



**Planning and Zoning - Minutes
Wednesday, January 02, 2013**

CITY OF CIRCLEVILLE
PLANNING AND ZONING
104 EAST FRANKLIN STREET
CIRCLEVILLE, OH 43113
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WEDNESDAY, JANUARY 2, 2013
CITY HALL COUNCIL CHAMBERS

MEETING MINUTES

MEMBERS PRESENT

BILL MOSHER
DON MCILROY
MIKE COMBS
JOHN ANKROM
DAVID MOSS
AL SEDLAK
VALERIE GOELLER, CLERK

VISITORS PRESENT

ARISTA MNOR
MORGAN CHAMBERLIN
SCOTT EWING
MIKE SHAUB
BLAKE CALIVER
OLIVIA BOLDOSE

Chairman Bill Mosher called the meeting to order at 7:00 p.m.

The first item on the agenda was 2013 Election of Officers.

Al Sedlak motioned to nominate Bill Mosher as Chairman, seconded by Don McIlroy. Nominations were closed. All were in favor. Bill Mosher will remain as Chairman.

Don McIlroy motioned to nominate Al Sedlak as Vice Chairman, seconded by Bill Mosher. Nominations were closed. All were in favor. Al Sedlak will remain as Vice Chairman.

John Ankrom will serve as Secretary and Valerie Goeller will remain as Recording Secretary.

The next item on the agenda was approval of the December 2012 Meeting Minutes. Bill Mosher stated on Page 4, the second to last paragraph reads "John Ankrom stated the existing garage to the property to the south clear the property line by .08". It should actually read .08'. With the correction noted, Al Sedlak motioned to approve, seconded by John

Ankrom. All in favor, meeting minutes approved.

The next item on the agenda was requested by Thomas Lamb of Circleville Ag Products, to extend Zoning Permit #8431 approved on December 7, 2011.

Scott Ewing of Circleville Ag was sworn in.

Bill Mosher stated the statement you submitted clearly explained why it wasn't started within the one year time frame.

Don McIlroy stated where does the project stand? Will a one year extension give you enough time?

Scott Ewing stated things are in motion now. We have contractors ready to go as soon as we get approval. The work should be done by March.

Al Sedlak motioned to extend ZP#8431 for one year, seconded by David Moss. VOTE ON MOTION: BILL MOSHER, YEA; DON MCILROY, YEA; MIKE COMBS, YEA; JOHN ANKROM, YEA; DAVID MOSS, YEA; AL SEDLAK, YEA. 6 YEAS, 0 NAYS, MOTION CARRIED.

The next item on the agenda was Variance 20-12, as requested by Mike Shaub, Little Caesars Pizza, 4205 Meadowbrook Court, North Charleston, SC to install a drive thru at 204 Lancaster Pike and to vary the required parking spaces from 34 to 14 and the size of parking space from 10' x 20' to 10' x 18', in an area zoned GB, General Business District.

Mike Shaub was sworn in.

Bill Mosher stated you have or are in the process of purchasing the property at 204 Lancaster Pike.

Mike Shaub stated no, we are leasing the property from Warren Leist.

Bill Mosher stated your plans reflect a structure designed for pick up, carry out or delivery only.

Mr. Shaub stated no delivery. I have been with Little Caesars for 30 years. I've been through this process hundreds of times. When Little Caesars was in Circleville located across the street from where we are now, I owned it. I am very familiar with the area. Our current concept is strictly a carryout with a pickup window. In our opinion it varies from a drive thru window. A pickup window is just that, you pull up and pickup an item that is already prepared. You would pay and move on. You don't order at a separate station. Custom orders are called ahead. I recently purchased ten stores, 7 of those have a pickup window. Roughly 50% to 60% of sales go through the pickup window. The pickup window is a necessity for us there. The average wait time at the drive thru is less than 30 seconds, very efficient. The average wait time in the lobby is also less than 30 seconds. The drive thru actually decreases the need for parking instead of increasing the number needed. Without the drive thru window we would fall under general retail, which we could easily fit that category. Under that category we would need 14 and I think there are 20 parking spots now.

John Ankrom stated your plan shows 14 dedicated to your operation.

Mr. Shaub stated if there is any experience from this town to improve the traffic on the lot, I

am open to suggestions. Because of having the drive thru we intentionally designed our lobby small. With the size of the lobby we probably wouldn't be able to properly serve the customers without that drive thru window. Unfortunately because of the pickup window we are being put in this category. On our premises you cannot dine or use the restroom. You come to the counter or go to the drive thru for service.

Bill Mosher stated your sketch indicates you will turn the curb cut closest to the ice cream shop into an entrance only and the curb cut further to the east will be an exit only. It appears you control this with signage. Also indicated is traffic being blocked off at the existing curb cut on Pontious Lane. How will that be done?

Mr. Shaub stated it is currently blocked off with post, parking blocks and chains.

Don McIlroy stated who blocked it off?

Mr. Shaub replied we did that with the owner's permission.

Don McIlroy stated is there an owner right now for the ice cream shop?

Mr. Shaub replied the ice cream shop is owned by the same owner. The ice cream shop is in operation, but closed for the season. We have tried to contact them several times and they have not returned our calls.

David Moss stated doesn't that entrance get used a lot for the ice cream shop?

Mr. Shaub stated their exit for the ice cream shop is further on up at the corner of the lot.

David Moss stated what about their entrance?

Mr. Shaub stated they would use the same entrance. We aren't opposed to opening that up, but we thought it was safer for our customers.

Bill Mosher stated the greatest use that curb cut has is people cutting through it from Lancaster Pike to get out onto Pontious Lane.

Mr. Shaub stated that is exactly why we put it up. We thought it was a danger to pedestrians in the lot.

Al Sedlak stated if they cut through they would drive right through your drive thru lane. I think it is a good idea.

Don McIlroy stated I see why it's good for you, but not so sure for Scoops.

Mr. Shaub stated we also tried contacting Scoops owner through Mr. Leist as well. The Leist's are very much in favor of closing that entrance.

John Ankrom stated both buildings are owned by the same owner.

Don McIlroy stated where the drive thru stacking is you have four parking spots. Will that be hard to get the cars out if cars are lined up in the drive thru?

Mr. Shaub stated that is primarily employee parking. People tend to be courteous and let people out.

Bill Mosher stated this to me seems to be a better situation than what Donatos have. I think there could be an occasional issue with parking during the summertime after little league games are over. You might have a hard time getting people to use the entrance and exit properly.

Mr. Shaub stated we aren't foolish enough to think everyone will use it correctly, but we will do our best to let them know it is the preferred way to get in and out. We plan to use surface paint on the asphalt for directional signage. It will be clearly marked.

John Ankrom stated I want to go over something Mike has already addressed, but I'm not sure everyone caught it. In the required parking section of the code, we have a gap between establishments that serve food and eating/drinking establishments with drive thru windows. We don't have a category for his food establishment. The only drive thru facility is with eating/drinking establishments. The parking requirement is much stricter there because you have the ability for people to go in and dine. It's one per 75 square feet instead of one per 200 square feet. Part of the reason I made him get a variance is because it wasn't specifically addressed in the code. When we revise our code we might want to consider an additional category, possibly food establishments without indoor seating, but with a drive thru. Under the category that talks about drive thru facilities he will be short of parking, it would require 34 spaces, but under the other category which more fits his business model only 14 are required. He does have the 14 spaces provided. If 14 are acceptable 25% of that has to be provided in a cued up area in the drive thru and he has that. The other variance I asked him for also is the depth of the parking spots.

Bill Mosher stated the drawing shows extend paving two feet into overhang. Is this the architect's response to meeting the 20' depth?

John Ankrom stated yes.

Mr. Shaub stated while I was onsite today, I field measured the spots and I don't think 20' is going to be an issue for us.

David Moss motioned to approve Variance #20-12 to allow for 10' x 18' parking spaces, seconded by Mike Combs. VOTE ON MOTION: DON MCILROY, YEA; MIKE COMBS, YEA; JOHN ANKROM, YEA; DAVID MOSS, YEA; AL SEDLAK, YEA; BILL MOSHER, YEA. 6 YEAS, 0 NAYS, MOTION CARRIED.

The next item on the agenda was vote to remove from the table zoning determination for Great American Vending.

John Ankrom motioned to remove the request from the table, seconded by David Moss. All in favor, motion carried.

Determine permitted zoning use for Great American Vending, 161 West Main Street, to be used for gaming, in an area zoned DB, Downtown Business District.

Bill Mosher stated I see nobody is here from Great American to discuss it.

John Ankrom stated I did check in with Mr. Thompson today and wanted to make sure he was aware of the meeting tonight and let him know he is welcome to come to make a presentation, however he declined. I asked him about the information we were trying to get from his attorney in regards to the machines and how they meet gaming requirements in

Ohio. Mr. Thompson didn't offer any information.

Don McIlroy stated the Law Director gave us an opinion of what to do. I don't believe they have lived up to what the Law Director requested. My opinion is we send this back to the Law Director.

Bill Mosher stated can we address it in some way relevant to our opinion regarding permitted zoning use? There was a lot of comment in these regards at previous meetings.

John Ankrom stated we know it doesn't fit neatly in any category. We tried to fit it in as a similar use. We talked about it possibly fitting as a similar use if the types of activity that went on were in accordance with State Law.

Bill Mosher stated this wasn't a consensus and we haven't been satisfied of the legality of the games.

Al Sedlak stated I checked with the Assistant Law Director and he indicated the permit violation has been dismissed. I am looking at the opinion from Gary Kenworthy and he states "skilled games are inspected and there should be some letter or certification that these are skilled gaming devices. As a result Great American Gaming should be able to provide verification that these machines have been legally determined as skilled gaming machines and not a game of chance. If you can't get this documentation then maybe these aren't legal games of skill machine. My advice would be to have Great American Gaming provide you proof of fact that all of their machines are legal skilled gaming devices, if so, I see no reason why the commission can't make some determination as to whether issue the appropriate permit to continue their operation." We have been trying to get him to do this. They don't bother to even appear to explain themselves much less provide what they promised they could provide at the initial meeting. The burden of proof is on them to show their devices are legal. They haven't even attempted to do this.

Don McIlroy stated they did provide a letter from an attorney saying they are games of skill, but that didn't mean anything to me. We have asked all along for what the manufacture can provide.

Al Sedlak stated he promised he would bring them to us. He said those games come with certificates and he would bring them to us. John forwarded the letter from his attorney and I agree, it's nothing but says skilled games are legal. Well we all know that. The question is, are these particular games? He isn't addressing this. I don't think we can take an affirmative stance to conclude these are valid or legitimate. I think our stance is Great American Vending has not established that they are using skilled gaming devices. The Law Director can make what he wants of it.

David Moss stated for it to be a similar use, Section 12.02.05, under that it says within 30 days of submittal the commission shall make a determination if the requested use is similar to those permitted in the specific district. The paragraph before that, talks about applicant feels they qualify as a similar use and that is what I have been waiting for from him. He hasn't told us that. I don't feel the burden of proof is for us, as a commission, to determine it's a similar use. He should be telling us and we should decide if we agree with him.

Al Sedlak stated firstly he needs to prove his machines are legal. If they are legal, then he needs to convince us his business is a similar use.

Bill Mosher stated we need to let him know that we are closing this issue. If he wants to

reopen it, then he needs to prove the machines are legal and that it is a similar use in the Downtown Business District.

Al Sedlak stated he needs to be made aware that if he doesn't take action to show us he is in compliance with zoning then he will get a visit from the Zoning Inspector because he is in violation.

John Ankrom stated we sent him two letters in the past month. Both letting him know we were going to take action on it. Does this action address only him or does it get expanded into any other operation that might be similar business.

Bill Mosher stated they exist, but I don't know about in the Downtown Business District. The gas station on East Main Street has them.

Don McIlroy stated he has a request before us; we address it and the other we will address at another time.

Al Sedlak stated his application needs to be rejected because it isn't a conditional or permitted use and he hasn't demonstrated it's a similar use. The burden is on the owner to prove it's a similar use.

John Ankrom stated I will tell him if he wishes to continue his operation he needs to provide the information we requested. Is it a legal operation? And how does it qualify as a similar use.

All agreed a letter will be sent to him with the Law Director being copied telling him he needs to prove they are legal games and his business is a similar use.

Don McIlroy motioned to adjourn, seconded by Al Sedlak. All in favor, meeting adjourned.