

**BOARD OF ZONING APPEALS
CITY OF NORTH OLMSTED
MINUTES OF DECEMBER 1, 2011**

ROLL CALL

Ms. Sergi called the meeting to order at 7:30 p.m. in Council Chambers.

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

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 Ms. Bellido, to approve the amended minutes of November 3, 2011 which passed 5-0.

RESIDENTIAL APPEALS AND REQUESTS

Kerry & Star McFarland; 31407 Bradley Road

Proposal consists of an addition to existing home and the following variance is requested:

A variance for expanding a non-conforming use; code allows continuation of a non-conforming use so long as the use is not extended or expanded onto other parts of the lot, applicant shows a home addition, Section 1165.04(a). Note: Current use is single family residence which is not permitted in a Limited Industry District.

Mr. McFarland and Mr. Margulies, the architect, were sworn in. Mr. McFarland said he'd owned the family home since 2000. His sister and her son lived in the home until July 2011. The existing house is a two bedroom, single bath, 916 square foot home. Due to the current economy he would like to remodel the home to accommodate his business and family. Mr. Margulies said the addition is across the back of the existing home so the front elevation would have minimal changes.

Mr. Mitchell said due to the limited industry zoning, adding to the home is prohibited. He did not believe that the home should be expanded. Mr. McFarland said his business has been broken into and there is no onsite use as the home is too small to use as a home or office. The surrounding area is residential homes which are used both as a residence and business so what he proposes would fit the character of the neighborhood. Ms. Rudolph asked if the rear fence would remain and if he and his wife would reside within the home and Mr. McFarland said yes, he would like to live and run his business from the home. Ms. Rudolph said in visiting the site the area clearly appears residential and asked when the area was rezoned to limited industry. It appears that the city took a populated residential area, rezoned it in the hopes that it would redevelop into limited industry which hasn't occurred. Mr. Gareau believed that the rezoning took place before 1996. The house clearly predates the code and it is a question of allowing the non-conforming use to be expanded or not. Ms. Rudolph said when the site was rezoned the residents didn't have a say. Ms. Diver questioned zoning of the surrounding area. Mr. Margulies said that the area across the street was rezoned residential/office which is why the area

still appears residential. Ms. Diver said the mixed zoning of the area seems to be creating issues. Ms. Rudolph said the opposite side of the street is zoned for exactly what the applicant proposes for his site. Not granting the variance would penalize the applicant as the character of the neighborhood appears to remain. If the lot is sold it's sold as light industry and the addition doesn't adversely affect the neighborhood. Ms. Bellido said the majority of the area is being used as residential this will have both residential and office use. Mr. Lopez felt that the variance should be granted as the lots were rezoned after the area was developed residential.

Ms. Rudolph moved, seconded by Ms. Lopez, to grant Kerry & Star McFarland of 31407 Bradley Road a variance to expand a non-conforming use; applicants show a home addition which is not allowed in limited industry, Section 1165.04(a), which passed 5-0.

Gregory Cuiffo; 5310 Dover Center Road:

Proposal consists of parking a commercial truck in residential driveway. The following variances are requested:

1. A home occupation variance; parking overnight in driveways; code does not permit, applicant shows 23 ft. long truck, Section 1135.02(b)(6).
2. A home occupation variance; requires the residential character of the dwelling exterior shall not be changed; code does not permit, applicant shows truck in driveway, Section 1135.02(b)(5).
3. A home occupation variance for not residing within the dwelling; code requires members of the family, applicant uses as rental property, Section 1135.02(b)(1).

Mr. and Ms. Cuiffo, Mr. and Mrs. Spisak and Councilman Schumann were sworn in. Ms. Cuiffo said they purchased the home in 2008 with the intent of it being a residence with a garage to use as storage and to park their work truck. The home is used as a single family residence and their box-style truck is backed into the driveway and the garage is used as storage. This use has taken place for the past three and half years and they haven't received any complaints. The building, fire and service departments have all been to their home for one reason or another and have seen the truck in the driveway. They can't afford to rent a storage space and if she parked it in her own home's driveway it wouldn't fit the neighborhood and there would be complaints. The driveway is 120 feet deep and the truck is backed in so only the front of the truck is visible. Photos of the parked truck were submitted which they don't believe changes the character of the neighborhood. If their rear neighbor believes the line of site to the truck is disrupting to their home they would be happy to plant tall evergreens to buffer their line of site. She noted a typed statement which their neighbors signed saying they do not oppose the truck parked in the driveway. She is concerned for her husband's safety if forced to store the vehicle at a warehouse; it would be very late at night and add additional driving time.

Mr. Spisak submitted photos which he took of the applicant's parked vehicle from his backyard. The code was written to protect residential neighborhoods and to keep commercial vehicles from disrupting residents. For the applicants to suggest at their home the truck would be an eyesore but at their rental property it isn't is insulting. The applicants use this home as a rental property, they are both fully employed and their business is a seasonal one which operates during the carnival season each year. The truck is started and loaded with a lift gate very early in the morning leaves and then returns to be unloaded after midnight. The applicant and his helpers

make quite a bit of noise while unloading and moving things out of the truck to the garage. Commercial deliveries are being made to the home throughout the week. He asked if one ton trucks were allowed to travel on Dover Center and Butternut Ridge Roads.

Ms. Sergi requested the applicant clarify if they live in the home. Ms. Cuiffo said the home is rented to a young couple with small children. If allowed to keep the truck onsite they will plug the truck into an outlet and only move things in the morning hours. The deliveries that are made at the home are done so by vans only and the concession business which is seasonal allows them to afford their home and have the rental property without it they could not afford both. Ms. Spisak said the renters have small children and with the deliveries and the box-style truck coming and going places the children in danger. There have been arguments after midnight with tenants over parking and late night loading and noise created by the landlord. The season runs from spring to fall when windows are left open for all to hear. The freezers are cleaned and left unattended in the driveway open which in itself is hazardous to the neighborhood children and food is being stored in the garage which attracts rodents. Mr. Schumann questioned how the applicant could seek the variance to have or run a business at the home which they do not reside in. There are a lot of vacant homes within North Olmsted and the city needs to be mindful to protect the residential character of those areas. Ms. Cuiffo said the business is not run out of the garage it is used as storage and parking only. The business is only from the first week of June to second week of September. If any neighbor has issues with noise they should let them know and they would address it. Mr. Spisak read chapters 1363.07 and 1161.07 pertaining to storage of industrial or commercial equipment and material waste for commercial use being prohibited under residential zoning and parking commercial vehicles on residential property.

Mr. Mitchell said they received complaints from neighbors pertaining to storage of propane tanks and the fire marshal rendered an opinion that as long as the tanks were secured and kept in the garage there was no violation. At the time of the inspection there were no freezers within the garage. The commercial truck changes the character of the neighborhood. The building department recommends the truck be removed from the site. Mr. Gareau advised the members to limit their review to the truck and variances as written. Ms. Ciuffo noted that all neighbors that received notice of the hearing signed off on a statement that they had no objections to the truck being parked in the driveway other than the Spisaks. Ms. Rudolph questioned if the photos taken by Mr. Spisak was taken from his yard and he said yes his rear yard extends past the applicant's lot. Mr. Lopez recalled a similar case where a resident kept his work truck at home and Mr. Mitchell noted that the owner lived in the home.

Mr. Lopez said keeping just to the issue of the truck being parked in the driveway does change the character of the neighborhood. If the city starts allowing commercial vehicles in residential driveways the residential character will be lost as will the value of the homes. Ms. Diver said the owner pointed out that they couldn't get away with what they are doing at this site at their home. Such a use at this residence is not only placing a burden on the renters but the neighbors as well. Mr. Lopez said the comment pertaining to the safety of late drop offs is unfounded as they don't live at the site they're already conducting late drop offs. Ms. Rudolph said the applicant from the time of purchasing the home intended to rent the home and use the drive and garage as a commercial storage site. The vehicle changes the character of the neighborhood and to imply

that such a use is acceptable at the owner's rental property but not at their own residence clearly shows they understand the adverse impact such a vehicle has on a residential neighborhood.

Mr. Lopez moved, seconded by Ms. Diver, to grant Gregory Cuiffo of 5310 Dover Center Road the following variances:

- 1. A home occupation variance; parking overnight in driveways; code does not permit, applicant shows 23 ft. long truck, Section 1135.02(b)(6).**
- 2. A home occupation variance; requires the residential character of the dwelling exterior shall not be changed; code does not permit, applicant shows truck in driveway, Section 1135.02(b)(5).**
- 3. A home occupation variance for not residing within the dwelling; code requires members of the family, applicant uses as rental property, Section 1135.02(b)(1).**

Motion failed 0-5.

COMMERCIAL APPEALS AND REQUESTS

Jared Jewelers; 25851 Brookpark Road

The proposal consists of a wall sign. The following variances are requested:

- 1. A 9" variance for a wall sign higher than code allows; code permits 4'0", applicant shows 4'9", Section 1163.28(c).**
- 2. A variance for a third wall sign on a building; code permits 1, applicant shows 3, Section 1163.28(a). (BZA granted a variance for 1 additional wall sign 5/5/2003).**
- 3. A 164.2 sq. ft. variance for additional sq. ft. of signage on a building; code permits 103 sq. ft., applicant shows 267.2 sq. ft., Section 1163.25(b). (BZA granted a variance for 75.1 sq. ft. of additional signage on a building. 5/5/2003).**

Mr. Beeman of Wagner Electric Signs was sworn in. A letter from the owner was read authorizing Mr. Beeman to represent them. Mr. Beeman said his client would like to install a sign on the east elevation of the building. The third sign would not affect government services and will match the existing signs both in size and material. It would give them visibility to traffic entering the Brookpark Road entrance. Mr. Mitchell said the applicant was previously granted variances for signage and he does not believe the request is warranted. Ms. Rudolph asked if their customers complained about finding the store and Mr. Beeman said he had not spoken to the client so is unaware of any complaints. The sign identifies the location and being identified is the key to any business. Ms. Diver suggested relocating existing signs. Ms. Rudolph said the applicant has not provided evidence that a third wall sign is warranted. There is also undeveloped space to the east which if developed would block the east elevation. Ms. Bellido said when driving to the site the two existing signs are very visible. Ms. Sergi said the diamond logos were on all four elevations of the building which provides recognition.

Ms. Rudolph moved, seconded by Mr. Lopez, to grant Jared Jewelers of 25851 Brookpark Road the following variances:

- 1. A 9" variance for a wall sign higher than code allows; code permits 4'0", applicant shows 4'9", Section 1163.28(c).**
- 2. A variance for a third wall sign on a building; code permits 1, applicant shows 3, Section 1163.28(a).**

3. A 164.2 sq. ft. variance for additional sq. ft. of signage on a building; code permits 103 sq. ft., applicant shows 267.2 sq. ft., Section 1163.25(b).
Motion failed 0-5.

CMS11-23: Lucky Break Café; 26715 Brookpark Road Ext

The proposal consists of an internet café. The following variances are requested:

1. A 263.5 foot variance for insufficient spacing. Code requires a minimum distance of 500 feet measured from the closest point of the building and parking lot of the business to the property line of any residentially zoned property, place of worship, public or private school, park, playground, library, or public building. Applicant shows lot 236.5 feet from residentially zoned property, Section 1139.01(d)(4)(A). See exhibit.
2. A variance for insufficient floor area. Code requires a minimum area of fifty (50) square feet per entertainment device in each room in which entertainment devices are located. Applicant shows less than 50 square feet per device, Section 1139.01(d)(4)(B). Note: rear hall and area outside restrooms are not considered part of the room.
3. A variance for insufficient parking. Code requires a minimum of one (1) parking space per every terminal, plus one (1) space per every full time employee. Applicant shows less, see table, Section 1139.01(d)(4)(D).

	Square Footage	Large unit development 1161.05(w) min: 5 per 1,000 sf	Large unit development 1161.05(w) max: 6 per 1,000 sf	Existing parking spaces
Cherandon No. 2 Lucky Break Café	16,142 sf (plaza) 1,600 sf (café)	65 <u>21</u> 86	78 <u>21</u> 99	52 (-34)

*80% of total floor area used to calculate parking requirement.

Mr. Kanis and Mr. DiBenedetto were sworn in. Mr. Kanis said they are requesting three variances for their business. They first applied for their permits and licenses August of 2010 and they were not made aware of being out of code until after all the work was completed and inspections passed. It wasn't until they were about to receive their occupancy permit that they were told they needed to go before the boards and commissions. Code requires 50 sq ft of space per unit and they have been able to provide about 48 sq ft per unit. They are required to have 21 parking spaces and the lot has 52 parking spaces which are shared. There is also a variance required for being outside the zoning. The 253 foot distance to a residential lot is residential area which is wooded undeveloped property. Mr. DiBenedetto said his tenants have spent thousand of dollars to develop the suite and pulled the proper permits for all the work they did. He stated that his family has cross easements for parking throughout the plaza.

Mr. Mitchell said the site needs a variance of 263.5 ft for distance from a residential lot. He noted that the residential area was undeveloped green space. The applicants need a total of 1,000 sq ft for the 20 units and have 991 sq ft of space which doesn't meet the 50 sq ft per device requirement. Parking for the tenant building has 52 existing spaces and 86 spaces are required therefore a variance for 34 parking spaces is required. Ms. Sergi asked if the building regardless if the applicant is in the space or not was short on parking and Mr. Mitchell said yes. Ms. Sergi asked the building departments stand on the request. Mr. Mitchell said the parcel/lot parking was already non-conforming and the proposed tenant increases the non-conformance an

additional 21 parking spaces. Ms. Rudolph said the way the code is written the applicant is only using 1/10 of the building space and using a quarter of the parking required for the building. Mr. Gareau said the discussion at Planning and Design Commission meeting looked at cross easement parking for all four parcels and asked if the building official calculated what was required versus what is currently in place. Mr. Mitchell said using that the entire plaza parking would require a variance for 29 parking spaces. Mr. Gareau noted that using the entire plaza also moved the use closer to the residential area as well as the church. Mr. Gareau questioned what tenants were in the same building as the applicant and Mr. DiBenedetto said an art studio, a barber shop, Indian restaurant, and Ohio Realty. All but the restaurant closes by 6:00 pm. The neighboring building to the west houses Wild Birds and their family office so the parking is always open. Arturo's draws the most parking and that is to the east. Mr. Gareau noted that an existing café already in North Olmsted is pretty much full from the time it opens to the time it closes and asked how the landlord would ensure his existing establishments wouldn't lose their assigned parking spaces. Mr. DiBenedetto said he was not sure as to date the western parking lots have been used very little and they have never had issues pertaining to parking in the past.

Ms. Rudolph said it appeared there were two different ordinances pertaining to the parking 1139.01(d)(4)(D) which relates to parking per terminal plus employee and 1161.05 for large unit development. She asked if one took precedence over the other and Mr. Mitchell said they still needed to satisfy both requirements. Mr. DiBenedetto said the plaza pre-dates most current zoning codes. He commented that no matter what tenant went into the space they would need parking variances however this use seems to be unusually restrictive. Ms. Diver said she was uncomfortable with the distance to the residential lots and daycare. It was pointed out that the liquor store abutted the residential property line and was closer to the daycare than the proposed use would be. Board member felt floor space per unit was minimal and had no objections to the request. Ms. Diver said there are other similar centers which were built many years ago and when tenant space is full parking becomes a major issue. Mr. Lopez said he understood any tenant would require parking variances but, is concerned this could adversely impact the existing tenants by using all available parking spaces. Ms. Sergi agreed as the businesses throughout the center have the same business hours and after normal business hours Arturo's, the Indian Restaurant and this café will be competing for parking spaces. Ms. Rudolph and Ms. Bellido felt parking was warranted because no matter what tenant went into any of the vacant spaces they would require parking variances, the number of parking spaces needed may fluctuate a bit but a parking variance is unavoidable. Denying parking variances for pre-existing centers such as this not only limits the landlords ability to fill his spaces it limits what tenants can occupy the spaces.

Ms. Rudolph moved, seconded by Mr. Lopez, to grant CMS11-23; Lucky Break Café of 26715 Brookpark Road Ext, a 263.5 foot variance for insufficient spacing. Code requires a minimum distance of 500 feet measured from the closest point of the building and parking lot of the business to the property line of any residentially zoned property, place of worship, public or private school, park, playground, library, or public building. Applicant shows lot 236.5 feet from residentially zoned property, Section 1139.01(d)(4)(A). Roll call: Sergi, Bellido, Rudolph, Lopez – yes; Diver - no. Motion passed 4-1.

Ms. Rudolph moved, seconded by Mr. Lopez, to grant CMS11-23; Lucky Break Café of 26715 Brookpark Road Ext a variance for insufficient floor area. Code requires a

minimum area of fifty (50) square feet per entertainment device in each room in which entertainment devices are located. Applicant shows less than 50 square feet per device, Section 1139.01(d)(4)(B). Motion passed 5-0.

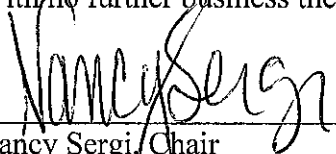
Ms. Rudolph moved, seconded by Mr. Lopez, to grant CMS11-23; Lucky Break Café of 26715 Brookpark Road Ext, a variance for insufficient parking. Code requires a minimum of one (1) parking space per every terminal, plus one (1) space per every full time employee. Applicant shows less, see table, Section 1139.01(d)(4)(D).

	Square Footage	Large unit development 1161.05(w) min: 5 per 1,000 sf	Large unit development 1161.05(w) max: 6 per 1,000 sf	Existing parking spaces
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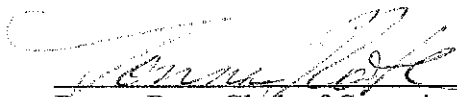
Roll call: Bellido, Rudolph – yes; Lopez, Diver, Sergi – no. Motion failed 2-3.

ADJOURNMENT

With no further business the meeting was adjourned at 9:30 pm.



 Nancy Sergi, Chair



 Donna Rote, Clerk of Commissions

Approved:

 Jan 10, 2012