pousoulides how long he has rented out before that.

Mr. Murray said he had only rented out a small portion of the warehouse area since he had used most of it for himself.

Mr. Putman said his business rented it from the time of construction until two years ago when he sold the business and then that new business rented it until...

Mr. Pousoulides asked about the other storage facilities, how many other storage facilities do you have there.

Mr. Murray said there are 24.

Mr. Pousoulides asked if they are currently rented, or what is the status.

Mr. Murray said they are not fully rented. He said he made a mistake, 16 of them are 10 x 20 in size and 8 of them are 5 x 10. He can't seem to give away the 5 x 10's. He has been running around a 75% occupancy.

Motion by Mr. Reichel,

WHEREAS, Applicant/ Anthony Psaris, 1721 Lancaster Gate, North Canton, Ohio 44709 & Owner/ D. L. Murray Enterprises, LLC 4155 Martindale Road NE, Canton, Ohio 44705; Requests a variance from an existing Mini-Storage or Mini-Warehouse Facility Conditional Use Permit on the property located at 4165 Martindale Road NE (Parcel #52-18194) consisting of the following:

- **Outside storage adjacent to a Residential District variance 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:

- **Outside storage adjacent to a Residential District variance requested.**

Seconded by Mr. Stewart,

DISCUSSION:

Mr. Reichel said that he had several questions coming in and he thinks they were all answered pretty honestly and fairly with Mr. Murray and the FEMA questions regarding the 100 year flood plane, Mr. Putman and Mr. Psaris about the need for a fence in the back. I don't feel that there is probably a need for that; you've convinced me of that I had questions on that. You're insured in case anything does happen if somebody comes back through that back entrance way.

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

Appeal #1192-08-A is therefore APPROVED.

No further business pending the meeting adjourned at 7:40 pm.

PLAIN TOWNSHIP BOARD OF ZONING APPEALS

STEPHANIE A. METZGER, SECRETARY