

MINUTES
Board of Building and Zoning Appeals
City of Willoughby Hills, Ohio

July 8, 2008

CALL TO ORDER: 8:02 pm
PRESENT: Chairman, Frank Cihula; Vice Chairman, John Klements
Peter A. Kamis, Mark Kotoch, Joe Zawatski
Clerk/Secretary, Joan Motuza
ALSO PRESENT: Thomas G. Lobe, City Law Director

DISPOSITION OF MINUTES OF 5/13/08

MOTION: John Klements moved that the Board approve the minutes as submitted.
Seconded by Mark Kotoch.
Roll call: Ayes unanimous
Motion passes 5/0.

CORRESPONDENCE

5/16/08 To Dale Fellows, Chairman Charter Review Commission – BZA recommendations for Charter revision.
5/28/08 To Clerk of Council – No June meeting notification
6/16/08 From Clerk of Council Savage – Ordinance 2008-15 ORDINANCE AMENDING PART ELEVEN – PLANNING AND ZONING CODE, TITLE ELEVEN – SUPPLEMENTAL DEVELOPMENT STANDARDS, CHAPTER 1167 – PROTECTED AREAS & REGULATIONS

Case 2008-3

5/19/08 To Richard Rosner, advising Board action postponing Case 2008-3 hearing until July 8, 2008 at 8:00 pm per his request.
7/7/08 From David B. Hartt to Thomas G. Lobe – Emerald Lake Center – Opinions Re: Deed Restrictions and Variances.

CASE 2008-3

Vincent S. Giorgi

Emerald Lake Plaza -28102 Chardon Road

Vincent S. Giorgi, Managing Member, Chardon Emerald Lakes LTD., 7073 Brightwood Drive, Painesville, as owner of Emerald Lake Shopping Center, 28102 Chardon Road (31A-8C-3 & 35) requests to terminate, abrogate, rescind and nullify the Deed Restrictions (per paragraph 9 of said restrictions) adopted by the Board of Building and Zoning Appeals in Case No. 1986-12 and recorded in Vol. 472 pg. 276, its five addendums recorded Vol. 545, pg. 1249; Vol. 1089, pg. 650; Vol. 1117, pg. 354; Instrument #200045500 and Instrument #2004R048375 of the Lake County Recorders Office.

He is also requesting to terminate the Sign Agreement adopted by the Board of Building and Zoning Appeals on 1/27/87 as amended 5/14/96. The use of the subject property would then be governed by the requirements of the B-2 District regulations, Chapter 1137, and the Sign Regulations, Chapter 1151, of the Codified Ordinances of the City of Willoughby Hills.

Notice was mailed to property owners within 500 feet of said property. Legal notice was published in The News-Herald on May 3, 2008. Information was available for review in the lobby of City Hall.

The Board received a letter, dated May 8, 2008, from Attorney Rosner requesting postponement of this hearing until July 8, 2008.

PRESENT: Vincent Giorgi, Managing Member Chardon Emerald Lakes LTD, Daniel Giorgi,
Richard A. Rosner, Attorney

All parties were sworn by Attorney Lobe.

Stated reason for variance request:

Emerald Lakes Plaza was developed by Stark in 1987 after being granted use variances by the Board of Building & Zoning Appeals. As the land on this development site was zoned residential, comprehensive deed restrictions (which have been recorded and amended four times by Mr. Stark and once by the current owner) were put in place. Mr. Giorgi's company, the current owner, purchased this property in 2002. This property retained its residential single zoning classification until 2006 at which time a new zoning code was adopted by the voters. This changed the zoning of the land on which Emerald Lakes Plaza sits to the B-2 Commercial Campus/Mixed Use District. Mr. Giorgi, Emerald Lakes, was contacted by the City who suggested that it would be appropriate at this time to request termination of the deed restrictions. They were placed on the agenda for May. In reviewing the plan of the shopping center against the B-2 zoning restrictions they could spot that they would need some variances. Attorney Rosner spoke with Law Director Lobe who contacted David Hartt. They (Emerald Lakes LTD) hired Polaris Engineering to do a zoning analysis which determined that they would need numerous variances. All of variances would be related to current non-conformities and are not related to uses.

Yesterday, they received a memorandum from David Hartt which made two recommendations: One that the deed restrictions be terminated and (2) that they shouldn't ask for variances because it would frustrate the purpose of the non-conforming use of the provisions of the City Zoning Code. Zoned B-2 they currently have legal non-conforming use.

Attorney Rosner stated that a major concern of the owner is the ability to secure financing for themselves or future owners. If the property is accidentally destroyed, it needs to be rebuilt "as is" to re-establish its value and a similar income stream or cash flow. Currently, if more than 50% of the building is destroyed it can only be rebuilt if in strict compliance with the current zoning regulations. If Sections 1121.03 and 1121.04 of the Willoughby Hills Zoning Code are strictly applied, a similar sized building can not be rebuilt on the property and the ability to protect or rebuild the asset or cash flow "as is" is significantly diminished.

They (Emerald Lakes) discussed their concerns with Mr. Hartt and Law Director Lobe who suggested rather than ask for variances, an amendment be made to the non-conforming use ordinance to permit them to rebuild the center as is in the event damage is in excess of 50%.

Chairman Cihula clarified that the proposed amendments to the ordinance would not be written specifically for this property alone. There are other properties in the City that fall into this same situation. (ie the funeral home and Sears Hardware).

Public Portion:

None.

Public portion closed.

Law Director Lobe presented opinion of David Hartt as stated in his letter of July 7, 2008.

1. *Once the property is rezoned to a corresponding zoning district, as was done for Emerald Lake Center, the City should then rely on the zoning in place and no longer needs to rely on the deed restrictions. Reliance on the zoning for this property is no different than the regulations that apply to all other zoned properties in the City.*
2. *Therefore, to address these reasonable financial considerations I recommend that the Zoning Code be amended to permit one-hundred (100%) percent reconstruction of a non-conforming building essentially "as is" when the demolition is involuntary (i.e. fire, storm, etc.) "As is" essentially means the same site coverage, and the same number of parking spaces.*

MOTION: Mark Kotoch moved that the Board approve the appellant's request in Case 2008-3 and terminate, abrogate, rescind and nullify the recorded Deed Restrictions (per paragraph 9 of said restrictions) adopted by the Board of Building and Zoning Appeals in Case No. 1986-12 and recorded in Vol. 472 pg. 276, its five addendums recorded Vol. 545, pg. 1249; Vol. 1089, pg. 650; Vol. 1117, pg. 354; Instrument #200045500 and Instrument #2004R048375 of the Lake County Recorders Office.
Seconded by John Klements.
Roll call: Ayes unanimous.
Motion passes 5/0.

MOTION: Mark Kotoch moved that the Board approve the appellant's request in Case 2008-3 to terminate the Sign Agreement adopted by the Board of Building and Zoning Appeals on 1/27/87 as amended 5/14/96.
Seconded by Joe Zawatski.
Roll call: Ayes unanimous.
Motion passes 5/0.

MOTION: Mark Kotoch moved that the Board approve the Board of Building & Zoning Appeals' Resolution 2008-1 – A RESOLUTION AUTHORIZING AND DIRECTING THE CHAIRMAN OF THE BOARD OF BUILDING AND ZONING APPEALS OF THE CITY OF WILLOUGHBY HILLS, OHIO TO EXECUTE A TERMINATION OF THE LIMITATIONS AND RESTRICTIONS ORIGINALLY ADOPTED IN BOARD OF BUILDING AND ZONING APPEALS CASE 1986-12 APPROVED JANUARY 27, 1987.
Seconded by John Klements.
Roll call: Ayes unanimous.
Motion passes 5/0.

Documents were signed and provided to Attorney Rosner for proper recording. Chairman Cihula requested the BZA be provided with copies once the documents are recorded.

Mr. Giorgi was advised that City Council would be addressing Mr. Hartt's recommendation regarding amending the zoning code.

UNFINISHED BUSINESS

None.

NEW BUSINESS

The Planning & Zoning Committee of City Council is working on amendments to the new zoning code. The Board agrees that the definition of lot size be amended to delete the sentence which states "excluding the area within the ROW" so that lot size would be measured within the property lines.

It was felt that, by the City's reducing property rights they are, in effect, seizing those property rights.

MOTION: John Klements moved that the Board recommend to Council that lot size definition be amended to delete the last phrase which states excluding land within the public right of way.

Seconded by Mark Kotoch.

Roll call: Ayes unanimous.

Motion passes 5/0.

MOTION: Mark Kotoch moved to adjourn; seconded by Peter Kamis.

Voice vote: Ayes unanimous

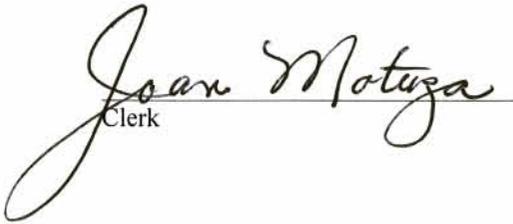
Motion passes 5/0.

Meeting adjourned at 8:46 pm.

Note that it is the policy of the Board to make site visits to guide them in making their decisions.

Note that BZA meetings are recorded on audio tape and tapes are considered a public record.

All decisions of the Board of Building and Zoning Appeals are final within the City of Willoughby Hills. Any interested party may appeal the Board's decision to the Court of Common Pleas of Lake County, as provided for by Ohio Law.


Clerk


Chairman

Date: 8/12/08