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Board of Zoning Appeals  
Meeting Minutes  
Case #VC2020-001 & #VC2020-002  
February 24, 2020

The Board of Zoning Appeals of Pierce Township, Clermont County, Ohio met at 6:30pm, on Monday February 24, 2020, at the Pierce Township Administration Building, 950 Locust Corner Road.

**CALL TO ORDER/ROLL CALL**

Chairman Bob Sander called the meeting to order. Board members answering roll call Mr. Raymond Lembke, Mr. Ryan Holte, Mr. John Buhr, and Mr. Bob Sander. Township personnel who were also present: Mr. Eddie McCarthy, Planning & Zoning Administrator and Mrs. Laura Waczovszky, Administrative Assistant.

**PLEDGE OF ALLEGIANCE**

Chairman Bob Sander led everyone in the Pledge of Allegiance.

**NOMINATIONS FOR CHAIR & VICE CHAIR OF PIERCE TOWNSHIP BOARD OF ZONING APPEALS**

Chairman Sander asked the members about nominations for chair and vice chair. The Board asked Mr. McCarthy to send out an email to each member about chair and vice chair nominations. Board decided to vote when more members were in attendance.

**APPROVAL OF THE MINUTES**

**APPROVAL OF MINUTES FROM APRIL 18, 2019 MEETING**

Mr. Holte made a motion, seconded by Mr. Lembke to approve the minutes of the April 18, 2019 hearing as presented. Roll call on motion: All yea

**INTRODUCTION OF THE PLANNING & ZONING ADMINISTRATOR**

Mr. McCarthy introduced himself to the Board of Zoning Appeals and spoke about his experience with Planning & Zoning.

**OATH TAKEN BY ATTENDEES**

Chairman Sander administered the oath to attendees.

**CASE #VC2020-001 3792 Poplar Creek**

Chairman Sander opened the hearing on case #VC2020-001 3792 Poplar Creek.

## **STAFF REPORT FOR CASE #VC2020-001 3792 Poplar Creek**

Mr. McCarthy presented the staff report on the application for a Dimensional Variance to construct a 10.5' (+/-) tall retaining wall at 3792 Poplar Creek Cincinnati, Ohio, submitted by Rich Riebel on behalf of Paul & Michelle Kamphaus, owner(s). The applicant requests a Dimensional Variance from 4.06 F) 4) (a) to construct a 10.5 (+/-) retaining wall (Max of 6' permitted) to the rear of the Single-Family Dwelling (SFD) on site, as a replacement to the prior railroad tie configuration. The subject property is located at the southern terminus of Poplar Creek, Cincinnati, OH. The site is approximately 5 acres in area and is zoned Single Family Residential (SFR). All properties abutting the subject lot are zoned SFR and appear to be used for residential purposes.

### **PRESENTATION FROM APPLICANT**

Mr. Kamphaus gave his testimony about why he is requesting a variance for a 10.5' retaining wall. The Board asked if the neighbor(s) objected to retaining wall, if notice(s) went to adjacent property owners, any complaints received, how far was the retaining wall from the backyard, and why a 10.5' retaining wall. The applicant explained that the wall is critical to preventing the yard directly to the rear of the home from eroding.

Staff confirmed that the case was properly advertised and that the applicant had submitted a letter from an engineer detailing that the proposal was the minimum structure necessary to accomplish the intended goal(s) of the applicant.

### **PUBLIC COMMENT**

None

### **DELIBERATION BY BOARD OF ZONING APPEALS**

The Board discussed the hardships associated with the applicant's proposal in accordance with 3.08 B) 2), as well as the apparent necessity of the retaining wall to replace a failing railroad tie application. Due to the nature of the property, including the presence of an existing single family dwelling on site, the retaining wall appears necessary to support the ground directly adjacent to the Single Family Dwelling.

### **MOTION**

A motion was made by Mr. Lembke seconded by Mr. Holte to grant the variance subject to conditions identified by staff, including the addition of "county"; The applicant must comply with all other federal, state, county, and local regulations. Roll call on motion: Mr. Lembke-yea, Mr. Holte-yea, Mr. Buhr-yea, Mr. Sander-yea.

## **CASE #VC2020-002 1145 SR 125**

Chairman Sander opened the hearing on case #VC2020-002 1145 SR 125.

### **STAFF REPORT FOR CASE #VC2020-002**

Mr. McCarthy presented the staff report on the application for Variance(s) from Pierce Township Zoning Resolution, 3.04, 3.05, & 11.04(B)(2), pedestrian sidewalk and requirement to perform a traffic study, submitted by Carl Hartman, Agent, on behalf of 3S Property LLC for property located at 1145 State Route 125 Pierce Township, Ohio 45102, Parcel #282808A008. Request and Proposal: The applicant requests Variance(s) from Pierce Township Zoning Resolution, 3.04, 3.05, & 11.04(B)(2), pedestrian sidewalk (Construction of a 4' wide sidewalk along the frontage of the property) and the requirement to perform a traffic study.

The applicant proposes to construct a new 3,300 sq. ft gas station retail building, remove the existing retail structure (approximately 476 sq. ft) and utilize the two (2) existing pump islands at 1145 State Route 125 Pierce Township, Ohio 45102, just west of the intersection of Will O EE Drive and SR 125.

The site is approximately 1.25 acres in area, has three curb cuts and is zoned General Business (GB). The subject lot is abutted by a mix of Single Family Residential (SFR), General Business (GB) and B-1 (Union) zoning. All properties abutting the subject lot are used for commercial purposes with the exception of the property to the south which is used for residential purposes.

Mr. McCarthy explained that the data provided by the applicant's traffic engineer indicated that more than 100 trips were expected to be generated, thus triggering the Traffic Impact Study. The traffic engineer then began further researching and cc'ed staff on discussions with the Ohio Department of Transportation (ODOT).

### **PRESENTATION FROM APPLICANT**

Mr. Carl Hartman agent on behalf of the applicant (3S Property LLC) gave his testimony about why the applicant (3S Property LLC) requested a variance from Pierce Township Zoning Resolution, 3.04, 3.05, & 11.04(B)(2), pedestrian sidewalk (construction of a 4' wide sidewalk along the frontage of the property) and the requirement to perform a traffic study. Mr. Hartman talked about the site plan guidelines, ODOT process for variances, handed the Board court cases to provide additional information on the variance, and shape of the property. Mr. Hartman provided information on the property, possibility of gas sales, fuel tax, and sales tax increases, no sidewalks on SR 125, traffic study, open the property as is; a gas station, open the property as a used car lot, fifteen other properties 3S Property LLC owns and feels the property should be grandfathered in. Mr. Patel spoke about the property, other properties he owns and runs as a convenience store(s), and issues with ODOT.

### **PUBLIC COMMENT**

None

### **DELIBERATION BY BOARD OF ZONING APPEALS**

The Board discussed the sidewalks, court cases provided by Mr. Hartman, traffic study, improving the property, number of curb cuts, issues & requirements with the Ohio Department of Transportation (ODOT), building permit, future installation of sidewalks from joining property and what triggers the business owner to install sidewalks, safety issues, and grandfathering properties.

Mr. Lembke further explained that he is not convinced by the applicant's presentation that this property is in a unique circumstance. Mr. Lembke then discussed the differences between ODOT and Pierce Township, indicating that the two entities are separate and that the applicant is dealing with two separate governing agencies and regulations.

Mr. Lembke discussed the expectation that the proposed increase in size of the structure(s) on site will most likely increase the traffic generated on site. Mr. Lembke then explained that proposing a new and larger structure on site does not constitute "grandfathering". The Board discussed the importance of utilizing a traffic study to preserve the safety of users and ensure that the site is capable of handling the traffic, particularly when traffic is proposed to increase. Mr. McCarthy explained that the purpose of the study is to ensure the protection of public health, safety and welfare.

Mr. McCarthy talked about the traffic study in more detail, appeals, requiring business owner to build sidewalks, and permit(s) issued on property. Mr. Keating talked & asked about the traffic study, ODOT curb cuts, side walk requirement, type of variance, hardship and permit(s) issued on property. Mr. Hartman talked about the area on the site plan to be used for pedestrian use, traffic study, and provide notarized statement for easement for sidewalks.

Mr. Keating then explained that the sidewalk qualifies as an "Area Variance", not a "Use Variance".

**MOTION**

A motion made by Mr. Buhr seconded by Mr. Holte to grant the variance with stipulations with building the sidewalk if either adjacent property owner puts a sidewalk in or if the township mandates it as a whole along SR 125 and to make sure they follow through with painting of the lines. Roll call on motion: Mr. Lembkenay, Mr. Holte-yea, Mr. Sander-nay, Mr. Buhr-yea.

The Board & Mr. Keating discussed the motion made to grant the variance; which had two yeas and two nays.

Mr. McCarthy then discussed that it is advisable to make findings.

A motion made by Mr. Buhr seconded by Mr. Lembke to deny the traffic study variance request. Roll call on motion: Mr. Lembke-yea, Mr. Holte-yea, Mr. Buhr-yea, Mr. Sander-yea.

The Board asked Mr. Patel about the other locations he owns and type of business. Mr. Patel talked about the traffic, ODOT requirement(s), and types of businesses.

**ADJOURNMENT**

At 7:53 PM, Mr. Lembke made a motion to adjourn seconded by Mr. Buhr Roll call on Motion: All Aye

ATTESTED;

The foregoing minutes were approved by the Pierce Township Board of Zoning Appeals on April 27, 2020.

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Bob Sander, Chairman

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Date