

**Planning Commission
July 22nd, 2020
Meeting Minutes**

Meeting called to order:

Chairman Pete McGory called the meeting to order at 4:33pm. The meeting took place virtually. The following members were present: Peter McGory, David Miller, Mike Zuilhof, and Jade Castile. Commissioner Mike Meinzer, Jim Jackson, and Conor Whelan were not present. Greg Voltz and Tom Horsman represented the Planning Department. Trevor Hayberger represented the Law Department. Administrative Assistant for the Planning Department Kristen Barone, was also present.

Appointment of Planning Commission Member to CRA Housing Board:

Mr. McGory explained that Joe Galea recently resigned from his position on the Planning Commission due to moving out of the City and no longer being eligible to serve on the board. He was also the Planning Commission's representative on the CRA Housing Board. Therefore the Planning Commission needs to appoint a new representative.

Mr. Zuilhof offered to be the Planning Commission representative, unless there was another member that wanted to do so.

With no further discussion, Mr. McGory made a motion to approve Mr. Zuilhof as the Planning Commission representative on the CRA Housing Council. Mr. Miller seconded the motion. All voting members present were in favor of the motion.

Approval of minutes from the June 24th, 2020 meeting:

Mr. Miller made a motion to approve the minutes as submitted and Mr. Zuilhof seconded the motion. All voting members present were in favor of the motion.

Approval of minutes from the July 9th, 2020 special meeting:

Mr. Miller made a motion to approve the minutes as submitted and Mr. Zuilhof seconded the motion. All voting members present were in favor of the motion.

Adjudication Hearings:

Mr. McGory explained that the first application on the agenda is an application submitted by Brady Signs, on behalf of the Erie County Board of Commissioners, for an electronic message board sign at the Department of Job and Family Services, located at 222 West Parish St.

Mr. Hayberger then swore in Mr. Voltz and Mr. Horsman, whom would be presenting on the applications.

Mr. Horsman briefly went over the application and then stated that staff recommends approval of the Conditional Use permit for the digital message board sign located at 221 W. Parish St. with the following conditions: 1. The minimum display time shall be 10 seconds, 2. Brightness shall not impose hazard to pedestrian or vehicular traffic, nor a nuisance to surrounding properties, 3. No animations, videos, or illumination with flashing lights.

Mr. Hayberger then swore in the applicant Ryan Brady.

Mr. Brady stated that the main purpose of the sign is to get information to the people the Department of Jobs and Family Services serve and to those who are in need of services. He also stated that the Board of Commissioners think that the staff conditions are reasonable.

Mr. McGory asked if this sign would be replacing an existing sign or if this is a new addition.

Mr. Brady stated that this would be a new addition.

Mr. Miller stated that he would be abstaining from this discussion and vote as the Board of Commissioners are his employer.

Mr. Zuilhof made a motion to approve the application with the conditions recommended by staff and Mr. McGory seconded the motion. Mr. Miller abstained from the vote and all other members were in favor of the motion.

Mr. McGory stated that next on the agenda is an application also submitted by Brady Signs, on behalf of Resort Schools, LC, for an exterior marquee sign to be located above the first floor at the Falcon Point Lofts at 250 East Market St. Mr. Horsman briefly went over the application and then stated that staff recommends the granting of the Conditional Use Permit for the signage. Staff believes the location on the upper floors of the building is appropriate due to the size and scale of the building. Mr. Horsman said that there was one public comment submitted by John Hoty, manager of Sandusky GSA Properties, Ltd, owner of the property at 221 E. Washington Street, an abutting property owner. Mr. Hoty stated in his letter that he has no objection to the request and offers his full support of the same. Mr. Zuilhof made a motion to approve the application and Mr. Miller seconded the motion. All voting members present were in favor of the motion.

Mr. McGory stated that the third application on the agenda is has been submitted by Bob Waldock, on behalf of Waldock Properties II, for a zone change for a Planned Unit Development District at 1643 First Street (parcels 57-04125.000 and 57-01424.00).

Mr. Voltz stated Planning Staff recommends approval of the application for the Planned Unit Development to be located at 1643 First Street with the below conditions. The Bicentennial Vision supports reclamation of blighted properties for residential development along First Street, and creation of the Sandusky Bay Pathway. Conditions: 1. All permits and approvals are obtained through the EPA, Army Corps of Engineers, ODNR, Various Departments and any other applicable agency. Copies of permits and approvals should be put on file with the City of Sandusky Planning Department, either with final plan submission or prior to occupancy of first building, 2. The applicant continues discussion with the City of Sandusky regarding the Sandusky Bay Pathway and the creation of a 'node' space at the southeast corner of the property, 3. The applicant continues discussion regarding the serpentine wall fronting First Street. These discussions may include whether or not a five foot wall is in the best interest of the area, or whether alternate materials should be used, or possibly other ideas not yet discussed, 4. The applicant provides names of proposed streets. Mr. Voltz then stated that he has received four public comments regarding this application. The first comment is from Vimal S. Kumar, who stated "I applaud the vision of Mr. Waldock and I am very happy to see our eastern neighbor utilize the natural beauty of the area for more people to enjoy. At Lyman Harbor we have been able to share the natural beauty and the fantastic view of the bay and Cedar Point with thousands of guests over the past 20 years. I am looking for clarification with regard to the utility easement to the eastern side of Lyman, adjacent to Mr. Waldock's property. There is currently a gate in place that delineates the pathway for the utility easement and fire department utilization. I would appreciate it if you could address how the easement will be maintained at the upcoming meeting. In looking at his proposed plans, they failed to note this easement. I believe it extends in a northerly direction from First Street to the Sandusky Bay. The next comment comes from John M. Hoty who stated "I am the President of Hoty Enterprises, Inc., general Partner of Lake Ridge Investments, Ltd., owner of the property at 1535 First St. I have no objection to this request and offer my full support of the same. I do have one request. Would you please provide a copy of the plan for these properties and let me know the cost and when we can pick them up. Mr. Voltz explained that the next comment comes from Ron Goldstein, President of the Shades of Nantucket HOA. Mr. Goldstein stated "We would like it written into the record that the Shades of Nantucket Homeowners Association does not oppose the Planned Unit Development application for 1643 First Street. However, we would like to note that we are in property dispute of the original beach property and northern strip of land along Nantucket Drive. This property has been utilized by the residents of Nantucket for over 21 years. We plan to continue ongoing discussions with 1643 Limited, and hope we can come to a resolution. Mr. Voltz then explained that there was a fourth comment received, however, the letter (see attached), and attached documents are pretty lengthy and too long to read allowed at the meeting. The Planning Commission did get a copy of this packet via email after it was received by staff. After reviewing the letter and attached documents, it seems they are in regards to a civil dispute and that the applicant obtain proper environmental clearances.

Mr. Hayberger then swore in Mr. Waldock and Mr. Hancock.

Mr. Waldock then explained that they have been working with the EPA for about two years now, and also more recently with DERR, to figure out what they need to do in order to get rezoned as Restricted Residential on the property. He stated that they have noted on the application that they cannot do anything on the property until that has been approved by the EPA.

Mr. McGory moved to approve the application with staff's conditions and Mr. Zuilhof seconded the motion. All voting members were in favor of the motion.

Mr. McGory stated that the next application on the agenda has been submitted by Bob Waldock, on behalf of Waldock Properties II, for an amendment to the zoning map for the following parcels located along First Street: 57- 00925.000, 57-00926.000, 57-00923.000, 57-04024.000, 57-04022.000, 57-0924.000, 57- 03694.000, 57-03695.000 (lot numbers 408, 409, 410, 411, 412, 413, 414, 415).

Mr. Voltz stated that in understanding the goals set for this area by the city's Comprehensive Plan and the reasons stated in the report staff believes the rezoning could satisfy many conditions in the Zoning Map Code. However, staff believes there will need to be precautions put in place to limit the type of uses permitted in this area so as to ensure that future development in this area does continue to be a contribution to the area and not a detriment. Types of development that staff believes would not be ideal would include developments such as gas stations, automotive repair shops, drive through fast food, etc. Staff recommends the approval of the proposed amendment to the Zone Map for the referenced parcels from "R1-40" Single Family Residential to "CR" Commercial Recreation. Mr. Voltz stated that he received two public comments regarding this application and the following application. The first comment comes from Dorthy Lewis Page at 1842 Third Street who stated "I am concerned with this rezoning as this could create further flooding issues. How can future projects ensure that it doesn't add to the flooding already occurring? How can current properties owners make sure that their properties are kept safe if more buildings are put up adding more strain to the existing storm sewer and sanitary sewer? There has already been flooding issues. We have concerns about creating problems if apartments are being built, due to problems flowing out of the apartments." The second comment comes from Vanessa Jordan at 1017 Clinton Street speaking on behalf of her mother who lives at 1829 Third Street. She stated "Curious as to what the long term plans are for these parcels. Want to make sure that commission knows that this is a historically black neighborhood and that we want to be respected. Most of the people don't have ability to come to a meeting or be heard digitally. We don't want to live next to McDonalds. Would rather see houses, a habitat house, something. Not doctors storage buildings."

Mr. McGory asked if there is a deadline the last two applicants have in order to get their applications approved at this meeting, or can they wait in order to give staff more time to create an overlay district as mentioned.

Mr. Hayberger then swore in Mr. Rengel.

Mr. Rengel stated that they have no immediate plans for his property that is on the agenda.

Mr. Waldock then stated that they have no immediate plans for his property either but would like to tie in some construction with what they are doing across the street.

Mr. Zuilhof made a motion to table the application until next month's meeting and Ms. Castile seconded the motion. All voting members were in favor of the motion.

Mr. McGory stated that the next application on the agenda has been submitted by D. Jeffery Rengel, on behalf of RLR Properties, LTD., has submitted an application for an amendment to the zoning map for the following parcels located along Second Street: 57- 03859.000, 57-03861.000, 57-03863.000, 57-03864.000, 57-03865.000, 57-03866.000, 57-03867.000, 57-03868.000, 57-03869.000, 57-03853.000, 57-03854.000, 57-03855.000 (lots 433, 434, 439, 438, 437, 436, 441, 442, 446, 447, 448, 451, 380, 381, 382) and the following parcels located along Third Street: 57-03875.000, 57-03876.000 (lot numbers 461, 462, 463).

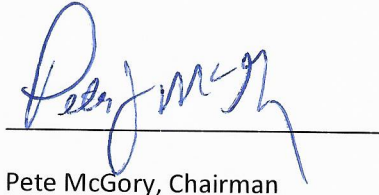
Mr. Zuilhof made a motion to table the application until next month's meeting and Mr. Miller seconded the motion. All voting members were in favor of the motion.

Meeting Adjourned: Mr. Zuilhof made a motion to adjourn and Ms. Castile seconded the motion. The meeting was adjourned at 6:07pm.

Approved:

A handwritten signature in blue ink that reads "Kristen M. Barone". The signature is written in a cursive style and is positioned above a horizontal line.

Kristen Barone, Clerk

A handwritten signature in blue ink that reads "Pete McGory". The signature is written in a cursive style and is positioned above a horizontal line.

Pete McGory, Chairman

July 22, 2020

Chairman McGory
City of Sandusky Planning Commission
c/o Greg Voltz, Planner – email: gvoltz@ci.sandusky.oh.us

Re: Application of 1643 Limited for a zoning change to PUD at 1643 First Street

We are neighbors having our respective personal residences within the Snug Harbor subdivision which is located just east of 1643 First Street. The issues presented in this letter reflect common viewpoints and opinions held by us, and many other owners and residents within the Snug Harbor development. A property dispute has recently arisen with respect to long established uses by the owners of property in the Snug Harbor subdivision, with respect to certain portions of the real property that has been included in the Applicant's application for rezoning of 1643 First Street. Although recent discussions have taken place to outline and explore potential resolutions of that property dispute; at this juncture no resolution has been agreed to which would protect the owners of Snug Harbor with respect to their existing recreational areas, decks, drainage, and/or erosion barriers protecting the western peninsula of Snug Harbor. As explained below, although existing, parts of the disputed property remained unmapped for decades upon the tax maps of Erie County. Areas of the unmapped property, which include the disputed property were recently mapped by the Applicant and included as part of the Applicant's pending request for rezoning and development of 1643 First Street.

Additionally, the property at 1643 First Street, may be subject to certain recorded environmental use restrictions and covenants which may limit the potential uses that may be made of all or part of property at 1643 First Street. In the interest of avoiding any further environmental action against the property and/or the City of Sandusky, (the latter of which was also a party to the action which gave rise to the Ohio EPA Director's Final Findings and Order), due consideration by the Planning Commission should also be made with respect to any applicable environmental covenants or restrictions that may impact uses of the property as authorized by the City of Sandusky through its Planning Commission.

The remainder of this submission will address the property dispute first, followed by references to documents evidencing environmental covenants and use restrictions.

The neighboring Snug Harbor development was originally platted in 1948 with the approval of the City of Sandusky, Erie County Officials, and the consent of the United States War Department. See, Exhibit 1, attached. The original plat was amended on a couple of occasions, and now exists as having three parallel peninsulas that extend into Lake Erie; both the west and east peninsulas have a northerly breakwater which runs perpendicular to each peninsula at its most northern point. The 1955 revised plat for Snug Harbor shows the west channel lots of Snug Harbor. See, Exhibit 2, attached. The west channel lots are closest to 1643 First Street.

Located north of the easterly wetlands located at 1643 First Street, was a beach along the shoreline of Lake Erie. The shoreline of the beach was located approximately 460 feet south of

the northerly point of Snug Harbor's westerly breakwater. North of said beach shoreline, are the waters of Lake Erie, and along the westerly shoreline of the west channel of Snug Harbor are fortifications of large rock for erosion control, to protect the integrity of Snug Harbor's westerly peninsula, as well as supporting several dock structures built along the westerly shoreline by residential owners of Snug Harbor or their predecessors in interest.

At the time that most owners in the Snug Harbor development acquired their properties located within Snug Harbor there was no recorded claim of ownership of the beach which was located west of Snug Harbor's westerly peninsula, and north of Snug Harbor lot number 138. Additionally at the time of those purchases, no owner of 1643 West First Street claimed to own any property north of Snug Harbor lot 138, between the waters of Lake Erie and Snug Harbor's western peninsula. At the beginning of 2019, the above referenced beach area, and all property located north of Snug Harbor lot 138, which was located between the westerly Lake Erie shoreline, and western peninsula of Snug Harbor were not included or delineated upon the Erie County Tax Map or Erie County Auditor's parcel map; that property is collectively referred to as the "Unmapped Property." See Exhibit 3 – 1987 to 2017 Tax Map Indicating "Piece Created by Mapper Does Not Exist."

It is our understanding that for more 21 years prior to 2019, the owners of property at Snug Harbor, have maintained the Unmapped Property, for their own benefit and that of their residents, and/or guests at Snug Harbor, through uses of the Unmapped Property in a manner consistent with the exclusive possession of private property, that was open, notorious, continuous (based on the nature of the uses from time to time), and adverse to the interests of any legal title owner, if any, of said Unmapped Property. As such the owners and residents of Snug Harbor have acquired certain vested legal property rights in the Unmapped Property. Any claim of right of any person or entity to dispossess the owners of Snug Harbor of such vested legal rights or uses in the Unmapped Property is now barred by the statute of limitations period of 21 years for the recovery of real estate, as set forth in Ohio Revised Code § 2305.04.

On December 8, 2017, 1643 Limited, the applicant herein acquired 1643 First Street, pursuant to a "limited warranty" deed from Famous Realty of Cleveland, Inc. See, Exhibit 4. That deed did not include any metes and bounds specifically describing the Unmapped Property. The metes and bounds description in that conveyance conforms to the outline of the property west of Snug Harbor shown on Exhibit 3 – the 1987-2017 Tax Map (without reference to the area identified on the map as "Piece Created by Mapper Does Not Exist").

The applicant's property at 1643 First Street is also subject to certain terms and conditions of environmental orders issued in connection with an action before the Ohio Environmental Protection Agency. The Ohio EPA Director's Final Findings and Orders issued on May 26, 2015, included an environmental covenant that the subject property's use be limited to commercial or industrial land use, as those terms are defined in OAC 3745-300-08(C)(2). See, Exhibit 5, at p. 4; also appearing of record in the Erie County Recorder's Office at Official Record Number 201506918, recorded on August 6, 2015 at 2:53 P.M.

The December 6, 2017, deed to 1643 Limited by its predecessor in title included the environmental restrictive covenant describing activity and use limitations for the property as "a. Limitation for Commercial and/or Industrial Land Uses." See, Exhibit 4, p. 1.

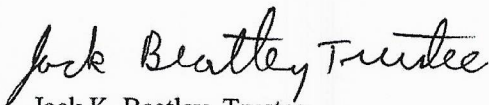
On or about July 9, 2019, the Ohio EPA, addressed certain requested revisions to the Environmental Covenants impacting the property at 1643 First Street. The proposed draft revisions which apparently have not yet been approved or finalized state in part: "**Fee simple single-family homes or duplexes are prohibited.** Permissible residential land use included without limitation condominiums, apartments, daycare centers, long term care facilities . . ." Exhibit 6, at p. 17 (emphasis added). The revisions appear to clarify that the intent of the restrictions is to comply with Ohio Administrative Code § 3745-300-08(C)(2)(a), to reduce environmental contamination risk associated with "land use with a high frequency of potential exposure of adults and children to dermal contact with soil, inhalation of vapors and particles from soil, incidental ingestion of soil, and inhalation of volatile compounds due to vapor intrusion from environmental media to indoor air." Id. Given the express prohibition of uses at the property related to a single family home, (albeit held in fee simple title); it seems incongruent that prohibited uses which are designed to avoid physical contamination from soils, would be consistent with a single family home whose paper title was simply held in another form – other than fee-simple ownership.

Is it appropriate, sound, or a matter of good conscience for this Planning Commission to look past the intent of O.A.C. § 3745-300-08(C)(2)(a) which is written with an intent to avoid likely contacts created by uses of a single family dwelling in an effort to protect children and/or adults who are more likely to play in or work in the surrounding yard of a single family home or duplex; compared to a multi-unit residential high-rise, in what was an significant toxic site in this community, which remains and may continue to be subject to EPA conditions require continuing monitoring and engineering controls to protect users and occupants at the property.


Since the Applicant's request pertains to the entire site and includes many single family residential homes, this Commission should table the application pending a resolution of both: the property dispute, and a final determination from the Ohio EPA as to what uses will actually be permitted, given the existing restrictions that appear to restrict use of the property to commercial and industrial uses.

Thank you for your review and inclusion of these comments as part of your consideration with respect to the pending application of the rezoning of 1643 First Street.

Respectfully submitted,



Jack K. Beatley, Trustee
Owner of 532 and 534 Nantucket Drive
(Lots 147, and 148)



Dr. Michael Thomas Powers
Resident of 530 Nantucket Drive
(Lot 149)