

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

**February 6, 2014**

**CALL TO ORDER:** 7:00 P.M.

**PRESENT:** Chairman Charlotte Schryer, Vice Chairman John Lillich, Mayor Robert Weger, Council Representative David Fiebig, John Davis, Joe Zawatski and Christopher Smith

**ALSO PRESENT:** Building Commissioner Fred Wyss, City Engineer Pietro DiFranco, BZA Representative Frank Cihula, City Attorney Tom Lobe, Councilman Ray Somich, Councilman Nancy Fellows, Council John Plecnik, Councilman Chris Hallum. Economic Development Steve Roszczyk and Clerk Katherine Lloyd

**Correspondence**

- Email dated January 30, 2014 from Chairman Schryer RE: PCABR Meeting on February 6, 2014 re: Zoning Code.
- Email dated January 30, 2014 from Councilman Fiebig RE: Meeting of the Planning and Zoning Committee of Council on February 13, 2014 re: Discussion of Zoning Code and any other business.
- Email dated Feb. 5, 2014 from Frank Cihula RE: Zoning Changes - Fences
- Notes prepared by Building Commissioner Fred Wyss RE: Zoning Code
- Traffic Impact Study dated September 3, 2013 by TMS Engineers, Inc for Dunkin Donuts, Willoughby Hills.
- Packet prepared by Steve Roszczyk RE: Improving the Zoning Code to help redevelopment in the Bishop & Chardon Road area.
- Electric Fence pamphlet from Tractor Supply

**ZONING CODE**

**1.) East Side of Bishop Road between Eddy Road and Chardon Road – Cross Access Connections, Curb Cuts and Easements**

(Schryer) When the Code was reviewed in 2006, we knew there were many lots around the City that do not really meet the Code, like the ones on the east side of Bishop Road between Eddy Road and Chardon Road. They would all need adjustments made to the lot. Section 1115 allows the Planning Commission to make adjustment but it is limited to just a particular property. Many curb cuts on the street make it difficult for planning easy access in and out for good business once it is developed. In the packet is a there is sample of Code written up based on research by the Zoning Administrator. This will need thorough discussion to determine where it should be placed in the Code.

One of the reasons that this is being considered is that Dunkin Donut will be going in that area. A map of the area has been provided.

**Zoning Administrator's Comments:**

This zoning issue was brought to our attention because to the prospective development on Dunkin Donuts (DD) on an old residential lot in B2 District. The map shows the undeveloped area of Bishop Rd from Eddy Rd to the old Sears building. A proposal for Cross Action Connection rules would affect all those properties.

Review of the project shows that entrance for the narrow 98-foot lot presents problem for traffic on Bishop Road. They did a Traffic Study as requested during the Work Session. [Study is in the packet] The study shows that there is a traffic light at Bishop Park Apartments which allows ingress/egress. The DD entrance would have to be offset. Any of the other owners in the entire development area could present commercial development proposals to the Planning Commission which would raise the same issue.

Research was done for communities with codes dealing with cross action connection. Staten Island is more suitable for large developments. The sample code in the packet was derived from the code in Franklin, Tennessee, near Nashville. It addresses trees, existing buildings and when cross action would not be considered. It allows more latitude to the Planning Commission and it includes input from the City Engineer and safety officials.

Willoughby has lots of cross action connections at the corner of Route 20 and SOM Center. Most were natural conveyances during development. Cross action can be specified during a review of a development by the ingress/egress committee.

The architect for Dunkin Donuts provided in plan with cross action access. At this time, there is no vehicle for encouraging the neighboring properties to work with Dunkin Donuts to provide the easements.

If City has the Code, the developers would need to provide the easements. The code should also include any development and re-development. Eventually, a cross action connection to McDonald's will be necessary.

**Board Comments**

(Fiebig) Are you proposing that Dunkin Donuts have both an easement and a maintenance agreement for all of the cross connections across all of the properties? *Each property as it is developed will be required to provide its own easement and easement maintenance agreement. City has the right to review all the maintenance agreements. Those agreements would address ingress/egress. At this time, Dunkin Donuts is the first development. Easements cannot be required to be placed on the other properties until they come to us. Planning Commission can vote on what would be the ideal development on the Bishop Road developments.*

(Schryer) This Cross Action Connection is not just for Bishop Road corridor. It will also help with the City Center, especially since it might be done in phases. It would apply to the whole City. *This would have applied when Huntington Bank wanted access to Chardon Road.*

(Davis) Dunkin Donuts would not have a road across to Eddy Rd until the other property owners develop? *That is correct. It will give more latitude in directing how we want Dunkin Donuts to look. The latest plans show the right in-right out only with an island in between. With the Ordinance, we could envision the main entrance to the North. We could ask for a right in-right out access as far to the north as possible that will eventually connect to the main entrance that will connect to the right. It would give more flexibility for Dunkin Donuts to negotiate with his neighbor for the access, especially if Dunkin Donuts pays for easement.*

(Schryer) Each of these lots may become separate businesses. Better access with ingress/egress would increase value. Better access would benefit the other property owners. *For a small development area*

*like this, it will also show how shared parking would be more accessible. The DD architect agrees that access off Eddy Road would be a huge benefit. It would help in negotiations with the corner property.*

(Lillich) At this time I am only looking at this parcel. It is a great idea. However, this road will run along the rear property line of the homeowner and property immediately to the east on Eddy Road. This road will decrease buffering and landscape that has been worked in behind Dunkin Donuts. How do we handle the road, the buffer, landscape buffering and parking? *The buffer yard in this commercial area as required by code is the minimum parking setback is 20 feet. A 10-foot berm may also be used as a buffer. The proposed code could state that an access way parallel to property line in an unlike zoning district, the minimum landscape or other means of buffering requirement would be whatever is decided. An access way is a less intense use than the Accessory Use. This is a parallel road so impact of headlights would be lessened.* We should also consider some Noise/sound buffering.

(Fiebig) The Tennessee code lists 40 feet requirement for any private driveway entrance apron to any cross access way. It is very close. *It is in parentheses in my proposed code. We are talking about the house itself. We thought that by making the Corner lot a B-1 District would make it a step down to between the B-2 and Residential, but it pushed commercial development closer to the house. If Dunkin Donuts had bought the corner lot and proposed a drive-through, it could have been designed to be farther away from the house. It is allowed on that lot. The setback off the major road is 75 feet in B-1 versus 25 feet in the B-2. Once the corner lot comes for development, we would like to develop closer to Bishop Road and further from the house.*

(Fiebig) First, we need to address whether this proposal will help with development of the area? Dunkin Donuts did discuss installing a traffic light across from Bishop Park. That seems to be a safety issue. Then we can discuss all the aspects involved in how we can do this, i.e. noise, input from owners

A, C, D, E and F. If there is access in the front, there will be that much less property.

(Lillich) The ideal situation would have been if these individual properties had been purchased by one owner. What is the next best resource? I think we are headed in the right direction. We do need to protect the residential land.

(Wyss) Regarding use of space in the front of the neighbors' properties, we do already have Cross Action in the Code under Section 1137.06. One of the provisions of that part of the Code is that an access point in a front setback will allow forgiveness of the necessary parking setback from the major road. The Access Way will be necessary. It is a less intensive use. The neighboring properties will need an ingress/egress. The Access Way eliminates ingress/egress necessity onto Bishop Rd. Traffic flow can be organized better on the development.

#### **City Engineer's Comments (DiFranco)**

1.) Cross action Easement: It would be good but we need to establish how it will work. Would Dunkin Donuts provide the easement to the City or the neighboring properties?

(Lobe) The City would want it on both the North and South and in the front and the back. The Planning Commission has a larger duty to plan telescopically for everything in the City. Reasonable standards for Cross Access must be considered for the future, with or without an ordinance. We will ask that the easement for Dunkin Donuts be in favor of the properties to the North and to the South and in favor of the City. In the future, if an adjoining property to the south sought to develop, its easement would be in favor of its neighbor to the south and its neighbor to the north (Dunkin Donuts). Additional ingress & egress points on Bishop Road would complicate traffic and add additional cost to the recent road improvements on Bishop Rd. We need to plan for a little bit of everything for the future.

2.) Corner property- If the ordinance is passed and the owner of the corner property has a plan to develop the property, but he does not need the cross access, does he still required to provide it? Does he have to allow people to drive on it?

(Lobe) The City will still want the cross access. That will give flexibility in the future if the property changes hands or the development plan changes. No one expected Sears to go out of business. Planning Commission will review each new development. Telescopic good planning for the future will help that process. Good planning is much more than meeting the legal minimum requirements.

No one is allowed to drive through the property until it is developed. You would be allowing access across Dunkin Donuts and perhaps some curb access in the front and back. You 'stub it out' like an engineering project.

In 1998, all the property owners from the corner lot to Sears Hardware sued the City to change zoning from Residential to Commercial because they proposed a big commercial development. Nothing has happened.

We would want a cross access from Dunkin Donuts only in favor of the neighbors. Dunkin Donuts would be the 'subservient' property. The property to the north would be the 'superior' and the property to the south would be 'superior.' How much is what the Planning Commission decide. What happens in the future with the neighboring properties will be decided by the Planning Commission when they develop. I am not advocating cross parking.

3.) Right in-Right out Apron proposed by Dunkin Donuts: If they get that and then the corner property develops and provides the easements, and if we get a traffic signal across from Bishop Park Apts., who pays for the traffic signal and re-configuring of the Dunkin Donuts drive apron? The signal will need a lot of modification.

(Lobe) There are many answers to that based on the actual scenario. Some cities have used a combination contract. It is difficult to predict or control the future.

(Wyss) Dunkin Donuts could offer to pay for the access road to Eddy Road if the corner lot will grant easement. [See discussion of 'stubs' in the cross action print out]. I would hope that the Ordinance, if adopted, would open up development. Provision of the easement and 'stubs' would become a standard for properties to be developed. Everyone would know that we would want the traffic light to completely line up with Bishop Park.

(Schryer) Are these two lights too close together? (*DiFranco*) yes

(Wyss) With regard to the distance between lights, who ever planned the paving of Eddy Road after the widening of Bishop put that curb cut for a possible ingress/egress into the commercial property at the edge of the property line. We would need to get the curb cut moved or we accommodate it with minimum buffering.

4.) Easement on the Corner property: How do we compel an easement if the owner does not need it? The easement benefits the City in terms of traffic. The City needs a rear access drive for the safety services.

### **Public Portion for Cross Access Connections, Curb Cuts and Easements opened at 7:47 PM**

#### **Frank Cihula, 35060 Dixon Road**

Sears Hardware was required to pay for the fourth face of the traffic light that was at their entrance driveway and any work needed to be done in the controller to accommodate it. They had deed restrictions because the property was zoned residential. They were also required to provide cross access to the north. Deed restrictions were rescinded because the property is now zoned B-2.

If property owners put cross easements into deed restriction, it is easier to defend. A new owner would be accepting them when purchasing the property.

Ray Somich, City Council, 2941 Legend Lane

Do we really need two access areas – in the front of the properties along Bishop and along the back of the properties? This scenario is seen frequently in Columbus along highways in view of motorists. I am concerned that there is less visibility in the rear. People could speed through from McDonald's out to Eddy Rd. That could be disruptive to the neighbors to the east. Can we do one without the other? These are on private property but are sanctioned access roads – who would have the liability for accidents or speeding on the access road?

(Lobe) Liability is on the property owner. The duty of the Planning Commission is to plan for the best solution. Due diligence on that regard would include review by the police, fire, city engineer or a traffic study.

(Wyss) Regarding the Map, it is an exhibit. It does not need to be included in Code. "Internal Vehicular circulation" does not specify two easements. The Planning Commission would be reviewing the needs of each development. For Dunkin Donuts, the one in the back makes sense because it is so close to Eddy Road. The buffer area for the house needs to be evaluated.

**Public Portion for Cross Access Connections, Curb Cuts and Easements closed at 7:55 PM**

**Additional Comments:**

(Fiebig) I could see speed bumps in the access way. The rear could also serve as a service road or alternate access.

(Schryer) In the case of Dunkin Donut, they would have 'right in/right out' only in the front unless there was an access in the future. Owners of C, D and E might not need the back access.

(Lillich) With two access areas, parking areas could be limited. We should leave enough room in the front for wide landscaping along Bishop Road.

(Roszczyk) It is a good idea. Anything that alleviates traffic would be a selling point if it does not cost them more money. I am concerned about two accesses because the lots are not very deep. From an economic development standpoint, I do not see two accesses as a major obstacle. Merchants hate traffic snarl. Anything that alleviates that and provides access to Eddy Road would be a selling point.

(Zawatski) It would help the traffic off of Eddy Road.

(Fiebig) We can require Dunkin donuts to provide North-South access but how do we show benefit to the owners of D, E, and F so they provide the easements? The Planning and Zoning Committee of Council will meet on Thursday, Feb. 13<sup>th</sup> at 6:00 pm. We can continue this discussion then. Everyone is invited to bring back more ideas. Additional question, do we have to change the designation of that from B-2 to B-3?

(Schryer) Changing the zoning requires the vote of the people.

(Wyss) We could also consider Mixed-Use Overlay Districts. The Planning Commission has the ability to put conditions on any development. There is a vacant property sitting fallow between Eddy Road and the Freeway. It might be a good location for a 2-3 story office because of the slope of the land. Overlay District would allow it to stay Residential or allow construction of an office building.

(Schryer) Having the Cross Access in the Code is good for many areas of the city. Dunkin donuts is just an example. Overlay Districts is another meeting and a vote of the people.

(Smith) I am concerned about non-contiguous development. Who puts in the cross access if the properties being developed are not contiguous?

(Lobe) They cannot be forced but it gives the flexibility for the future. It is 'stubbed out'

(Schryer) If someone goes into Sears Hardware and the Ordinance is in place, they need to follow the code. It is the groundwork.

(Wyss) If someone develops property D without the easements in place, the engineer will need to figure out their ingress-egress. As properties to the north or south develop, they will be required to put in the 'stubs'. They probably would have a right-in/right-out on Bishop which would have to be eliminated once the 'stub' is connected to the neighboring property.

(Davis) The back easement would be an advantage for property D. I like the concept of having both front and back available. They could do better business with both. The corner lot might sell quicker.

(Wyss) The access does not necessarily have to be 2 lane access. It could be one way in the front and the opposite way in the rear.

## **2.) Discussion of other Zoning Code issues**

(Schryer) We will briefly discuss all the other issues brought forth tonight so they will go on the docket. There are Zoning Review Proposals from the Zoning Administrator in the packet.

### **B-1 Limited Commercial District**

Per notes in hand out, B-1 is supposed to be a step-down to the residential district but residential development is not allowed. Multi-family development could be a conditional use. Dwelling units above a first floor commercial business could also be permitted. The zoning administrator proposes 3 or more residential units per building be permitted in this district. Our code is 'silent' which means it is not allowed.

### **B-3 High Density Mixed Use – Commercial District**

(a) Residential

- (1) Multi-family dwelling C CP
- (2) Dwelling unit(s) above the first floor of a building

### **1139.02(e) Permitted Uses**

E – Research and Office District – Opening the discussion to add all less intense uses to the R&O District that are permitted in the B-1, B-2 and B-3 Districts is suggested. Recent discussion about the school suggested this.

### **Section 1133.04 Setback Requirements**

(a) R-1 Traditional Single Family District

- (1) Front Setback
- (2) Front Setback on Built-up Block Faces

Language in the section needed to be consistent. Houses are dwellings.

### **Section 1153.07 Location of Required Parking Spaces**

(e) Access – refers to Cross Access.

### **Section 1153.11 Regulations for Access Drives**

(3) Minimum distance - Suggested addition noted in the hand out.

(e) Cross Action Connection between Adjacent Uses

- (1) Connectivity Cross-Access Between Adjacent Uses - Proposal outlined in the hand out.

### **Addendum for R-1 District for Agricultural**

Addendum was added because there is development planned. Nothing in the code permits any agricultural use. The Code from 1972 directs keeping of horses but there is nothing in the Zoning

code. We get calls about keeping chickens. Once Warner Nursery went away, we have nothing in the code that allows for development of another nursery. Explanation is in the footnote.

**Section 1133.11(c)(6) Fence Ordinance – Materials and Construction**

Email from Frank Cihula was forwarded to the Board in advance.

Frank Cihula distributed a copy of his email dated Feb. 5, 2014 and the Fences pamphlet from Tractor Supply. Electric fences are used by many gardeners to protect their gardens. The code should permit electric fences which meet the requirements outlined in the email. When we were working on the code for 2006, some people did not want it.

(Fiebig) Why was it not allowed then?

(Lillich) I was there during the discussion. There were a lot of emotional issues involved, like control of deer.

(Zawatski) Are they allowed according to our Code? *No, but people do have them,*

(Weger) What if a kid runs into the fence?

(Cihula) It is a millisecond charge.

(Lillich) Fences are much improved now. Many people have them.

**B-3 Step-down**

Chairman Schryer suggested raising the height limit for buildings near Sam's Club at Bishop and Chardon Road. Height currently permitted is 55 feet including the roof air conditioners because it is 200 feet from the road. The apartments nearby are very tall. It might help development. A write up will be prepared for the next meeting.

(Schryer) For our next meeting, please read all the topics, especially Dunkin Donuts and Cross Access. We will review them, vote, put them on paper and refer them to Council. The next step is a Public Hearing for Planning Commission and a Public Hearing for Council to get public input. If we have a meeting with Council and get a list of everything that needs to be changed, we should be able to proceed.

(Lillich) A special Work Session for Zoning discussion separate from the regular meeting might be advisable. We could meet on a separate day or for an hour before the regular meeting.

**Additional Discussion RE: East Side of Bishop Road between Eddy Road and Chardon Road**

(Smith) I would like to see curb cuts on Bishop minimized

(Davis) I agree with Chris' comment about the curb cuts. I also feel that we need to protect the privacy of the homeowners.

(Schryer) Some of this will retain a good amount of the existing tree line along the back.

(Davis) The house is very close.

(Wyss) The owner of the house reportedly knew when he bought the property that development would come eventually.

(Schryer) Before the next meeting, we can refine each of these.

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**Disposition of Minutes**

Meeting of November 21, 2013

**MOTION:** David Fiebig moved to approve Minutes of November 21, 2013 as presented.  
Seconded by Joe Zawatski.  
Voice Vote: Ayes Unanimous  
**Motion Passes 7/0**

**Disposition of Minutes** Meeting of January 2, 2014

**MOTION:** John Lillich moved to accept the Minutes of January 2, 2014 as presented.  
Seconded by Christopher Smith  
Voice Vote: Ayes Unanimous  
**Motion Passes 7/0**

**ARCHITECTURAL BOARD OF REVIEW**

No Pending Business

**PLANNING COMMISSION**

No Pending Business

**UNFINISHED BUSINESS**

None

**NEW BUSINESS**

None

**MAYOR'S REPORT**

We have sad news. Our former Mayor Mort O'Ryan passed away earlier this week. The wake will be at DeJohn Funeral Home on Monday. Funeral services are on Tuesday. We extend our sympathy to the Mayor's family.

**COUNCIL REPRESENTATIVE'S REPORT**

None

**BUILDING COMMISSIONER'S REPORT**

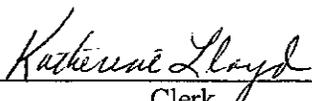
None

**CHAIRMAN'S REPORT**

There was a nice article in the News-Herald about Mayor Mort O'Ryan. I am personally saddened. He swore me in to the Planning Commission 14 years ago.

**MOTION:** John Lillich moved to adjourn.  
Seconded by David Fiebig  
Voice Vote: Ayes Unanimous  
**Motion Passes 7/0**

**Adjourned at 8:31 P.M.**

  
\_\_\_\_\_  
Clerk

  
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Chairman

Date Approved Feb. 20, 2014