

**BOARD OF ZONING APPEALS
CITY OF NORTH OLMSTED
MEETING MINUTES OF JANUARY 7, 2010**

ROLL CALL

Mrs. Diver called the meeting to order at 7:35 p.m. in Council Chambers.

Present: Maureen Diver, Nancy Sergi, Jennifer Rudolph, Laura Bellido, Alfredo Lopez

Staff: Law Director Michael Gareau Jr., Planning Director Kimberly Wenger, Building Commissioner Dale Mitchell, Clerk of Commissions Donna Rote

REVIEW AND CORRECTION OF MINUTES

Ms. Rudolph moved, seconded by Mr. Lopez, to adopt the December 3, 2009 minutes as written which was unanimously approved 5-0.

RESIDENTIAL APPEALS AND REQUESTS

Walters Advanced Dentistry; 4780 Clague Road:

The proposal consists of modifying the conditions of the previously approved use variance to include offering ancillary cosmetic services and modifying hours of operation.

Mr. Gareau said the agenda shows the board is being asked to amend a previously approved use variance to include ancillary cosmetic services. However he received documentation that pertains to the standard practices of the dental industry set by the Ohio State Dental Board and the documents clearly show that ancillary cosmetic services are standard procedures offered within the dental industry. Therefore the service Dr. Walters' dental practice offers does not modify the use variance granted so that issue does not need to be addressed. The modification requested to the hours of business may be based upon a change in circumstances since the original use variance was granted. The board is asked to determine whether or not there has been a change in circumstances such that it would justify the change in the hours of operation. There are no set criteria for reviewing a change in circumstances; if the board feels the applicant has met his burden then it is within the board's purview to modify or grant the request.

Dr. Walters was sworn in and said the use variance approved included limiting the facility to being open weekdays unless there were emergencies. However they need to be more flexible for their clients and provide their services Monday through Saturday to ensure they remain competitive in the dental industry. Current office hours are Monday through Friday 8:00 am to 6:00 pm unless there's an emergency and one day a week either Monday or Friday is staff only. His clients have asked for Saturday appointments which at this time he can not accommodate.

Ms. Rudolph questioned the anticipated traffic flow for Saturday hours and Dr. Walters said there would only be an additional 25 to 30 vehicles at the site. Mrs. Sergi said the Saturday restriction was enacted due to resident concerns that increased traffic would endanger children in the area. Dr. Walters said foot traffic was very limited along the front of the office as there is a sidewalk from Wellington Place to Brookpark Road which is mainly used.

Mr. Mitchell said there have been no complaints or violations filed through the police or building department against the dental office. He has no objections to the request. Ms. Wenger said in lieu of adding Saturday hours to the office hours she recommended eliminating restricted hours of operations entirely. Looking at permitted uses within the multifamily district there are no restrictions pertaining to people coming and going during the day or night. There is a church across the street which has Sunday services and evening hours as well as a senior residence next door which has traffic traversing the area at all times. Restricting the dentist office hours and days of operation places an undue burden on the applicant. She believes that it has been shown that the use has not generated more traffic and does not create traffic issues in the area.

Ms. Rudolph asked if city staff was concerned that the lighting of the wall and ground signs could become an issue. Ms. Wenger said the locations of the signs are such that they are blocked by the neighboring facility which has greater illumination than the dental office. Dr. Walters said all signs and lights are on timers and the only lights which go out at night are parking lot lights. His signs are not visible to the residential neighborhood. Mr. Mitchell noted that Wellington Place has made adjustments to their building and site lighting to address neighbor concerns. Both facilities have been very cooperative with the area residents to ensure their lighting is not intrusive. Mrs. Sergi asked if lifting the restriction would affect all future owners of the site. Mr. Gareau said use variances granted run with the land as do the restrictions however if a new owner wished to change the use of dental office they would have to seek a new use variance. He noted that hours of operation are typically governed by business regulations rather than zoning codes. Ms. Rudolph asked if in the future a different use was proposed would the board be within their right to review hours of operations again and Mr. Gareau said yes.

Mrs. Sergi said concerns which the board first had have changed as traffic has not adversely affected the area. The point of being more accessible to his clients is valid and flexible hours are warranted. Knowing a new use would require a new use variance gives assurance as well. Mrs. Bellido said Saturday office hours would not adversely impact the neighborhood. Mr. Lopez said in viewing the neighborhood the dental office did not appear to have an impact on it and removing the restrictive operating hours will not affect the neighbors. Ms. Rudolph and Mrs. Diver agreed with other board members' observations.

Ms. Rudolph moved, seconded by Mrs. Sergi, to eliminate the condition regarding the hours of operation previously placed upon Walters Advanced Dentistry of 4780 Clague Road, which was unanimously, approved 5-0.

COMMUNICATIONS

Ms. Rudolph asked when the board would be addressing the rules and applications which were to be docketed and Ms. Wenger said she asked that the matter be removed to give the new Law Director an opportunity to review the documents. Mr. Gareau said he was establishing his office and would review the documents to provide the board guidance. Although the board's election is on the agenda he would recommend the board postpone it until such a date that the board's appointments and rules are completed. The board could hold a caucus prior to an upcoming meeting in which all members are present to work through the rules and questions relating to chairmanship. Mrs. Diver questioned if members and staff would be present for the March 4th

meeting and after a brief discussion amongst members and staff it was decided to move the BZA meeting of March 4 to Thursday, March 11, 2010.

ADJOURNMENT

With no further business the meeting adjourned at 8:10 p.m.

Maureen Diver, Chair

Donna Rote, Clerk of Commissions

Approved:
