

**BOARD OF ZONING APPEALS
CITY OF NORTH OLMSTED
MEETING MINUTES OF JUNE 3, 2010**

ROLL CALL

Ms. Sergi called the meeting to order at 7:32 p.m. in Council Chambers.

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

Also Present: Assistant Law Director Bryan O'Malley, Building inspector Paul Grayshaw

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

REVIEW AND CORRECTION OF MINUTES

Ms. Rudolph moved, seconded by Mrs. Bellido, to approve the May 6, 2010 minutes which passed 5-0.

RESIDENTIAL APPEALS AND REQUESTS

Mohomed Ali; 5464 Jacqueline Lane:

Request for variance (1123.12); proposal consists of an addition and the following variance is requested:

1. A 15 foot rear yard setback variance for a residence too close to the rear property line; code requires 50', applicant shows 35', section 1135.08 (a). Note: Lot is on a cul-de-sac and is shaped odd.

Mr. Mohamed Ali the owner and Mr. Eddie Dunlap a neighbor were each sworn in. Mr. Ali said he would like to convert his existing deck into a four season room. His home backs up to woods and due to the amount of bugs they can not use their deck area. The room will be cooled and heated. Mr. Dunlap asked for someone to show and explain the plan to him as his notice says the addition is too close to the property line which concerns him. Mr. Mitchell showed and explained the plans to Mr. Dunlap. Mrs. Sergi questioned if there would be siding, windows and if all materials would match the existing home and Mr. Ali said yes.

Mr. Mitchell said the variance is for the rear setback as code requires 50 feet and the addition will be 35 feet from the rear property line. Mr. Dunlap asked if the addition would be any closer to the sideyard line than it currently is and Mr. Mitchell said no. Mr. Dunlap said he had no objections as long as the sideyard setbacks are maintained. Mr. Mitchell noted that the lot was irregularly shaped as it is located on a cul-de-sac which affects the setbacks. A brief discussion ensued regarding the size and location of the new sidewalk being installed which met code and would not affect the neighbor. Ms. Rudolph did not feel the character of the home would be affected nor would governmental services be altered. Mrs. Sergi felt that although the property could yield a reasonable return as is the addition was an improvement which would not adversely affect the neighborhood.

Ms. Rudolph moved, seconded by Mrs. Diver, to grant Mohamed Ali of 5464 Jacqueline Lane a 15 foot rear yard setback variance for a residence too close to the rear property line; code requires 50', applicant shows 35', section 1135.08 (a), which passed 5-0.

Thomas & Pamela Urbanek; 6150 Stearns Road:

Request for variance (1123.12); proposal consists of a garage. The following variances are requested:

1. An 825 square foot variance for a detached garage larger than code allows; code permits 750 sq ft, applicant shows 1575 sq ft, section 1135.02 (C)(1).
2. An 11 inch variance for a detached garage higher than code allows; code permits 15 ft, applicant shows 15 ft 11", section 1135.02 (C)(1).

Mr. Thomas Urbanek the owner was sworn in. Mr. Urbanek said they will demolish the existing shed and garage to build a new garage which will meet all setback requirements however the square footage exceeds the maximum square footage allowed. He will use the garage for vehicles, yard tools/equipment and personal storage. He submitted 5 letters from neighbors who signed a letter pre-typed stating they had no objections.

Mr. Mitchell noted that the plans did not state the existing garage and shed would be demolished and questioned why the applicant required a garage larger than his existing home. Mr. Urbanek said the size is needed to house his vehicles and personal belongings. A brief discussion depicting the size of the existing garage and shed found the current total square footage to be 644 square feet and the new garage to be over 1500 square feet which is more than twice the square footage. Mr. Urbanek said currently he has to house some of his vehicles off site which he would like to eliminate. Mr. Mitchell said that although there are large garages/storage units along Stearns Road the size of the garage compared to the 1200 square foot home is substantial. Mrs. Sergi read aloud the letters the neighbors signed and noted that the letter states the neighbors agree provided the structure meets standard building requirements which is not the case.

Mrs. Bellido felt that although the property was large she objected to the garage as it is overwhelming and the request is substantial. Ms. Rudolph noted that the garage size was more than twice the size code allows and would alter the character of not only the owner's lot but those of the abutting neighbors as well. Mr. Lopez said he object to the size of the garage which would be larger than the owner's home. The variance is substantial and storage is not a hardship for granting a variance. Mrs. Diver said the owner's predicament can be addressed with a smaller garage and outdoor parking. The property can continue to yield a reasonable return without the garage. She also questioned if the rear overhead door would require a driveway out the back and Mr. Mitchell said it would not. Mrs. Sergi questioned if the area above the garage was for living space as the plans show plumbing, electrical, heating and cooling. Mr. Urbanek said the upper floor was for storage only. Mr. Lopez felt the garage would depreciate not only the owner's home and those of his neighbors as well.

Mr. Lopez moved, seconded by Ms. Rudolph, to grant Thomas & Pamela Urbanek of 6150 Stearns Road the following variances:

1. An 825 square foot variance for a detached garage larger than code allows; code permits 750 sq ft, applicant shows 1575 sq ft, section 1135.02 (C)(1).
2. An 11 inch variance for a detached garage higher than code allows; code permits 15 ft, applicant shows 15 ft 11", section 1135.02 (C)(1), which failed 0-5.

NON-RESIDENTIAL APPEALS AND REQUESTS

Surf Shop LLC; 27328 Lorain Road:

An appeal of Building Commissioner's inspection report of April 15, 2010, listing violations of North Olmsted Codified Ordinance sections; 1119.01(a), 1119.01 (b), 1119.02 (a) and 1119.05. Note: tabled 5/6/10.

Mr. Tom Hartnett Attorney for Surf Shop, Mr. Randy Thorne Surf Shop Owner, Mr. Jack Hawk an Architect, Building Commissioner Dale Mitchell and Building Inspector Paul Grayshaw were each sworn in. Mrs. Sergi asked if the owner of the property was present and Mr. Hartnett advised that he was the agent for the owner.

Mr. Hartnett passed out a 41 page booklet to each commissioner and said his client was sited for doing building repairs without building permits however his client made no repairs which required permits. The City inspected the property, no violations were sited and an occupancy permit was issued. Testimony will be given by Mr. Hawk indicating that the property as it stands now is not in violation of the Ohio Building Codes. The issue of not receiving an occupancy permit unless property taxes are paid up or an agreement from the County is submitted was never mentioned to his client outside the Commissioners letter. However the landlord provided a copy of the agreement between him and the County Treasure regarding delinquent taxes which has since been submitted. His client has not changed the use of his business which is alleged in the Building Commissioners letter. There is a misconception as to what the Surf Shop is and what it is not is a gambling hall as his client sales internet time, access to faxes, printers and computers. There are 35 computer terminals which can be used to access the internet for, e-mails, stream videos, music, games or business use. In conjunction with computer access his client has a sweepstakes along side the business, when a client purchases computer time they earn instant sweepstake points which can be redeemed prior to accessing or using the computer. The sweepstake is no different than any other promotional sweepstakes other business franchises use to promote sales. The sweepstakes is not gambling nor does it break any law which needs to be made clear.

Mr. Thorne said he owns and operates a restaurant in Canton Ohio and he became involved with owning the Surf Shop through researching different opportunities to invest and increase his revenues. He researched the opportunity after speaking to a sales rep and felt comfortable investing in the company which is a legalized business and not gambling. Documents were noted that were submitted which state the business is not gambling. Placing his business in North Olmsted was at the recommendation of the developer who owns his restaurants location. Upon seeing the site which was ready to occupy and needed little work to open the location was chosen. Mr. Thorne briefly reviewed the operation of his business and how the computers are blocked from gambling sites by firewalls and how the sweepstakes work. He has a five year lease signed for the North Olmsted location, purchased thirty five computers, furniture and an

internet access for three years. Mr. Thorne said when the occupancy application was submitted he spoke with Mr. Grayshaw in the building department. The application states the business is a business center and there was no discussion as to how the business would be ran or the number of computers which would be installed. Mr. Hartnett asked Mr. Thorne a series of yes and no questions pertaining to the application documents which were submitted and received for obtaining an occupancy permit. The only complaint which Mr. Thorne is aware of is a large delivery truck parked across two spaces and the neighbor called police and the truck was parked correctly. The tax relief agreement with the County was briefly reviewed. Mr. Thorne said the business plan had not changed since he opened his business. He removed the counter which was in place, added electrical lines and outlets for power to the computers. The walls were painted, wall sconces added and new flooring installed prior to opening. He opened his business in March and if the occupancy is pulled it would put him in financial stress as he is obligated for the five year lease and all equipment purchased.

Mr. Hawk reviewed his architectural credentials and affiliations in the architectural field. He visited the site and was asked to create an as built plan which was submitted to the city. The plans were prepared May 20, 2010 and the site was viewed ten days prior to the dated plans. Based upon his observations of the site it meets Ohio building codes although the drawings used were not full working plans of the center. He believes that the site complies with both the requirements of business and assembly of the Ohio Building Codes OBC which were reviewed in detail including the exceptions. The Certificate of use and occupancy was reviewed by Mr. Hawk who said he was brought in after the building official ruled the use had changed. However he believes that the category for the Surf Shop should be a business following OBC table maximum floor area allowed per occupant which was read aloud. Using the OBC Mr. Hawk calculates that there can be up to 100 people based on the floor space and toilets provided however their plan which was submitted states no more than 49 people will be in the space. His opinion is that the site in question is a business no different from a call center. He sought the opinion of the International Code Council for a definition of gaming equipment versus computers used for gaming and was told if the computers are basic computers then they are not gaming machines such as pinball and slots. They did not receive the opinion in writing but once received it will be submitted. With sixteen hundred square feet of space the space complies with both business and assembly but preferably business. He pointed out one or two small issues regarding violations which are not health or safety issues, one is to provide a drinking fountain which can be a bottle water dispenser and slop sink needs to be installed in the utility room.

Mr. Hartnett said his client has made a substantial investment in North Olmsted and the business and has tried to keep everything in compliance to code however there were things he was not aware of including real-estate tax requirements which has now been addressed. His client has not preformed any changes or repairs to the space which requires permits. Mr. Hawk testified that the use is in fact a business use and qualifies as such.

Mr. Mitchell reviewed the documents which were submitted to the Building department by the applicant noting that the applicant stated there would be no more than 15 people in the space and the business was a business center which provides coping, faxing and internet services. Once the application is submitted his department has 10 days to review and issue an occupancy permit or issue a letter stating why it is denied. A sketch of the floor plan was submitted which he

reviewed. Permitted uses allowed under General Retail Business District include Retail, Service, single family and cluster. The prior business was a service establishment and the new occupant said they were a service establishment as well. The Check cashing business floor plan was submitted in the commissioner's packets to demonstrate an existing interior layout which is required by all occupants. He reviewed that there was a utility room, an office, single bathroom, work space, and two counters that included cabinets and electrical outlets. The owner advised the inspector that the use of the business would be similar to Office Max or Kinko's. Therefore it was the cities understanding that there would be a coping center in the space. Fast Cash pulled permits prior to erecting walls, cabinets and doing electrical work which Mr. Mitchell reviewed. Comparing the previous tenants' floor plan to the Surf Shops existing as built plans there were counters, cabinets, electrical lines, phone lines, a door and a wall removed without a permit. The only thing that matches the existing plan is the utility room, office and part of the bathroom. Modifications were made to the existing restroom, a second restroom added, electrical power stations for 35 computer stations were installed, wall light fixtures installed, Refrigerator, Microwave, ATM machine, a bottle water dispenser, Soda dispenser, waterlines and drains were all installed without permits.

Mr. Mitchell asked what Mr. Grayshaw's first conversation was with Mr. Thorne and he said he advised Mr. Thorne as to what documents were required to be filled out and submitted to the building department to receive an occupancy permit when he first visited the city. However he did not believe he was in the office when the documents were submitted. He visited the site the day after the application was submitted and the floor plan was the same as when it was Fast Cash minus furniture therefore an occupancy permit was issued. On April 13, 2010 he and John Schneider were asked to visit the site and do an occupancy inspection. Upon entering the space he noted the wall and counters were removed and rows of computer stations added. He only observed people sitting at the computers and did not observe coping or faxing machines being used. Mr. Mitchell said after reading the inspectors field notes which noted interior changes and found that no permits had been issued for the interior work he determined that the use had changed to an assembly which requires a conditional use permit. He then issued the letter dated April 15, 2010 to the applicant.

Mr. Hartnett asked what year the prior occupancy was and Mr. Grayshaw said it was in 2005. Mr. Hartnett asked about the drawing which showed two bathrooms and Mr. Grayshaw said the drawing the applicant submitted did not have a lot of details shown on the plan. Mr. Hartnett noted that the drawing first submitted showed two bathrooms and the prior tenants drawing did not and Mr. Grayshaw said he only had the applicants drawing when viewing the site for occupancy and there were two bathrooms as the plan showed. There were also counters a wall and doorway when first inspecting the site. Mr. Hartnett said the first plan did not show counters, a wall or doorway either yet there were no issues with occupancy. Mr. Grayshaw said the plan first submitted was to provide an idea as to the size of the space and number of rooms but the plan lacked interior details as it was not a professional architects drawing. Mr. Hartnett questioned if the occupancy visit is to ensure that all building codes are met and Mr. Grayshaw said it was a zoning occupancy inspection not a building code inspection. Mr. Grayshaw was asked if he would have issued a zoning occupancy certificate if there were plumbing issues and Mr. Grayshaw said he was not a certified plumbing inspector he just makes sure there is hot and cold water and toilets flush but he is not qualified to determine if there are plumbing violations.

Mr. Hartnett asked if an occupancy permit would have been issued if there were building permit issues and Mr. Grayshaw said he would not until all building inspections were passed however his inspection was for zoning compliance only. Mr. Grayshaw was then asked to review his credentials required for working in the building department which he did. He also briefly reviewed what a zoning compliance inspection was and how it is evaluated. Mr. Hartnett questioned the second visit and if there were any building violations and Mr. Grayshaw said he was asked to visit the site to note how many people were in the space not to perform a building inspection and there were 25 to 35 individuals in the space. However in his field notes he noted the visual changes made to the space since his first visit including the removal of a wall, counters and cabinets. The addition of light fixtures being added to the walls and several electrical receptacles added for the computer stations installed. Mr. Hartnett asked if a building permit is required for adding receptacles and Mr. Grayshaw said both the North Olmsted Codified and OBC require permits to pull electrical lines for outlets and wall sconces. Regarding counters, cabinets, walls and doorways being removed if they are fixed structures or there is electrical wiring a permit is required prior to removing. He then reviewed what is deemed as minor electrical work and advised that installing or adding additional electrical lines is not minor. Mr. Hartnett asked if an electrical strip which is used to provide power for multiple pieces of equipment require permits and Mr. Grayshaw said it would need to be evaluated as there are restrictions pertaining to how many cords can be plugged in and how long the cords are for fire safety codes. Mr. Hartnett asked what building code violations exist in the site currently and Mr. Grayshaw advised he could not answer the question as there has not been any building inspections conducted to date at the site. Mr. Hartnett asked why a second visit was made to the site and Mr. Grayshaw said a complaint regarding the number of occupants was received and the Building Commissioner requested he revisit the site and that is when he noted the visual changes to the interior had been made. Mr. Hartnett asked if permits were required to install carpeting and Mr. Grayshaw said prior to the items being installed in a commercial building the installer of the carpet should be registered to work within the city and the city would need to know what type of carpeting is being installed to make sure it is code compliant and that information was not provided. Mr. Hartnett questioned interior painting requiring a permit and Mr. Grayshaw said recently EPA requires all buildings constructed prior to 1978 which may have led paint issues to be evaluated however that ruling was after the applicants' occupancy. Mr. Hartnett questioned if Mr. Grayshaw believed that an assembly use was a permitted use for the site and Mr. Grayshaw said he did not have an opinion pertaining to the use of the site as that is outside the scope of his job. Mr. Mitchell said although Mr. Grayshaw is the senior inspector he does not do zoning interpretations as that is the Planning Director's and Building Commissioner job.

Mr. Hartnett asked if the Building Department was state certified and Mr. Mitchell said yes but the certified plans examiner is contracted. Mr. Hartnett asked if the plans examiner reviewed the plans submitted for the Surf Shop and Mr. Mitchell said no, no detailed plans were submitted. Mr. Hartnett asked why the site was re-inspected and Mr. Mitchell said the former Safety Director requested he have it inspected. Mr. Hartnett asked if there were any direct complaints made directly to the Building Commissioner and he said no. Mr. Hartnett asked if Mr. Mitchell knew there were articles in the News Paper pertaining to the Surf Shop and asked if anyone in the Mayors office or any other city official has brought it to Mr. Mitchell's attention that they did not want his clients business in North Olmsted and Mr. Mitchell said no. A brief discussion between the Law Director and Mr. Hartnett ensued regarding whether or not Mr. Hartnett's

questions pertaining to city officials personal opinions about his clients business was relevant or not. Mr. Mitchell again reviewed what is required for a certificate of occupancy. Mr. Hartnett questioned if there was a fax or copy machine at the facility and Mr. Mitchell said he did not know as he had not view the site. A discussion pertaining to the number of bathrooms at the time of occupancy inspection ensued and whether or not Fast Cash drawings showed two or one bathroom. Mr. Hartnett asked how the total occupancy was determined to be 15 and Mr. Mitchell said Mr. Thorne stated on his application the occupancy for the space would be 15 for his business 5 employees and 10 patrons. Sections of chapter 1139 of the codified codes were reviewed between Mr. Hartnett and Mr. Mitchell. Mr. Hartnett asked which use the building official would relate to his clients business and Mr. Mitchell said assembly which requires a conditional use permit to be within the general retail district. Mr. Hartnett asked if violations to building codes were looked for during occupancy inspection and Mr. Mitchell said as the inspector noted they make sure there is running water, electricity, heating and cooling at the site but a building inspection is not conducted. At the time the occupancy permit was issued the site had no visible apparent building violations. Mr. Hartnett asked if Mr. Mitchell agreed with the OBC on its interpretation of up to 49 people being allowed in the space as a business and Mr. Mitchell said as a business use the site can hold up to 49 people but the this use is assembly.

Mr. Hartnett presented his closing argument as being simple as his client asked for a certificate of occupancy a sketch of what the building looked like was submitted and the inspector approved the occupancy and there were no health or safety code violations and as the property stands today it meets building codes. What they are really dealing with is a pretext to drive the business out of town and he thinks everyone knows that. When the Mayor has publicly stated he does not want the business in his city and then Council places a moratorium on the business and a re-inspection of the site is called for and the inspection finds issues. That is clearly selective enforcement and the city is just trying to find any reason to close down the business. The business clearly complies with OBC and has the appropriate number of occupants following the OBC. His client has done everything correctly and the city has made mistakes and is now trying to look back to change things and that is how you get in trouble. They received an occupancy permit and nothing has changed since it was issued. He asked that the board allow his client to remain in business.

Mr. Mitchell concluded that the matter is a zoning issue and the fact that interior modifications were made without permits and the use not being business but in fact an assembly use. The work completed to the interior building was not submitted for review nor were there any building inspections made or called for. It wasn't until he was asked to check the number of occupants were the other issues/violations noted.

Mr. Lopez asked if there were electrical changes made inside the unit since the last tenant and if plans were ever submitted for the changes. Mr. Mitchell said that there was never a permit or drawings submitted to the building to allow inspections to be scheduled. Mr. Lopez asked if there was any documents submitted showing any and all electrical work which was installed to ensure it meets OBC codes. Mr. Mitchell said no and no permits were pulled so there is no way of knowing whether or not the electrical work meets codes. Mr. Lopez said then in fact there could be fire safety hazards if the electrical work was not installed to code and Mr. Mitchell agreed. Mr. Lopez asked Mr. Hawk if he also checked to make sure the NEC (National

Electrical Code) and NFPA (National Fire Protection Association) codes were met for occupancy for fire protection and Mr. Hawk said they were only asked to look at the occupancy loads and the building as it was they were not provided as build or existing drawings so in this case they could not check. Mr. Hawk said the normal course of action he is familiar with is occupancy permits are not issued until all building permits are approved. Mr. Lopez asked if Mr. Hawk checked the building to ensure that it is in compliance. Mr. Hawk said he viewed the electrical panel and it seemed to be enough power coming into the building but the exact location of the outlets they didn't have drawings to show the outlets and was told the landlord does not have a plan for the space. Mr. Lopez said then Mr. Hawk in fact does not know for sure if the building is compliant with NEC or NFPA which determines electrical safety. Mr. Hawk said the building does not require a sprinkler system and fire alarm system may not be appropriate at the site. The carpet he saw was non institutional carpet it appeared to be general business carpet. There were no wall coverings and they generally don't have anyone ask us exact specifications on paints used on the walls as it is not in the OBC. The power panel had enough power to it and they were all fusible. Mr. Lopez asked if Mr. Hawk was aware that the OBC included wording which he paraphrased that even though it is used for deign the local authority can dictate what is required. Mr. Hawk said he was aware that the building official has the authority and the right to the interpretation which can be appealed. However in this case he didn't think they were talking of zoning issues but uses and he understands that the uses are not spelled out in the cities zoning codes which then convert back to the OBC. There are exceptions which can be applied which were reviewed earlier. Mrs. Diver asked if the site had sprinkles and Mr. Hawk said the space was not required to have a fire suppression system nor does the power gym which is double in size. He said fire suppression systems are only required in buildings which are 50,000 square feet or larger. Ms. Rudolph said when Mr. Thorne filled out the occupancy permit he stated occupancy would be 15 yet he installed 35 work stations so he obviously intended to have more than 15 people at the site. She asked if Mr. Thorne ever ask if more than 15 people could be at the site or if he was permitted to have more. Mr. Thorne said the occupancy permit was mailed to the Surf Shop and the mailman returned the permit to the city so he never received the occupancy permit.

Ms. Rudolph said looking at the fast cash layout it shows one bathroom the applicant's hand drawing shows two bathrooms so she would think that would have alerted the building department that a change in the floor plan had taken place so why wasn't that picked up. Mr. Mitchell said that from the time Fast Cash left to date there has been no permits applied for, for any work. The applicants showed two existing bathrooms and when the inspector went to the site there were in fact two restrooms. Ms. Rudolph asked how the building official concluded the use of business changed to assembly. Mr. Mitchell said consideration of the pop machines, ATM, microwave, refrigerator, water cooler and second bathroom added and removing walls to provide more floor space is not conducive to an office space. Mrs. Diver said she was not aware of any comments made by the Mayor or any Council members and didn't think it had any barring on the case being addressed. Ms. Sergi said Mr. Thorne said when he was asked what he did to ready his establishment he said not much and then she hears walls were removed, carpeting installed, electrical lines were removed and added, work stations built and lights added all of which is not minor work. She finds it hard to believe as a business owner he would not think to contact the building department prior to doing any interior work. It sounds like the board is being asked for forgiveness not permission. Mr. Thorne said the drawing he submitted

for occupancy was the way the building looked. He interperated the city web site to say he could add receptacles without permits. Mrs. Sergi asked why the electrical additions were not shown on the plan and Mr. Thorne said it was not required to be shown on the plan. When he was at the building department to pull an occupancy permit he asked what was needed and was told he could draw the plan himself and that is what he did. Ms. Rudolph asked if the horizontal line in Mr. Thorne's drawing was the existing wall and door which was removed and Mr. Thorne said it was a counter which was not structural.

Mr. Gareau said the board should not give consideration to the argument or pretext pertaining to administrative comments which may or may not have been said. The board should treat all comments made by the Appellant and Apelles based upon the preponderance of the substantial reliable probative evidence presented on record. Any discussions pertaining to gambling or gaming is not an issue before the board nor should it be addressed by the board in any manor. The bottom line is did the use and interior layout change after the occupancy permit was issued.

Ms. Rudolph said the adjudication order dated April 15, 2010 pertaining to section 1119.01(a) the evidence presented for the interior work done i.e. items removed and installed supports the Commissioners ruling. Mr. Gareau said section 1119.01(b) addressing property taxes; the applicant submitted evidence confirming an agreement with the County for the taxes to be paid is in place therefore the Building Official withdraws his violation order of section 1119.01(b). Ms. Rudolph said section 1119.01(a) certificate of occupancy she sees both sides although the commissioner has clearly pointed out that the use is now more of a social nature with the pop machines, appliances and snack area which warrants a closer look. The Surf Shop stated there would be 15 occupants in the facility and then 35 computer stations were installed which is an obvious misrepresentation by the applicant. Mrs. Bellido said the owner who is a businessman knows if you state there will be 15 occupants in the facility you can't just double the occupancy without checking with the city. The business shouldn't have opened until the occupancy permit was received and posted which she believes to be required by law.

Mr. Lopez said saying you did not receive the occupancy permit is not an acceptable excuse the owner knew there was going to be more than 15 occupants and should have stated so to begin with and using excuses is not acceptable. Section 1119.01(a) considerable amount of interior work was performed no permits were applied for, issued or questioned which again is the applicant's responsibility. The excuse of misinterpretation of the online codes is unacceptable. Any responsible adult knows any commercial work being performed requires permits. Mrs. Diver said Mr. Thorne stated he is a restaurant owner so he is clearly aware of being required to apply for multiple types of permits and having inspections. Furthermore he led the building department to believe that there would be a maximum of 15 occupants then pleads ignorance of the law which as a businessman he knows ignorance of the law does not excuse you from it. Mr. Thorne stated himself that he hired many exports to research the establishment including an attorney, an architect, and other professionals but didn't think to ask if permits were required for the interior changes being made. The use which was applied for has changed to say there will be 15 occupants then install 35 stations not counting employees was blatant. If Mr. Thorne was not aware of what he needed to know to open his establishment he should have conferred with his paid staff to find out what was required. Mrs. Sergi said this appears to be asking for forgiveness rather than permission. The building department was misled as to the nature of what the space

was being used for and if there were mistakes made on any forms it should have been brought to the Cities attention and corrected immediately. The owner said his business was like Kinko's they do copying, faxing and internet services and just because you list internet service at the bottom and do some faxes or copying doesn't mean it is not misleading. The alterations made were substantial and should have been in accordance to City Codes which is a concern. The building commissioner and his staff were being fair in their findings. Mr. Lopez said it seems to be a case of abusing a building department that was being friendly to the incoming business and the applicant took advantage of that. Ms. Rudolph said she felt the matter of the use changing should be looked into further and would like the issues addressed separately.

Ms. Rudolph moved, seconded by Mr. Lopez to affirm the Building Commissioners order with regards to Surf Shop LLC of 27328 Lorain Road pertaining to being in violation of Codified Ordinance section 1119.01(a) which was unanimously approved 5-0.

Ms. Rudolph noted that the Building Commissioners finding with regards to Surf Shop LLC of 27328 Lorain Road pertaining to being in violation of Codified Ordinance section 1119.01(b), has been settled as documents showing an agreement with the County is in place to pay delinquent taxes and the issue is now moot.

Ms. Rudolph moved, seconded by Mr. Lopez to affirm the Building Commissioners order with regards to Surf Shop LLC of 27328 Lorain Road pertaining to being in violation of Codified Ordinance section 1119.02(a) roll call on motion Sergi, Diver, Bellido, Lopez "yes", Rudolph "no" motion passed 4-1.

Ms. Rudolph moved, seconded by Mr. Lopez to affirm the Building Commissioners order with regards to Surf Shop LLC of 27328 Lorain Road pertaining to being in violation of Codified Ordinance section 1119.05 which was unanimously approved 5-0.

Mr. Gareau was asked to draft the board's findings for the Surf Shop case and submitted for approval.

COMMUNICATIONS

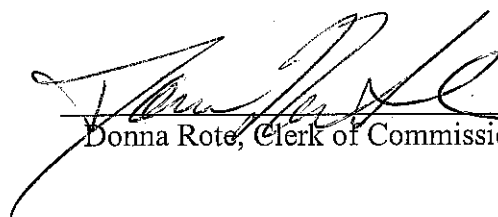
Mrs. Diver said she may not be at the July 1, 2010 meeting due to other commitments.

ADJOURNMENT

With no further business the meeting adjourned at 11:00 p.m.

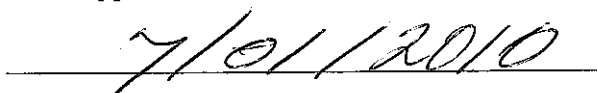


Nancy Sergi, Chair



Donna Rote, Clerk of Commissions

Date Approved:



7/01/2010