

## MINUTES OF THE BOARD OF ZONING & BUILDING APPEALS, 1-8-2020

The meeting was called to order at 7:01 P.M. by Chairman Pro Tem Chauncey Miller.

John Gasior swears in new member Michael Bulger.

Present: Michael Bulger; Bruce Klingshirn; Mark Ladegaard; Chauncey Miller; Kurt Schatschneider; Pam Fechter, Planning Coordinator; John Gasior, Law Director; Rick Schneider, Zoning Enforcement Officer and Jill Clements, Secretary.

Chairman Pro Tem opens the floor for nominations for Chairman. A motion was made by Mr. Klingshirn, seconded by Mr. Ladegaard to open the floor for nominations for Chairman. The vote was: "AYES" All.

Kurt Schatschneider nominates Chauncey Miller. There being no other nominations, the Secretary enters a unanimous vote for Chauncey Miller as Chairman.

Chauncey Miller nominates Mark Ladegaard as Chairman Pro Tem. There being no other nomination the Secretary enters a unanimous vote for Mark Ladegaard as Chairman Pro Tem.

John Gasior swears in Chauncey Miller as Chairman for Board of Zoning and Building Appeals.

## MINUTES OF THE REGULAR MEETING – DECEMBER 4, 2019

A motion was made by Mr. Ladegaard, seconded by Mr. Klingshirn to dispense with the reading of the regular minutes of Wednesday, December 4, 2019 and to approve said minutes as amended. The vote was: 4 "AYES" and 1 "ABSTAIN". The Chairman declared the motion passed.

## ADDITIONS/DELETIONS

A motion was made by Mr. Schatschneider, seconded by Mr. Klingshirn to delete item #8 The Doolos Appeal at the applicant's request. The vote was: "AYES" All. The Chair declared the motion passed.

A motion was made by Mr. Ladegaard, seconded by Mr. Klingshirn to accept the agenda as amended. The vote was: "AYES" All. The Chair declared the motion passed.

## PANERA RESTAURANT APPEAL

Mike Gilbert of DMG is requesting a 3-car stacking variance from C.O. 1292.09(1) Minimum Number of Waiting spaces to allow the proposed Panera Restaurant to have 7 car drive thru stacking instead of 10 required by code located at 35680 Chester Road.

Mike Gilbert is sworn in by Mr. Gasior. Mr. Gilbert says they want to request a variance from the stack count as it currently reads 10 cars and their site plan suggests a 7-car stack. Mr. Gilbert says that Panera Bread is a free-standing restaurant and they serve their clients in several ways, some come into the store and stay. Mr. Gilbert says some order online and park in a special spot and go in to pick up their order and then they have a full-service drive thru. Mr. Gilbert says Panera has just recently introduced drive thru's to their operations. Mr. Gilbert says Panera has found they only need 4-6 cars in their stack as that is their minimum target. He says there are

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special spots for people to stop to pick up their order or their drive thru is too large and they need to wait. Mr. Gilbert says the building is centered in their site and if they were to experience more cars than 7, they would stay within their internal drive lines. Mr. Gilbert says there will be a new curb cut on Chester which will allow access to their building and the new Hobby Lobby which is the bigger part of the site and there is the signalized site to get into as well by Menards. Mr. Gilbert says the zoning code is to keep vehicles on their site and they want to do that, and they will be able to contain them internally. Mr. Klingshirn says his concern is for like Dunkin Donuts or Starbucks, there are so many cars that back up. Mr. Gilbert says there are three intensities when designing drive thru's-light, medium and heavy. Mr. Gilbert says McDonalds, Chick fil A, Starbucks those are all heavy drive thru users and their car stacks should be larger. Mr. Klingshirn asks if they can design it for 10. Mr. Gilbert says he really can't as another operational component is, they need at least 70ish parking spaces, especially at high intensity use time and want to make sure there are open spots. Mr. Gilbert says 30% or less of their business is drive thru. Mr. Schatschneider asks what the average wait time is from when you order until you get to the window. Mr. Gilbert says its around 4 minutes on average. Mr. Gilbert says if they order just beverages it could be quicker or if they have a large order, they will be asked to park in the spots designated for that. Mr. Schatschneider asks how many of those there are, and Mr. Gilbert says 3 and Mr. Schatschneider says then basically you have 10 spots. Mr. Gilbert says that is a good way to look at it.

A motion was made by Mr. Ladegaard, seconded by Mr. Schatschneider to approve the 3car stacking variance from C.O. 1292.09(1) Minimum Number of Waiting spaces to allow the proposed Panera Restaurant to have 7 car drive thru stacking instead of 10 required by code located at 35680 Chester Road. The vote was: "AYES" All. The Chair declared the motion passed. Mr. Gasior asks when the store will be open. Mr. Gilbert says they want to start early spring. Ms. Fechter asks how long construction time is. Mr. Gilbert says it takes about a 140days for the site and shell and another 4 months to do interior. Mr. Gilbert says they need to coordinate with Hobby Lobby as well.

### DANIEL CECIL

Daniel Cecil is requesting a requesting a variance from C.O. 1262.08 Accessory Use Regulations to allow the existing accessory building to stay with no primary dwelling located at 4427 Case Road.

Dan Cecil is sworn in by Mr. Gasior. Mr. Cecil says recently he purchased property from a lot split and there was an existing building on the property when he purchased it and he would like to keep the building and utilize it for storage. Mr. Cecil says it was built as a horse stable with three walls and he would like to keep it the same size but enclose it and add garage doors. Ms. Fechter says Mr. Cecil was through Planning Commission and recommended the Special Use Permit for the flag lot and its been approved. Mr. Klingshirn asks if he has any intention of building on the lot. Mr. Cecil says there are no immediate plans, but he did get the approval to down the road. Mr. Cecil says he lives 200 feet from the rear of the lot now and has a primary residence. Mr. Klingshirn says they don't like a lot without a house and if you were to build, we could have a time frame. Mr. Cecil says there is not a plan to build soon. Mr. Schatschneider asks if he needs anything to enclose the building. Mr. Schneider says he would not need a variance just a zoning and building permit. Mr. Schatschneider asks if the can make it bigger and

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Mr. Schneider says he could. Mr. Schneider says this Board granted a variance last year for the stable for the side yard set back variance and it was approximately a 21' variance. Mr. Schneider says originally the setback was for 5 acres or more and now has under that. Mr. Ladegaard says since he's over 2 acres and if he makes it longer the variance would need to be amended. Mr. Gasior asks if he got a variance and it was confirmed the owner at the time did get a variance. The Secretary reads the section of the code for basically anything over 500 sq. ft and the lot size and says the setback is to be the size of the wall. Mr. Schatschneider say the reason is if we ok the variance, he can make the building as big as he wants because of the size of the lot without a house on or does he need to come back if he doesn't have a house. Mr. Gasior says he can apply to make it bigger without a house, but he thinks this body would be reluctant to grant that variance as he is here to keep what he has without a house. Mr. Gasior says if the variance is granted that size is what he is allowed without a house, if he wants to make it bigger, he needs to come back. Brief conversation is on if Mr. Cecil were to add would a variance be needed if he added onto the barn. Mr. Gasior says if the variance is granted that is covered and they would need to comply with setback and square footage. Mr. Gasior says its not an area variance they are granting its more of a use variance. Mr. Gasior says to have a structure with no house is a code variance not an area variance. He continues to say there have been variances granted on the conditions the applicant constructs the home within a time frame, but Mr. Cecil says he has no intention of doing that soon and they are in a difficult spot. Mr. Schneider says this structure is preexisting and Ms. Fechter says he lives 200 feet away. Mr. Gasior asks if his lot is contiguous to the lot and Mr. Cecil says no, they don't touch. Mr. Ladegaard says what Rick said about this being a structure that is existing, and he is not asking to build anything and thinks its ok. Mr. Gasior asks about a stipulation with the lot split in Planning and then in Council and says he thought the talk was the barn was there and he was building a house. Ms. Fechter and Mr. Schneider, say they don't believe that came up in Planning at all. Ms. Fechter says she's not sure it came up in Council either. Ms. Fechter says the front parcel got the variance and at the time she was going to tear down the stable and use the wood to redo the garage and changed her mind and Mr. Cecil asked to keep it. Mr. Gasior talks this might not be the proper place to address this issue since he is under a Special Use Permit. Mr. Gasior says he recalls talk about a future house and Ms. Fechter asks should he go back to amend the Special Use Permit to include the barn. Mr. Gasior says that is a good point. Mr. Schneider says there are few lots with barns and no houses. Mr. Gasior says this is a use issue and not an area variance. Mr. Gasior asks if you can put up a duplex in an R-1 area and it was determined no- it's a use variance on how they want to use that parcel. Discussion continues about the difference with a use variance and an area variance and how they differ and the fact that this body can not issue use variances. Mr. Miller asks since there is a new owner did the variance go away? Mr. Gasior says no- it stays with that lot. City Council minutes were read by the Secretary. Mr. Gasior says the concern that night was who should get the ordinance with the sale pending. Mr. Gasior says when they come in front of Planning, we always let them know if they are leaving an accessory building, they need a variance and/or a house. Ms. Fechter says in the contract it stated the barn was going to be torn down therefore it wasn't talked about and maybe it was just read in the purchase agreement and there was not actual talk about the barn coming down or a house going up. Planning minutes were read to the Board and there were no comments other than the septic leech field being unknown and Mrs. DeChant asks about the Special Use Permit and wanted to make sure nothing will be built without then knowing again. It was determined that for Mr. Cecil to go along with the lot split and flag lot Mr. Cecil needed approval from Ms. Frey and they believe all this barn

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being torn down was part of the purchase agreement. Mr. Cecil says the addendum did say the barn would be torn down. Mr. Cecil says in talking with Ms. Frey she was going to take the material from the stable and do her garage and Mr. Cecil says this stable is done very nicely. Mr. Cecil says he offered to purchase it from her, and she agreed. Mr. Gasior says he understands the possibility of the variance but feels it is still use area. Mr. Cecil says that the barn is 52'x11' and said if he needs to make it smaller, they can take a stall out but doesn't think that will resolve the issue. Mr. Cecil says the main issue now is if it should be there. He says the barn was built too close to the DeChant lot and has spoken to both neighbors and they are ok with the barn. Mr. Cecil says the one concern that Sarah DeChant had was farm animals and the sound. There were horses and steer in there and she wanted to make sure there wouldn't be any farm animals. Mr. Cecil says the reason he would want to keep it is for storage of items that he would use to take care of the lot- a brush hog and lawn mower, things like that. Mr. Schatschneider says if we grant the variance how big of building could he put on there. Mr. Schneider says they could limit the size until a residence is built there. Mr. Ladegaard says he is still good for about 3,000 sq. ft. with the size of the lot. Mr. Ladegaard says the size is ok with the land he has, and Mr. Cecil says its an odd shape to store and would like to put a garage door on the one end. Mr. Gasior says the Charter does not give the Board any power to change uses. Mr. Gasior says this building is a use and not an area variance and he doesn't think they can grant this variance. Mr. Gasior says to Mr. Cecil he can go back to Planning and Council and ask to amend the Special Use Permit to include the barn as the deal with the previous owner fell through as she couldn't use the material and now is left with the barn. Mr. Gasior suggest that Mr. Cecil withdraw this application and apply to Planning and Council as they have the authority to approve that. Mr. Miller says that is a good way to go and Mr. Schneider says Mr. Gasior is correct. Mr. Gasior says just explain to them what happened and the procedure going from Planning to Council and says hopefully by middle of March decision should be made.

A motion was made by Mr. Klingshirn, seconded by Mr. Schatschneider to withdraw Mr. Cecil's application. The vote was: "AYES" All. The Chair declared the motion passed. Mr. Cecil says he wishes there was a different result but appreciates all their time and effort to work through this to get it to the right place.

### JOHN JAMESON APPEAL

John Jameson is requesting a 1' height variance from C.O. 1294.08(a) Fence Location, Height and Opacity to allow the installation of a 5' high vinyl fence in the front yards of a corner lot to be located at 4297 Gatwick Dr.

A motion was made by Mr. Schatschneider, seconded by Mr. Klingshirn to table until the February meeting at the applicant's request. The vote was: "AYES" All. The Chair declared the motion passed.

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### ZOOM EXPRESS APPEAL

Mark Bailin of Diamond Signs and Graphics is requesting a 1' height variance from C.O. 1290.07(e) Maximum Height of Freestanding Signs, a 12 sq. ft. variance from C.O. 1290.05(f) Maximum Sign Area and a variance from 1290.06(d) Regulations for Freestanding Signs to allow two directional signs to be 4' tall, 16 sq. ft. and located within the Right of Way to be located at the entrances for Zoom Express Car Wash on Colorado and Chester.

Mark Bailin of Diamond Signs and Graphics is sworn in by Mr. Gasior. Mr. Bailin says he is asking for a variance for height and square footage of the directional signs and location of them as well. Mr. Bailin says the one on Colorado would be a single sided directional sign and the one on Chester would be double sided. Mr. Bailin says the one on Colorado will help direct them onto their site and not McDonalds with all the traffic. Mr. Bailin shows what they would like to propose as they feel that sign is the best visibility for that location. Ms. Fechter asks about the sign on Chester Road and says the original drawing shows the sign in a different location. Ms. Gasior says that is a big Right of Way and he believes the sign is still in the Right of Way. Mr. Schatschneider asks for clarification of the site plan for what is the right of way. Mr. Gasior says its owned by the City and it was confirmed the one on Colorado is the State of Ohio and on Chester it's the City of Avon. Discussion in on the size of the signs and the location from multiple people. It was determined these are directional signs and not a monument. The monument sign complied with size requirement and location. Mr. Bailin shows the 16 sq. ft. directional sign they have in Stow. Ms. Fechter says the sign on Colorado we are asking for size and right of way and mentions we could not address that one until we get approval from the State of Ohio. Ms. Fechter says they have had conversation with the owner about future possible reconfiguration on 611 and there will be an agreement with the owner if a loon comes into play. Ms. Fechter says if that does make its way into construction it will take the piece of property where the sign is shown. Ms. Fechter says ODOT would need to approve that sign. Mr. Gasior says ODOT will need to get on board for what is going on in that area. Mr. Gasior reads 1290.12 Prohibited signs section of code referencing no signs allowed in the Public Right of Way and isn't sure you can grant a variance for something that is prohibited and to look at a directional sign, that needs to be 5' outside of the right of way. Mr. Gasior says we can't grant the variance in the right of way and the directional sign would have to be at least a foot off the right of way if he requests that variance, but it cannot be in the right of way. Mr. Gasior suggests a table tonight and resubmit a drawing that shows the sign one foot inside of the right of way as what is submitted it can not be entertained. Mr. Gasior says if he wants to put it 5' off the right of way on Chester, he won't have to come back but anything closer a variance would be required. Mr. Bailin says the next question is the size and it was determined any deviation from the code a variance would be required. Mr. Bailin says if he moves the Chester sign and will ask for a variance for size to make it more visible and says he can ask for the variance one foot inside the right of way. Mr. Bailin says he will revise drawings for Chester, same height and variance for 1' inside the right of way. Mr. Schatschneider is concerned with the size will it affect visibility of turning out of site. Ms. Fechter says the right of way is so far back it will not be an issue. Mr. Gasior says come back with redrawn sign on your property with the size you want and ask for appropriate variances with Chester. Ms. Fechter says they will need to contact ODOT for the sign on Colorado Ave and will need that done before they could look at that Colorado sign. Mr. Gasior says if ODOT gives your permission, they will need to come back to make sure its ok to put the sign in the right of way since its not allowed. Mr. Bailin says he apologizes for not

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knowing its ODOT right of way and not the City. Mr. Ladegaard asks if they approve the sign it means the size and the height and if you were to go 5' off the property line could they do it today. Mr. Bailin says they have put a lot of time into the location of these signs and given traffic they feel that the two locations were helpful and need the larger sign. Another discussion is had between multiple people about the location and size of the signs and what can be done tonight. Mr. Bailin asks to be tabled until February meeting for revised drawing for Chester Road sign and allow him time to talk to ODOT in the meantime.

A motion is made by Mr. Bulger, seconded by Mr. Ladegaard to table until the February meeting at the applicant's request. The vote was: "AYES" All. The Chair declared the motion passed.

### COMMENTS

### ADJOURN

A motion was made by Mr. Bulger, seconded by Mr. Ladegaard to adjourn. The vote was: "AYES" All. The Chair declared the motion passed. The meeting was adjourned at 8:39P.M.