

PERKINS TOWNSHIP BOARD OF ZONING APPEALS MEETING

Held By: Perkins Township Board of Zoning Appeals

Place: Perkins Township Service Facility, Meeting Room, 2610 Columbus Avenue

Date: June 21, 2022

Time: 4:00 p.m.

Board Members Present: Mr. Ted Kastor, Chairperson
Mr. Larry Pitts, Vice Chair
Mr. Gary Gast
Mr. Michael Bixler

Board Members Absent & Excused: Mr. Spence, Mr. Bertsch

Staff in Attendance: Mrs. Arielle Blanca, Planning
Mrs. Jessica Gladwell, Administrative Assistant

I. Pledge of Allegiance

Mr. Ted Kastor called the meeting to order and led the Board and staff in the Pledge of Allegiance.

II. Roll Call

Mr. Kastor asked for roll call to be taken.

Mr. Kastor, here; Mr. Pitts, here; Mr. Gast, here; Mr. Bixler, here;

III. Minutes

Mr. Kastor asked for a motion to approve the minutes from the May 16, 2022, meeting.

Mr. Bixler made the motion and Mr. Pitts seconded.

Roll Call: Mr. Bixler, Yes; Mr. Pitts, Yes; Mr. Bertsch, Yes; Mr. Kastor, Yes

IV. Chairperson's Welcome and Explanation of Public Hearing & Public Meeting

Mr. Kastor welcomed everyone to the meeting. He said it will be held in two (2) parts. First will be the Public Hearing, where the Board will hear from the applicant. Then they will switch to the Public Meeting, where the Board will decide the fate of the application.

Mrs. Gladwell Swore in everyone that signed in.

V. Reading of the Request

APPLICATION #BA2022-10 A variance request filed by Primos GM for the property located on the corner of Columbus Avenue and Industrial Parkway. (PPN #32-00906.002) The variance request is to allow a parcel zoned C-2/General Commercial to be .6815 acres whereas Section 17.3 of the Zoning Resolution requires that any parcel zones “C-2”/General Commercial to have a minimum lot area of 1 acre.

VI. Staff Review

Ms. Blanca stated that the subject property is currently 2.474 acres large. The applicant would like to split the lot and make two smaller parcels. The front parcel would become .06815 acres, while the larger parcel in the rear would become 1.7926 acres. Township staff has reviewed the plans has no objections to the proposed variance, Fire Department has stated if there is new construction, there may be a requirement for hydrants in the future. The Department of Community Development is supportive of this application since the variance will allow for the existing dog grooming business to remain on the front portion of the lot while also allowing for a new business to purchase the larger rear lot.

Mr. Kastor Asked who was there to represent the applicant.

Mr. Kevin Didion (Of Taylor) Approved of the staff’s recommendation.

VII. Close Public Hearing/Open Public Meeting

Mr. Kastor asked for a motion to close the public hearing and open the public meeting.

Mr. Bertsch motioned to close the public hearing. Mr. Bixler seconded. Mr. Bertsch, yes; Mr. Bixler, Yes; Mr. Pitts, Yes; Mr. Kastor, Yes.

VIII. Discussion from Board

Mr. Kastor stated he would entertain a motion or approve or deny the request.

Mr. Gast motioned to approve Application #BA2022-07 and BA2022-08 Mr. Bixler seconded. Mr. Gast, yes; Mr. Bixler, yes; Mr. Pitts, yes; Mr. Kastor, yes.

IX. Reading of the Request

APPLICATION #BA2022-11

A variance was requested by Stephen L. Cremean on behalf of Marlene S. Cottier, Trustee for the property located at 704 W. Perkins Avenue (32-00018.000). The variance requested is to allow the extension of a nonconforming structure whereas Section 6.7 of the Zoning Resolution requires Board of Zoning Appeals approval for the extension of a nonconforming structure.

Resolution requires Conditional Use Permits for properties zoned “C-2”/General Commercial District in order to conduct outdoor entertainment and business.

X. Staff Review

Ms. Blanca stated that the subject property is currently 6.45 acres. This property is currently zoned "C-2"/General Commercial and is surrounded by commercial and industrial uses. The applicant would like to purchase the property and increase the size of the existing 600 sq. ft. dwelling unit by 2,000 sq. ft. or less to accommodate a family. Township Police and Fire Departments have reviewed the plans have no objection to the proposed variance. The Fire Department has stated they have no issues with an addition for a structure as long as it does not pose an access issue or is too close to a neighboring structure.

In conclusion the Department of Community Development staff are unable to recommend approval for this applicant as the applicant has not shown a true hardship for the extension of the nonconforming structure.

Further, the Comprehensive Plan's Future Land Use map shows this property as commercial and surrounding properties as commercial and industrial. Extending the nonconforming residential use may lead to future land use incompatibilities with future development.

Mr Kastor—Asked who was in attendance to represent the applicant?

Mr. Cremean—Rose and stated that he had no more to add, and that the dwelling, similar to the neighboring speedway, is compatible. He also stated that his remodeling business will be next door, and that he was hoping to combine commercial and residential on the property.

Ms. Cottier—Stated that zoning occurred next door solely for the purpose of development.

Mr Kastor—Asked if nearby property owners were notified?

Ms Blanca responded that they were.

Mr. Bertsch—Wished to receive more clarification on the definition of a 'hardship'.

Ms. Byington—Responded that since Mr. Cremean was not the owner, the staff could not consider him as having an actual hardship, but that future use complaints could be considered.

Mr. Cremean—Stated that he would have no objection to any future use.

Mr. Kastor—Asked if Mr. Cremean would be willing to sign an affidavit to that.

Mr. Cremean—Yes.

Mr. Pitts—Asked if there was a sewer system and not a septic system on the property?

Ms. Cottier—Yes. The original system was replaced about 15 years prior.

XI. Close Public Hearing/Open Public Meeting

Mr. Kastor asked for a motion to close the public hearing and open the public meeting.

Mr. Bertsch motioned to close the public hearing. Mr. Bixler seconded. Mr. Bertsch, Yes; Mr. Bixler, Yes; Mr. Pitts, Yes; Mr. Kastor, Yes.

XII. Discussion from Board

Mr. Kastor—In favor of Mr. Cremean signing an affidavit and asked if the staff would be comfortable with no complaints?

Ms. Byington stated that the staff would be comfortable with that and that the size could work.

Mr. Cremean—Stated that he would also be in favor of an affidavit to not subdivide the property as well.

Mr. Coppler—Stated that he would have no issues with that either.

Mr. Bixler—Asked if the deed restriction to bind would carry more weight than an affidavit? Or if the matter should be tabled.

Mr. Kastor—Moved to approve on the condition that the staff's needs were met. He also asked for a motion to approve as stated and to approve the contingency.

Mr. Pitts made a motion to approve, and Mr. Bertsch seconded the motion.

Mr. Kastor stated he would entertain a motion or approve or deny the request.

Mr. Pitts motioned to approve Application #BA2022-011. Mr. Bertsch seconded. Mr. Pitts, yes; Mr. Bertsch, yes; Mr. Bixler, yes; Mr. Kastor, yes.

XIII. Reading of the Request

APPLICATION #BZA2022-12

A conditional use permit request filed by Robert Bajkom HSB Architects on behalf of 5020 Milan Road, LLC for the property located at 5020 Milan Road (PPN: 32-03494.013). The Conditional Use Permit is to allow a Medical Marijuana Dispensary whereas Section 17.2(14) of the Zoning Resolution requires Conditional Use Permits for properties zoned "C-2"/General Commercial District to conduct a Medical Marijuana Dispensary.

XIV. Staff Review

Ms. Blanca stated that Robert Bajko with HSB Architects has submitted an application on behalf of 5020 Milan Road, LLC for the property located at 5020 Milan Road.

Current Zoning: "C-2" / General Commercial District. Proposed Development: Medical Marijuana Dispensary. It is noted that the subject property is located along the east side of Milan Road. This property formerly housed Pier 1 Imports. The property has an approximate frontage of 121 feet on Milan Road and the area is approximately 1.13 Acres. Vehicular access to the site is provided by one access driveway, which comes off the entrance to the Park Place Shopping Center. Land use north, south, east, and west of the property is commercial in nature. Planning Staff received a letter from an attorney this morning stating that the United Church has a location located 858.8 feet away from the proposed Medical Marijuana Dispensary. Perkins Township Zoning Resolution requires that Dispensaries are to be located no closer than 1,000 feet from any parcel on which sits a school, church, public library, public playground, or public park.

Therefore, planning staff recommends the application be tabled with the following conditions:

- 1. Either the applicant provides documentation from a licensed surveyor that the parcel line of the subject property is at least 1,000 feet away from the United Church property parcel line.**
OR
- 2. A variance application be submitted and approved by the Board of Zoning Appeals to allow a reduced distance.**

Additional Conditions when application is reconsidered:

- 1. If the parking lot is to resurface a new parking lot site plan and landscaping plan must be submitted for staff approval.**
- 2. All Building permits will need to be applied for and approved.**
- 3. A security plan will need to be submitted and approved by the Perkins Township Police Department.**
- 4. Outside sales or storage is not permitted.**

Mr. Kastor—Asked for any representation for the applicant.

Andy Miley—Attorney for the applicant, James Andress. Have the architect with him as well. Asked that the application be approved. Understands that the township used to ban dispensaries but rescinded the ban for a 1200-foot restriction, but then rescinded that to aid healthy competition. Also need a license to run the business, but his client has said license and has been in business for a few years thus far. Recognized the letter submitted to the township. Hopes that the body would embrace competition, despite a supposed church addressed in a letter by his client's competitor's attorney. Miley defined church as any mosque, synagogue, temple, or building that is used primarily for religious purposes.

Therefore, his opposing attorney's letter is invalid. To him a nursing home or living facility cannot constitute a church.

Mr. Pitts—Does this application need to be considered by the board or by the state?

Mr. Miley—No, the state has approved the property and have all blessings to begin business since there's no church; therefore a 5,000 sq. Ft. Rule has no merit.

Architect (Didn't state name)--Argued that the purposing of the vacant building seems to be a quality project.

Mr. Kastor—What does the proposed exterior look like? What type of finishes?

Architect—Not that far yet.

Mr. Robert Bajkom—Not much difference. Hope that the roof would be green instead of blue. Forest is the name of the company.

Mr. Miley—Statute is Ohio Revised Code 37.96.29 that discusses the 5000 foot regulation for marijuana dispensaries.

Mr. Kastor—Anyone here like to further comment on this?

Mr. Dean Napiro—Sent the letter, opposing attorney. Represents Ohio Patient Access. Patient Access partners with a residence within Perkins Township. The second marijuana dispensary present actually received a permit first. The statute (protection) listed earlier was originally 1200 feet but became 1000. This applies to churches, libraries, schools, and more. Ohio Constitution enables the township to place a 1000 foot restriction rather than the mere 500 feet recommended by the state itself. The church: He thinks that the folks who run the two chapels would be highly offended by the earlier comments that were made by the previous attorney. The applicant's dispensary is only 858 feet away from the two chapels that he is representing. Both have long-time affiliations with the United Church of Christ and offer two services per week, as well as offering communion. Perkins Township resolution defines church very broadly; therefore these are both clearly churches; employ two full-time pastors and a part-time chaplain. Founded in 1916 and maintained an unwavering commitment to serve its people. Clearly an injustice to claim that these facilities are not churches. Sometimes see churches in strip sites—these are still considered to be churches. Ask for compliance of the township resolution. Need a variance or need to find another location that complies with the local ordinance.

Mr. Kastor—That's a senior living center. Now discussing a mere 150 feet. Be specific. How is this dispensary negatively impacting the chapel in the senior living facility?

Mr. Napiro—The township enacted the ordinance as law. Obviously, there was a rationale to zone them properly. No negative effect; just what the law is.

Mr. Kastor—So you can't tell me a specific item that would negatively impact?

Mr. Napiro—No studies to prove that.

Mr. Kastor—A move to delay the inevitable? Reduce competition? What is the purpose?

Mr. Napiro—Client was the first to receive a permit. They just want their competitor to comply and the township to uphold the ordinance.

Mr. Bajkom—Received license on May 2. Competitors on May 17. Unaware that they applied in January as well. 5-minute drive and a 36-minute walk from the desired parcel to the nursing home.

Mr. Kastor—Any other questions?

Ms. --Property of the nursing home is owned by United Church Homes. Is tax exempt. Look at the state's definition of tax exempt. Sake of argument.

Don Habinelle—Owner of another group complaining. Record straight: Standard Wellness petitioned to move there facility. Second round of applications is where we came in. Applied in November, won in January. After that Standard Wellness applied to move two blocks away. They were licensed first, but moved second. Frustrated.

Mr. Kastor—Anyone else?

Mr. Miley—Allowed to apply. Nothing restricting that. Nursing home isn't tax exempt because of being a church, rather for being a charitable living center. Not meaning to offend; merely not a church in its entirety.

Mr. Bajkom—First made an offer on the building in November. Reached an agreement with the property owner in mid-January. Didn't know that Ohio Division Access was the winner of that. Eyeing that property in 2021.

Mr. Kastor—Any other notes or information received by the staff?

Ms. Blanca—No.

Mr. Kastor—Any other comments from the board?

XV. Close Public Hearing/Open Public Meeting

Mr. Kastor—Mr. Coppler, anything?

Mr. Coppler—Only thing is if the township does require 1,000 feet, there is an opportunity for the applicant to request a variance to be approved by the BZA.

Mr. Kastor—Would probably need time to look into the church matter.

Mr. Coppler—Will look into it.

Mr. Kastor—Tax exempt...maybe look into the claim? Religious exemption?

Mr. Coppler—Will do.

Mr. Kastor—Table it? Is timing, okay? We could accommodate and have a special meeting to rule on that. Any questions? Entertains a motion to close the public hearing and open the public meeting.

Mr. Bixler made a motion to close the public hearing and Mr. Bertsch seconded the motion.

Mr. Bixler, Yes; Mr. Bertsch, Yes; Mr. Pitts, Yes; Mr. Kastor, Yes.

XVI. Discussion from Board

Mr. Kastor—Hate these grey cases. Going from no medical marijuana to two. Went from 0 mattress stores to 5. They'll weed themselves out with the market. Any other comments?

Mr. Pitts—Definition is primarily for religious worship. That's what I'm focusing on, not 1000 feet.

Mr. Bixler—Must follow the township law. Need to grant a variance.

Mr. Kastor—Will accept accommodations move to table the issue.

Mr. Bertsch made a motion to table the issues and Mr. Pitts seconded the motion

Mr. Bertsch, Yes; Mr. Pitts, Yes; Mr. Kastor, Yes; Mr. Bixler, Yes.

Ms. Byington—Set the date here so that we don't have to send letters and reduces advertising. Consider that for a special meeting, let's set a date.

Mr. Kastor—Two weeks; July 5th, not July 4th.

Mr. Pitts—One week is too short?

Mr. Kastor—Yes. Thank you so much. Will make a ruling on whether or not it's a church
Mr. Kastor stated he would entertain a motion or approve or deny the request.

Mr. Pitts motioned to approve Application #BA2022-12 Mr. Bixler seconded. Mr. Pitts, yes; Mr. Bixler, yes; Mr. Bertsch, yes; Mr. Kastor, yes.

XVII. Old Business

Mr. Kastor stated that during old business, if there is anything that you would like to address to this board regarding zoning variances, now is the time to do that.

Laurie Harris - This is my husband, Christopher Harris; we live on Beatty Lane. So, for the past few years we have had some changes in our lane neighborhood which consists of 5 homes. We have had the Tru Hotel that was built. That was approved by the Township Zoning for a parking lot, we were against that but unfortunately that fell short. Now we hear that Mr. Carl Ruta who owns Best Budget Inn needs a driveway onto Beatty Lane also, which we are totally against. This is something that is a conditional use permit for the U-Hauls I believe, on top of re-zoning for the long term stay that has caused lots of problems for us personally with the type of clientele that comes there to stay. There is just another thing that we have to deal with, with another lane when Mr. Longer already has a lane well exit or entrance that was already there along with a drive next to our home. Now he wants to squeeze in a drive for his U-Hauls onto our lane. You know this lane connects to Perkins Townships Cemetery you know we kind of feel like we are the keepers there since Mr. Ruta has allowed illegal drug activity to go on, we have had to call the police. We have had people staying there use our address's. That was a huge mistake letting that happen, I don't know if you guys are personally friends with Mr. Ruta. I worked for him when I was very young, we all know he just does what he wants to do and basically, we are very tired of it, and if my husband and I were debating to put our home up for sale, because for 1. The police are always there, I have dropped off reports from when it started. We live here this is our home, this is our biggest investment you know. I shouldn't have to worry about my kids being in the front yard being harassed by some drunk, druggie which had happened on new year's eve. He was arrested he was homeless and came from the hotel over to our property. So, now we must deal with this not only do I have to watch people walk around out my front window and deal with baseball things going on in the parking lot next to our home, now he lets his U Hauls run all night long. I have been misinformed by Perkins Township, starting with Paul Ricci with this Tru Hotel. I have about 200 emails, I am up to here. Seriously, we totally feel like we are being pushed out, I can tell you that we have been disrespected. Mr. Coleman and Mr. Ferrell kind of laughed at us and said well they can do what they want to do when they were putting their parking lot next to our home. I get that Mr. Longer owned it, its zoned "R-1" but the fact is that we were not properly notified and that is why Megan Shurland was fired from this department. I know that Melanie is not longer here along with Mr. Ricci but after we made the complaint. It's just funny to me that this huge parking lot had to be done before the building was even constructed. So basically, enough is enough, we pay our taxes, and I don't even have a speeding ticket. We love our community, but what Mr. Ruta is doing is not enhancing our small little neighborhood. Ruta also owns the two other hotels across the street, those look fine. Why do we get the ghetto ass hotel that has all the issues, it's not fair. I am completely tired of it; we don't even know if we can sell our home because of this and the Tru Hotel.

Mr. Kastor – Have you ever talked to Mr. Ruta

Sandra Fillmore – We live on Beatty Lane- Yes, it is pointless. He said maybe we shouldn't have moved behind a hotel.

Mr. Kastor stated that this is a board of appeals, we did grant a conditional use for the U Hauls. I will tell you he kind of took advantage of us.

Mrs. Fillmore – yeah, we were told that he couldn't have them parked 10 ft near my fence, I am right behind the hotel. He has got them right up against the fence then I find out that's where we put the U Hauls – then I find out we were lied to because it was supposed to be all vehicles. All vehicles weren't allowed to be up against the fence. They climb on the vehicles and come over to our yard over the fence, they were hiding in our trees, the druggies. My grandkids can not play in the backyard anymore because we don't know what is there or what we will find.

Mr. Kastor stated we are the zoning board of appeals

Mrs. Harris stated so that would be the zoning commission

Mr. Kastor stated no they are sperate, the zoning commission deals with re-zoning and zoning of properties. We deal with any variance request regarding the zoning. So, our involvement with your situation regarding the conditional use, it was a variance for the U-Hauls. I will tell you we have had trouble regulating that, where we were going to pull the conditional use permit then worked out some last-minute agreement where he can park his U-Hauls trailer and vehicles. I'm very sympathetic to your concerns, you are residents, it doesn't sound like you have been treated fair. I would think if I were involved, I would make him put up some buffering between your fence and his.

Discussion continued between Mrs. Harris, Mrs. Filmore and the board regarding Mr. Ruta and Best Budget Inn.

XVIII. New Business

No applicants for next month, as of now unless Ruta applies.

XIX. Adjournment

Mr. Kastor asked for a motion for adjournment.

Mr. Gast made the motion and Mr. Bixler seconded. Roll Call: Mr. Gast; yes, Mr. Bixler; Yes, Mr. Pitts; yes, Mr. Kastor; Yes.