

MINUTES
Planning and Zoning Commission & Architectural Board of Review
City of Willoughby Hills, Ohio

June 7, 2018

CALL TO ORDER 7:00 P.M

PRESENT: Chairman Christopher Smith, Vice Chairman John Lillich,
Mayor Robert Weger, Councilman David Fiebig, Michael Kline
and James Shannon.

NOT PRESENT: Jonathan Irvine

ALSO PRESENT: City Engineer Pietro DiFranco, BZA Representative Frank Cihula

CLERK: Katherine Lloyd

MOTION: John Lillich moved to excuse Jonathon Irvine from tonight's proceedings.
Seconded by Mayor Weger.
Voice Vote: Ayes Unanimous.
Motion Passes: 6/0.

Correspondence:

- Email dated 5/29/18 from City Engineer DiFranco RE: Pole Barn to Replace Existing Shed at 2964 Sherbrook Valley Ct.
- Email dated 5/31/18 from City Engineer DiFranco RE: Preliminary Approval for Similar Use of a Plasma Donation Center at 28301 Chardon Rd.
- Email dated 6/1/18 from City Engineer DiFranco RE: Preliminary Approval for Similar Use of a Plasma Donation Center at 28301 Chardon Rd- Updated Report.
- Email 6/7/18 from Bob Fogarty, Hahn, Loeser & Parks LLC RE: Preliminary Approval- Similar Use- CSL Plasma at 28301 Chardon Rd., with attachments.
- Email 6/7/18 from David Fiebig RE: Attorney for the Planning Commission.

Disposition of Minutes: Meeting of April 19, 2018

MOTION: John Lillich moved to accept the Minutes of April 19, 2018 as presented.
Seconded by Mayor Weger.
Voice Vote: Ayes Unanimous.
Motion Passes: 6/0.

Disposition of Minutes: Meeting of May 17, 2018

MOTION: John Lillich moved to accept the Minutes of May 17, 2018 as presented.
Seconded by Councilman Fiebig.
Voice Vote: 5 Ayes and 1 Abstention (Weger).
Motion Passes: 5/0.

ARCHITECTURAL BOARD OF REVIEW

Public Portion opened at 7:02 P.M.

No Public Input.

Public Portion closed at 7:02 P.M

1.) Mary Turkalj

Agent/Contractor: N/A

2964 Sherbrook Valley Ct. – Pole Barn to Replace Existing Shed - PPN: 31-A-001-C-01-002-0

Plans received in Building Department 5/16/18 \$43.95

Plans reviewed by City Engineer 5/29/18

Present: Mary Turkalj and Thomas Turkalj

Owner/Representative Comments:

- He does not have any colors but he does have photographs of the current shed on his cell phone that he could not print off earlier. The current shed was shown; it will be removed.
- The pole barn will be similar in color with the house. Shingle color will be the same. Proposed location of pole barn indicated on photograph right across the driveway from the existing garage.
- Pole barn will store RV and equipment.

City Engineer's Comments (DiFranco):

None

Board Comments:

(Smith) What is the color of the siding? *The colors are listed on drawing [listing located]. It will match the house.*

(Lillich) Could you dress up the front elevation which faces the street? *It is in the woods and pine trees will be planted so it will be hidden from the road. The current shed was also hidden but trees have been removed in preparation for construction.*

(Smith) Will the driveway be extended? *Yes, it will be extended another 10 feet.*

(Lillich) Electrical is shown. Will there be any plumbing out there? *There will be drainage inside that will be connected to the septic system. Tony Antonelli did the septic tank; he will also do the drainage.*

(Fiebig) There will be an inside drain connected to the septic tank. *Yes. Do the gutters discharge on onto splash block? Yes. I do agree about dressing up the front elevation. We plan to dress it up a little bit. You cannot see the shed now from the street. We just cleared the land to get a head start.*

MOTION: John Lillich moved to approve the Plans for the Pole Barn to Replace the Existing Shed at 2964 Sherbrook Valley Ct. as submitted.

Seconded by Councilman Fiebig.

Voice Vote: Ayes Unanimous.

Motion Passes: 6/0.

PLANNING COMMISSION

Public Portion opened at 7:09 P.M.

John Plecnik, 2890 Bishop Road

I live closer to the Shoppes of Willoughby Hills than most of you. I am in the immediate neighborhood and care deeply about the Plaza and how it will be developed. Not every business is a good fit for the community and the goal we have of bringing in more businesses. While I respect the need for medical supplies, I personally don't think that a blood plasma donation center, a place to sell blood is a good fit for my neighborhood. I keep hearing from more and more residents asking their Council person to stop this. It is not my vote. It is yours. I encourage you to listen to the residents who come to so many of these meetings and express their concern and say 'No' even though the business has taken a bit of a litigious position and said that they had relied upon representations by various city employees. Even though we want to avoid risk of litigation, I think that any business that has dealt with more than one municipality knows that Planning and Zoning approval, or its equivalent, is required to make a significant investment the city. If someone, based on an off-hand comment or an opinion given by one employee, or two employees, were to make a significant investment, I think that would be on them ultimately. You have to have formal approval before you can build a business in a city. That has never been granted. That is your role, your job and you haven't ruled yet. I appreciate the concern but I think that it is only fair to point out to our friends that they have not received Planning and Zoning Commission approval. On behalf of my neighbors in the immediate area of the old Loehmann's Plaza, I want to encourage you to vote 'No'.

Public Portion closed at 7:11 P.M.

- 1.) Donaldson Properties, LTD
Foresite Group (David Norris)
28301 Chardon Rd – Preliminary Review for Similar Use of a Plasma Donation Center
- PPN: 31-A-008-0 -00-012-0
Plans received in Building Department 3/13/18
Plans reviewed by City Engineer 3/20/18

Present: John Rhodes, Jay Soring, Jennifer Wahls and
Bob Fogarty (Attorney with Hahn, Loeser & Parks, LLC)

Legal Representative for Board, Michael Germano

Mr. Germano was asked to give legal opinion on this case before the Board. He has been with the law firm of Wiles and Richards for 30 year. His law firm specializes in municipal representation. They currently represent five municipalities. He sits the Board as the attorney for the Planning Commission and also for the BZA of Willoughby. He also sits the Board for Kirtland and Concord occasionally.

The question before this Board is whether the Use before them is a Conditional Use or a Similar Use or is it a Permitted Use. From my review of the records, the problem developed when there were two opinions rendered by two separate inspectors. One was from Fred Wyss in 2017. He was asked if this was a Permitted Use. He said 'Yes'. Then Fred became no longer employed with the City. Pete DiFranco took over. He issued a second opinion. He used a term in his opinion, 'Similar'. He did not use 'Similar Use'. In his letter he says that it is considered 'similar to' a medical office and or retail establishment. When I asked him, it is my understanding that at that time, he did not have all the facts. He had that this was going to be a plasma donation center. Plasma Donation Center is not in the Code book under Section 1137.02. It is not specifically named in there. Pete, I believe that is the reason you used the term 'similar.

(DiFranco) That is correct.

There are two contrary opinions as to whether it is a 'Similar Use' or is it a 'Permitted Use'. There is another section of the Code book, which is the Definition section. Section 1103.02 has Definition 1, 2 and 3 which is office administration/business/professional, and, Definition 124 Office, medical/dental. You find that what is going in there fits either one of these definitions.

- 1103.02 Office Administration/Business/Professional indicates
 - "an establishment in which specific services are conducted" - *that fits-*
 - "with other businesses and with individuals, generally on a contractual basis." - *It is on a contractual basis because a copy of the Informed Consent contract was provided to me. There is a section in there where if they perform, they will be compensated for their services. It is an enforceable contract, even though it does say 'Consent' on top.*
 - "Not involving any retail sales of merchandise on the premises for walk-in traffic from the street" – *in my opinion, it fits that definition.*
- 124 Office, Medical and Dental –
 - It is run by doctors, dentists or similar practitioners licensed by the State of Ohio. - *It fits there also.*

Question to applicant: Who is running each facility? Is there a licensed professional, licensed in the state of Ohio?

Applicant: We normally have a medical director who is responsible for all of the medical things, who is licensed by the State of Ohio. Business-wise, it is run by a center manager.

- 'The health services provided include establishments providing support for medical professionals and patients, such as medical and dental laboratories, blood banks, oxygen and miscellaneous types of medical supplies and services'. – *Without a question, blood could be classified as medical supplies and/or services. That also fits the definition.*

I checked further. Mentor has a similar blood plasma donation center. I contacted the lawyer who sits on their zoning board. I asked about their zoning, how they did it, what it is, how did it get passed. I learned that their zoning is like ours. It is a business area. In their specific allowance section under Permitted Use, there was no exact language of 'plasma donation center'. It was approved because it fits their medical definition under the Definition section. Their definition is very similar to ours. That is how it was passed as a 'Permitted Use' in the City of Mentor. If you tour the facility, it is a very nice facility. It is not run down. It is a class act as you would expect in Mentor.

Taking the contract, the application and the interpretation here, it is my position that this is a Permitted Use in the City of Willoughby Hills under Section 1137.02.

Just to remind the Board, as I remind all the Boards I am on, this is just my opinion. The Board has the ultimate decision making procedure for what will be done with that. They can accept my recommendation; they can ask for a second opinion if so desired; they can seek additional information if so desired; they can proceed forward as is on the Agenda and act as if it is a Similar Use; or, the Board can indicate and make a motion, making a finding that this is a Permitted Use under 1137.02 and by doing so they are also indicating that they want this removed from the Agenda. That is my opinion.

(Lillich) I have driven by that facility on Diamond Center Drive on multiple occasions. I do not think the development of Diamond Center is adversely affected. It is quite diverse. The area still continues to develop.

(Fiebig) What Mentor does is up to them. Their parameters might be considerably different than where we are next to a Marc's and furniture store and the use that is envisioned for that area. I thank Mr. Germano for his opinion, but it is an opinion. It is his opinion after only a few hours review.

(Germano) Three hours, to be exact.

I would be more comfortable with a more thorough review and opinion before the Board acts. It is an important issue. I know the posture the applicant has taken with their letter from their attorney. This might be adversarial. I think it is best that we have fully informed decision making. For example, I respect your opinion but I disagree that the establishment of an office is to provide services to somebody. This is clientele coming to this operation to provide them with services. I believe that is not Similar Use and is not the intended use of our Shoppes of Willoughby Hills. I strongly agree that the purpose of zoning is to provide with some clarity what the character of the surrounding community, what the citizens desire for that. It is in the Master Plan. It is in the zoning codes. We need to think of things like traffic and how many people are coming in and out or is there any nuisance that could be developed because of that. We need to consider logistics like water, sewage and utility usage. I don't know that's a serious impact. You have talked about something like 200 people a day. That is a significant amount of people that would be coming into our city. I think the interesting thing that we have heard from not only from one of our Council people but several other Council people have spoken up, and other residents, and other business owners in the surrounding area who fear that this would interfere with the development of their property. Perhaps it could even devalue their property. I think that is a significant concern. I think that we, as a Board, should take it into serious consideration. I disagree with the use as conditional because I don't think it fits into office and I don't think it also fits into medical or dental services because these are not a conditional or similar use.

(Germano) My opinion is that it is a permitted use.

I disagree with that because of the character. I have spent more than three hours looking into it. I have sat in meetings with you several times now and have done quite a bit of research on my own. I would hope we would perhaps table to get a second opinion, perhaps with somebody who is in Planning and Zoning or does zoning issues specifically as a practice. Obviously, I am one vote and one voice here on this Board.

(Smith) I was asking if anybody has any questions specifically for Mr. Germano. What I wanted to do after Mr. Germano gave his legal opinion was to go to Mr. DiFranco.

Mr. DiFranco, in your opinion, did you intend for the Board to approve this as a Similar Use? In your view, is it a Permitted Use? Because, if it is a Permitted Use, the Planning Commission should not even be ruling on it. We would be ruling on it in Architectural Review to see what type of sign they want to put up. If it is a Permitted Use, it is a Permitted Use, and it would not come before this Board.

City Engineer's Comments (DiFranco):

Like I stated in my letter back in May, that opinion was based on a very limited amount of information. It was either a phone call or an email with the architect. At that time, I was looking for Blood Plasma Donation Center specifically. When I did not see it in the chart - that is when I thought it should be approved as a Similar Use. After speaking with Mr. Germano, now I see that, looking at the Definitions, it does fit, in my opinion, the definition of an office. Whether it is administrative or medical may need some discussion. On their application, they feel it is more administrative. One thing Mr. Germano did not mention is that medical laboratories and blood banks are actually listed in the definition of a medical office building. The other thing I didn't realize back in May when I wrote the letter is that there is a contractual agreement between the plasma place and the people who come in which fits the definition of 'office'. Knowing that information now, I do feel it is a Permitted Use.

Owner/Representative Comments:

We have done nothing new more since we were last in front of this Board. We put the brakes on it. We wanted to get the approval first. Our plans are complete. We are ready to move forward with it. We will submit for building permits and signage approval.

Board Comments:

(Lillich) I respect the Mr. Germano's opinion and Mr. DiFranco's. The person I respect was Fred Wyss. He was the best Zoning and Building Administrator that I have experience in my time in the City. It was Fred's opinion that this also fit the definition. I interpret it the same way that Fred Wyss, Pete DiFranco and Mike Germano did.

(Shannon) Reflecting on Mr. Fiebig's comments about depressing the business atmosphere, I did some research of my own. Hospitals, Rec Cross units and nonprofits all reject this plasma model for cash. They will not do it because it causes donors to lie about their health. It makes me a little uneasy. Why do we have to pay them for their time? We may draw in many people with serious health concerns. There are other countries that totally outlaw this. My concern is that this will adversely affect business development if people have this perception. It may be working well in Mentor. Probably no one is aware that it is there. Here, it is a sore thumb. I do not know if this is out of our realm of responsibility. If there is a perception that it damages business, we should at least talk about it.

(Smith) If restaurants want to move in and restaurants are permitted and the applicant is an unhealthy restaurant or sells food cheaply which attracts clients is not the purview of a Planning Commission. I think we are debating whether or not it is a Permitted Use. Our opinion of whether or not it is an attractive business or whether it will attract the wrong type of business is where we get into legal problems. We have to be careful not to impose our own personal judgment on what is good and what is bad.

(Shannon) No judgment is intended. I am merely looking at the reality of what people perceive and how they act upon that and the result of that.

(Kline) With that being our responsibility and with comments that have been made from citizens and Council members, it would seem that, even though there are two opinions now that it is Permitted, I do agree with Mr. Fiebig that another opinion that agrees that it is permitted.

(Smith) I would caution the Board. The word 'blood bank' is in the Code. It is an approved use. We have had an attorney say that it is a Permitted Use and our own Zoning Administrator says it is a Permitted Use. If we get another legal opinion and that person disagrees, do we go get a third? We need to decide if we are going to trust our own folks on what is and what is not permitted.

(Fiebig) The issue is in this particular business model. It is different from the typical models we have seen in that area. I think that is why it came forth as a Similar Use. It is my opinion that it is not a Similar Use. If our debate is whether or not this is a Similar Use, we could ask for another opinion regarding the legal interpretation of 'office' and 'administrative' and 'professional' but the words to me, and the intent to me, are clear as to what I see in that development plaza, that real estate that we call the old Loehmann's Plaza or Shoppes of Willoughby Hills. It was meant for retail and commerce. Your business model is more like an employment agency than it is commerce or service to our community. If it is a Conditional Use, we can say 'no' when it is clear that there is an interference with the development of adjoining properties. We had a new buyer come in and has talked about developing that in a way that, we just approved for example, a fitness center. It will bring customers to serve our community and the surrounding community. This will not help us. Perhaps it will even devalue our property. That to me is a serious concern. To me, that is a reason to reject the proposal that we have in front of us.

(Smith) I do not think our legal counsel and our Zoning Administrator are saying that it is a Conditional or Similar Use. They are saying that it is a Permitted Use under our Code. Unless we are able to prove that it is not a Permitted Use, when the words 'blood bank' and 'medical office' and the opinion of our legal counsel is in there, we would be liable if we deny them simply on the fact that we don't like the business.

(Lilich) I do not think that it is our purview to be questioning their business model. I do not see there is room to question the Code. The Code is pretty plain. It does supply a service to the hemophiliacs and others that need that service to survive. They do not supply the end product. They are an intermediary. They gather the plasma, it is shipped to other facilities to make other products from it. It ends up being a service to many, many people.

(Smith) That is correct. If it were a plain donation center, would it be any different? The activity is the same.

(Lilich) They are discussing traffic and 200 cars per day. When Gold Circle and other businesses were over there, it saw 200 cars an hour. It was built to handle that such traffic.

MOTION: John Lillich moved that the Board rule that the Plasma Donation Center at 28301 Chardon Rd. is considered a Permitted Use under 1137.02 and asked that it be removed from this Agenda and return the responsibility back to the Zoning Administrator to go ahead and treat it as a Permitted Use.
Seconded by Mayor Weger.

Additional Discussion:

(Shannon) What does that mean?

(Smith) Because it is a Permitted Use, it would go under the purview of the Zoning Administrator. They would have to meet the Code and meet the rules.

Voice Vote: 5 Ayes and 1 Nay (Fiebig).

Motion Passes: 5/1.

(Smith) We will remove this from the Agenda and see the applicant again for Architectural Board of Review.

UNFINISHED BUSINESS

None

NEW BUSINESS

None

MAYOR'S REPORT

None

COUNCIL REPRESENTATIVE'S REPORT (Fiebig)

None

BUILDING COMMISSIONER'S REPORT (DiFranco)

- Two Minor Alteration have been approved since the last meeting.
 - 2538 River Road – fence in the rear yard.
 - 3360 Rosewood - driveway addition.
- The meeting on June 21, 2018 looks pretty busy. Please let us know if you cannot attend the meeting.
- The meeting on July 5, 2018. I will be on vacation that day. If other people have vacation scheduled around the July 4th holiday, we might consider cancelling that meeting now.

CHAIRMAN'S REPORT (Smith)

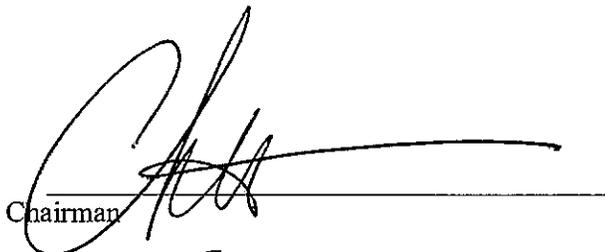
Per Board discussion of the upcoming meetings:

- Thursday, 6/21/18 will be a full meeting.
- Thursday, 7/4/18 will be cancelled. It is the day after the July 4th national holiday. We will not have Quorum for a meeting.

MOTION: Chairman Smith asked if all were in favor of adjourning.
Voice Vote: Ayes Unanimous.
Motion Passes: 6/0

Meeting Adjourned at 7:42 P.M.

Katherine Lloyd
Clerk


Chairman

21 June 2018
Date Approved