

Board of Zoning Appeals  
November 15<sup>th</sup>, 2018  
Minutes

The Chairman called the meeting to order at 4:30PM. The following members were present: Dr. William Semans, Mr. Kevin Zeiher, Mr. Feick and Mr. Walter Matthews. Ms. Angie Byington, Tom Horsman, and Greg Voltz represented the Planning Department; Mr. Trevor Hayberger represented the Law Department.

Mr. Zeiher moved to approve the minutes from the October 18<sup>th</sup>, 2018 meeting as written. Mr. Matthews seconded the motion. The motion carried with a unanimous vote.

Mr. Feick swore in those giving testimony.

Mr. Horsman stated that David Makkos is applying for a variance to operate a transient rental property at **1119 Fourth Street**. The application that had come before the Board in June 2018 and was granted a 6 month temporary variance to operate a transient rental. The current zoning of the property is R1-40 Single Family Residential which does not permit transit rental. The applicant resides next door at 1113 Fourth Street and owns both properties. The applicant is requesting a permanent variance to allow for transient rental use at 1119 Fourth Street. The applicant has also expressed interest in expanding the temporary use variance. Staff is not recommending approval of the variance for the following reasons: the City has established a policy for a transient overly district, and to date one transient use variance has been approved within the Cove District. The applicant has also expressed to staff regarding expanding the district, however he has been the only resident that has come forth with interest in expanding transient rental within this area. Staff also does not recommend approval of the proposed variance as staff is concerned with setting a precedent of granting single use variance for the purpose of transient rental.

Mr. Zeiher ask if what the applicant has expressed for the hardship of their application.

David Makkos, 1113 Fourth Street, stated that the hardship of the application is that he has placed money in the home before he knew the regulations. Mr. Makkos stated that he received the staff report on a short notice, otherwise he would have consulted legal representation. Mr. Makkos stated that staff made him believe they are behind you then after receiving the report it indicates that they are not supportive of the proposed variance. The report states that a precedent will take place, however a condition of approval could be that an individual could reside next door. The staff report also states that people will begin converting their homes to transient rental which will not be case.

Mr. Zeiher asked the applicant if he would like to wait until he has legal counsel.

Mr. Makkos stated he does not want to wait, he would like to move forward. Mr. Makkos stated that he believes this is violating his constitutional rights, this property will still be used as a residential unit. The City has made transient rental nearly impossible to do and created only one district for this to occur within. This is how people want to travel and stay. Mr. Makkos stated that by the city would allowing this to occur on one property but cannot occur on another is a violation of his right as a property owner. When granted the 6 month variance he met with the planners who suggested he speak with his neighbors about creating a transient rental overlay district, however many of his neighbors want to do this but are afraid of fighting the City. The feedback he has received from his guests are that they would like to stay in a quiet neighborhood. Mr. Makkos stated his surrounding property owners are in support, he did not receive one single complaint. Many of his neighbors would prefer transient rental as they have had other issues with standard rentals. Mr. Makkos stated that he suggested extending the transient overlay district to his neighborhood, he walked the neighborhood but then staff has not done their part. Mr. Makkos stated that to be on Air B & B the residence needs to be clean and the standards are much higher.

Mr. Makkos stated that he challenges the demographic information provided within the report.



Mr. Feick stated the staff report indicates criteria that staff and the Board needs to consider for each variance, Mr. Feick ask if Mr. Makkos would like to address the criteria addressed within the report.

Mr. Makkos stated that the demographics provided for the Cove area and his neighborhood are way off, the median household income is incorrect. Transient rental will not change the look and characteristics of the neighborhood, one half of the block away from the proposed transient rental home are several businesses. The homes are not valued for what staff has indicated for this area. Mr. Makkos stated that these variances should go on a case by case basis. He monitors this very well, cancels vacations to make sure he is available for his customers. All of the adjacent property owners are in support of the proposed transient rental. Mr. Makkos stated that the city is missing out on millions of dollars on this subject. The younger generation travels differently, this is a way of the future, the city is not giving the means to do this.

Mr. Makkos stated that he has requested financial and legal assistance from Air B & B. Everyone outside the Cove area are being treated unfairly, they have to apply for a use variance to allow them to do transient rental. They would like to see the overlay expanded into our neighborhood. If the district cannot be expanded he would be okay with a permanent use variance for this property. Mr. Makkos stated that he believes this could have a positive impact on the neighborhood, he would live next door and will monitor the transient rental.

Sharon Johnson, 1139 Fifth Street stated that the rental is a block away from her property, she would like the request be denied. The applicant was operating illegally. Everyone assumes this city is open to transient rental, however it is only open in a certain area. Transient rental is not designed for spot zoning the area that it is permitted was blighted and transient rental was to improve this area, this transient rental area could be extended more if this is approved. Mrs. Johnson stated that the valuation of her property has dropped \$7,000, there are several rentals around her property. The city should be encouraging home ownership not more rentals. The city already extended the area permitted for transient rental. This transient rental will bring down the valuation of the surrounding homes. If you give the variance to this gentleman, fifty others will want it as well. Transient rental will ruin the city. This gentleman may be the exception to the rule, however there are other landlords that are slum landlords. Mrs. Johnson stated that she does not believe that the overlay district should be expanded to Fifth Street. If you allow the variance you will have many legal problems.

Mr. Zeiher ask why staff does not want to expand the transient overlay district to this area.

Ms. Byington stated that staff is in support of transient rental in general that is why staff went through the process of creating a transient overlay district, however it is not permitted in a residential area. When we received this application there is not hardship related to this property, they can have a single family dwelling within this use. At the last meeting it was discussed that the planning staff look at expanding the transient rental district, there were several reasons why we did not proposed to do this. The Cove district permitted transient rental because it was already permitted within the adjacent area. The area in question is the middle of a residential district, it is not in close proximity of the transient rental area. The applicant has stated that the information in the report is incorrect, however this information was taken from the Sandusky Neighborhood Initiative, the census data, and the county auditor's website. Staff would be happy to get this information to the applicant. The information did show that this area has both higher income and home values than within the Cove, staff believes that this is a stable neighborhood as such they did not move forward. Further, there has only been one person whom has expressed interest in request transient rental. There are several zoning districts in which this is permitted, we are not infringing on anyone's rights to use their property.

Dr. Semans asked staff if they had researched transient rental districts to tourist areas in Ohio.

Ms. Byington stated that when we brought the transient rental overlay district before the Commission staff had done extensive research on where it was permitted. We are aware that transient rental has positive effects on the community, such as bringing tourist to the area, business, downtown, etc. Staff has extensively researched the topic and the effects.



Mr. Makkos stated that in regards to property values going down by transient rental, many of the properties have increased value within the neighborhood. This is not spot zoning. He has looked at purchasing a property within the cove district however it is difficult to purchase within that area as such he is looking into purchasing in the Port Clinton area. Mr. Makkos stated that he is not looking to get out of contracting because he made tons of money on transient rental, he made a total of \$3,500 more than regular rental. He is doing this as more of a personal gratification. The district should be expanded to Fourth Street not Fifth Street.

Mrs. Johnson stated that property values have not gone up, a home recently sold for \$25,000. They are not in the range that the applicant is mentioning.

Mr. Feick stated that a variance should be something that is an exception, we should not be setting a precedent. If you place enough conditions on the variance it is not setting a precedent. The updates to the property have been an improvement to the area, currently the surrounding property owners have no complaints and the neighbors are positive about the transient rental use. The transient rental is only operating for three to four months, then the home becomes a vacant home. Mr. Feick stated that the applicant is an exception to the rule he is doing everything right after he found out that he had to get a permit. He is in favor of it, because he lives next door, he would suggest that it remain as a single family, it cannot become a two family. Mr. Feick ask the applicant if he had received all the necessary permits for the alterations made to the home.

Mr. Makkos stated that he has received all the required building permits.

Dr. Semans stated when we grant a variance it stays with the property. Mr. Semans stated that he would approve the application if they could place conditions on the application that the variance stays with the property owner.

Mr. Matthews ask what the applicant's hardship is for his request.

Mr. Makkos stated that he has placed more than \$20,000 with the understanding that he would be able to transient rent the property and now he is not able to use the property in the way he intended.

Mr. Hayberger stated that the Board should not tie the condition to a person, a hardship is more along the lines of the property owner not being able to use the existing property, currently the property owner could utilize the property as a regular rental.

Mr. Makkos stated that he would be fine with tying the variance to the home or the sale of the property. He is also fine with the variance being conditioned that he remain living next door.

Mr. Feick stated that the Board could condition the approval on the sale of the property.

Mr. Hayberger stated that you would in essence be conditioning the approval of variance on the property owner, as it would be removed if he left the property. Mr. Hayberger stated he does not see a hardship with the application.

Ms. Byington stated that there should be a hardship when you are requesting the variance. A reasonable hardship should not be something set by actions of the property owner.

Mr. Feick stated that applicants often ask for variances for fences because they have chosen to purchase a dog that would require a fence that is higher than what is permitted and this Board has continually approved these variances.

Ms. Byington stated that this Board has chosen to do this, not all Boards approve those applications.

Mr. Feick stated that in essence those property owners have created their own hardship and so this property owner has created his own financial hardship.

Ms. Byington stated that a financial hardship is not a hardship, the six month variance is given to allow him to recoup the money from the property.

Mr. Makkos stated that he would never have bought the property if he knew he would not have been able to do transient rental at this location.

Mr. Feick stated that an overlay district should not be expanded for one property. Mr. Feick stated that if he had purchased several properties it would be a different story, however with one property it would be difficult. Mr. Makkos stated that he is fine with a variance for just this property if the district would not be extended, it would not be ideal but understands if cannot occur.

Mr. Zeiher motioned to deny the request variance stating that it is better suited for the Planning Commission and City Commission to review an extension of the area that has been established. Mr. Matthews seconded the motion.

Dr. Semans: No

Mr. Zeiher: Yes

Mr. Feick: No

Mr. Matthews: Yes

Mr. Feick suggested that the application be tabled until all five members are present to assure that there is not a split vote.

Dr. Semans moved to table the application; Mr. Matthews seconded the motion.

Without any further discussion the motion was tabled.

Mr. Horsman stated that Chris Gibson, on behalf of Cedar Point has applied for a variance to construct an 8' fence at **20206 Second Street**. The current zoning is commercial recreation and single family residential. The applicant currently owns the parcel. The applicant proposes to build basketball courts and soccer field to serve the adjacent Cedar Point employee residence halls. An 8- foot fence would surround the ball fields and courts for the purpose of keeping stray balls on the property. The following variance is requested: a 2-foot variance to the regulations in Section 1137 of the Zoning Code that prohibits fences to not exceed 6 feet. Planning staff recommends approval of the variance with the following condition: the applicant shall legally combine all the parcels on which the proposed development would be situated with the adjacent parcel 57-05499.000. The intent is to ensure recreation equipment does not interfere with nearby residence.

Mr. Feick ask what their hardship is for the application.

Ms. Byington stated the proposed use is causing the hardship, however the precedent that has been set by this Board is that these variances are approved. The planning and zoning code allows for recreational uses that would require higher fences, the planning department should look at recreational uses and the permitted height of fences.

Adam Poke, representative of Cedar Point Park LLC, stated that they are proposing a PVC black coated chain link black 8' chain link fence. The remaining would be within 6' limitations.

Dr. Semans motioned to approve the variance for an 8' fence; Mr. Zeiher seconded the motion. With no further discussion the motion was unanimously approved.

Dr. Semans ask about barbed wire fencing and how the code deals with this issue.

Ms. Byington stated that barbed wire is permitted in the manufacturing district with permission of conditional use permit.

Dr. Semans suggested that the applicant review the barbed wire fencing along First Street as it is not that welcoming.

Mr. Horsman stated that Monica and Mike Powers, authorized agents for RLR properties have applied for a use variance to build a storage facility on **Parcels 57-03841.000, 57-03858.000, 57-03857.000**. The current zoning of the property is R1-40 Single Family Residential. The property is currently owned by RLR Properties. The proposed storage facility would be 80 x 120 x 3 for a total area of 9600 square feet. The applicants stated that they have a seasonal residence on Nantucket Drive and they intent to make their permanent residence, thus they need additional storage area in close proximity. The Sandusky Bicentennial Vision Comprehensive Plan has targeted this area along First Street for infill residential and mixed use



development. There are currently development plans in progress for this neighborhood, as well as major investments in public infrastructure, such as the Sandusky Bay Pathway. The following variance is requested: relief from the prohibition of storage facilities in a R1-40 Zoning District. Planning staff does not recommend approval of the variance, as there is currently no hardship.

Jeff Rengel, 421 Jackson Street, stated that the property has been within the family for more than 100 years. This property had a buyer in 2016 that wanted to place boat storage within this area, they made an application to rezone the property to CR Commercial Recreation. At that time he was told at that this area falls within the plan for Commercial Recreation area. The buyer started conversations within the planning department and fire department and the application was scheduled for July 27<sup>th</sup>, 2016. Shortly before the planning department called and ask if we would be willing to table the application so the planning department could move forward with an application that combines these parcels with other parcels within the area to all be rezoned to commercial recreation. Mr. Rengel stated that he agreed to this, however it did not come into fruition, now two years later with another buyer we would still like to have the property rezoned. Mr. Rengel would like to reactivate the zoning amendment application, however the planning department told me and the perspective buyer that a variance application would be more appropriate. Mr. Rengel stated that he received the report yesterday from the perspective buyer that recommended the variance be denied. Mr. Rengel stated that he believes the proper method is rezoning the property. On the basis that the properties along First Street should be single family homes, he would like to know any new house that has been constructed along First Street. The proposed site in total is eight lots, theoretically they can place eight houses on these lots, however this will not occur. Mr. Rengel does not know why the planning department did not move forward with the rezoning of the property. He did not feel that a variance was an appropriate method for this project. Mr. Feick stated that the Board of Zoning appeals cannot do anything regarding the rezoning of the property.

Ms. Byington stated the owner of the property came to Planning Department in 2016, at that point we did have the previous comprehensive plan since then we have approved the Bicentennial Vision plan which calls for infill residential and mixed use development. There was a rezoning application that was submitted with a smaller parcel, we spoke with Mr. Rengel stating that the area was not large enough for us to recommend approval and it was our understanding that there was another property owner that was interested in rezoning as well. We informed Mr. Rengel to meet with the other property owner, however staff never received revised application adding in additional parcels. The planning department may have stated that we could not support a rezoning but the applicant may have a better chance at a variance as it is another way to reuse the property, we could not recommend this smaller area to be rezoned. Ms. Byington stated that she supports staff's recommendation regarding the variance.

Mr. Rengel stated that since he has applied for the rezoning application in 2016 there has been two other applications that have been approved for rezoning, these applicants were submitted without a plan. At this time we are presenting a plan and this plan is the reason as to why we are denied.

Ms. Byington stated that there is a difference between the variance and the rezoning application. A rezoning application does not require a site plan.

Mr. Waldock, 2015 Cedar Point Road, stated that Mr. Rengel stated that the city has had two different plans between the first offer on the property and the second offer on the property. If the current plan does not call for the proposed use, is there a chance that this potential use could move to another location possibly along Third Street as the property owner owns several parcels.

Mr. Feick stated that a variance on an eight block parcel is generally not something that should receive a variance it is more appropriate to be considered by Planning Commission.

Mr. Feick moved to table the application and this to be heard by Planning Commission.

Mr. Zeiher stated that he would not like to see another buyer lost, he believes that this is more appropriate to go back to Planning Commission.

Dr. Semans moved to table the application pending further discussion on rezoning with Planning Commission; Mr. Zeiher seconded the motion.  
Without further discussion the motion was unanimously approved.

Mr. Horsman stated that the applicant, Michael Waddle has applied for a variance to use the first floor of the property at **300 Central Ave** for residential. The current zoning of the property is DBD Downtown Business District. The applicant currently owns the property and it has been used as the applicant's residence since December 2017. The property sits on the edge of the Downtown Business District and is adjacent to a multi-family residential structure. The building frontage would not be conducive to first-floor retail usage. The following variance is requested: relief from the requirement in Section 1133.08 of the zoning code that residential uses are permitted only above the first floor. Planning staff recommends approval of the variance as it is not negatively impacting surrounding properties and the purpose of the DBD is to have active storefronts that is not the case in this situation. The first floor residential use would be less disruptive regarding traffic, parking, etc.

Mr. Waddle gave the history of the building, they want to live in the property and be within downtown as it is currently growing.

Mr. Feick ask if this was both his home and his business and have they applied for building permits.

Mr. Waddle stated that they have received permits.

Dr. Semans moved to approve the variance to allow residential on the first floor of 300 Central Ave; Mr. Zeiher seconded the motion.

With no further discussion the motion was unanimously approved.

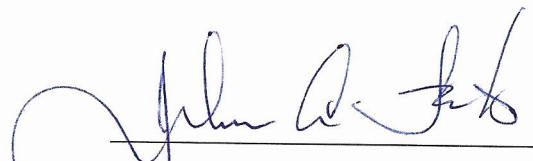
Mr. Zeiher moved to remove the application for Larry and Angel Cunningham for a variance to construct a fence on a lot without a main structure on Parcel 58-00236.000 off the table in order to hear it at next month's meeting; Dr. Semans seconded the motion.

Mr. Semans moved to adjourn the meeting; Mr. Matthews seconded the motion.

The meeting was adjourned at 5:31pm.

APPROVED:

  
Casey Sparks, Clerk

  
John Feick, Chairman