

MINUTES

**BOARD OF ZONING AND BUILDING APPEALS
THURSDAY, SEPTEMBER 15, 2022 6:00 PM**

**PLACE: COUNCIL CHAMBERS
7232 EAST MAIN STREET, REYNOLDSBURG, OH 43068**

A. CALL TO ORDER

PRESENT: Linder, Furst, Bulls, Barnhart
ABSENT: Davis

2. APPROVAL OF MINUTES

1. Board of Zoning and Building Appeals – Regular Meeting – August 18, 2022

Minutes stand approved

3. APPROVAL OF AGENDA

Agenda stands approved

4. SWEARING IN OF SPEAKERS

Speakers for the evening sworn in by Mr. Furst.

B. PUBLIC COMMENT

Mr. Furst: The applicant for item C-5 has asked for the item to be removed from the agenda. I do move to remove the item from the agenda.

Pastor Linder: I second.

Ms. Barnhart. Yes. Ms. Bulls. Yes. Mr. Furst. Yes. Pastor Linder. Yes.

C. NEW BUSINESS

1. 2374 Taylor Square Dr; Application #2022-5351; Applicant Eric Leibowitz; Variance - Proposed Drive-Thru Addition

Mr. Meyer read the staff reports into the record.

On behalf of the City of Reynoldsburg, EMH&T conducted a preliminary engineering review of the private development plan for the proposed drive thru addition to the existing Panera store located at 2374 Taylor Square Drive. The following summarizes our findings and recommendations with respect to this development.

ROADWAY ACCESS AND SITE PARKING

1. The proposed drive thru addition is to be located on the north side of the existing building. Traffic

will enter from the east side and exit on the west side of the building. The provided lane width of

12-feet is acceptable.

a. The drive thru lane does not have a bypass lane for a vehicle to exit the lane if desired midway through the queue. A bypass lane is required by City Code.

i. Within the application, the applicant states that a bypass lane was not included as it would have required a memorial tree and placard to be removed. This tree was planted in honor of a former employee of the TGI-Fridays restaurant directly to the north. Additionally, the bypass lane would have been in very close proximity to the existing sidewalk leading into the adjacent restaurant.

ii. With these hardships in mind, we take no issue with the elimination of the bypass lane. However, signage should be included at the beginning of the drive thru queue stating a bypass lane is not present.

2. The northern edge of the drive thru lane appears to be encroaching onto the adjacent property to

the north. An easement shall be coordinated with the adjacent owner and put in place as part of

the plan.

3. Signage will also be required to be placed at the exit of the drive thru stating “Do Not Enter” or

similar to prevent traffic from entering the drive thru lane from the wrong direction.

4. The proposed pavement section in the parking lot will need to match the original Panera plan,

which consisted of four inches (4-in) of asphalt concrete and eight inches (8-in) of aggregate base.

5. A refuse vehicle will likely have difficulty accessing the relocated dumpster since it is perpendicular

to the drive aisle. The enclosure should be angled to allow easier access or the owner should provide some level of assurance the refuse vehicle will access the enclosure “after hours” when

traffic will not impede their maneuvering.

6. The landscape plan shows plantings off of the property. Will an agreement be required with the

adjacent owner to plant and/or maintain this landscaping?

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UTILITIES

7. Any utility adjustments, relocations or additions should be shown on the PGU plan.

STORMWATER

8. At time of PGU submittal, engineer shall submit calculation showing percent increase or decrease

of impervious area based on site modifications. If there is an increase, a stormwater management

report will be required to be submitted showing either that the regional stormwater management

feature can accept the additional impervious area or if not, how the system will be modified or supplemented to accept it.

DETAILS / SPECIFICATIONS

9. Where applicable, refer to Reynoldsburg Standard Construction Drawings on the PGU plan.

OHM

Enclosed is our review of the application material for the above referenced plans.

1. Project Summary **a.** The property is located at 2374 Taylor Square Road. The site consists of 2 parcels under single ownership totaling 3.88 acres. The site is zoned CC-Community Commercial and is found at the southeast corner of Lancaster Avenue (State Route 256) and Taylor Road SW.

b. Adjacent zoning districts are RM - Residential Medium to the north and east and SR - Suburban Residential to the north.

c. The site currently contains two buildings on separate parcels, both used as Food Service - Full-Service Restaurants including the Panera Bread Restaurant.

d. The applicant is seeking a variance to Section 1105.13, L “to provide escape/abort lanes for vehicles desiring to leave the stacking lanes or to avoid disabled vehicles.” The lane is typically required to allow those staked in the drive - thru lane to leave the que without having to wait to the end and to allow full site circulation without leaving the site.

2. Zoning Review-Drive-Thru Service (Section 1103.13, L - Drive-Thru Service) **a.** The proposed drive-thru lane is 12 feet in width, which does not allow sufficient room “to provide escape/abort lanes for vehicles desiring to leave the stacking lanes or to avoid disabled vehicles” along its entire length (Section 1105.13, L, Supplementary Use Conditions, Drive-Thru Service).

b. The applicant cites in their statement of hardship that the provision of an escape/abort lane would not be possible because of an existing memorial tree and monument plaque and because of the proximity (1-foot) of an existing sidewalk on the south side of the adjoining T.G.I. Friday’s building. If you consider the entire 2 parcel site, including the T.G.I. Friday’s building there is sufficient circulation space (2 twelve-foot parking drive aisle lanes) to circulate the site without the drive-thru escape/abort lane.

c. A dumpster and enclosure are proposed to be relocated from the side of the existing building to a location within the parking lot but with less space for sanitation vehicles to maneuver around parked vehicles (backing straight in and out) to and from the enclosure. If the proposed location is changed to be slightly to the north and east and placed within the parking lot island area, the dumpster and enclosure can be angled to allow use of the circulation isle for maneuvering. Otherwise, hours for pick-up will need to be restricted to after business to take advantage of the space vacated by parked cars.

Recommendation

- a. The applicant is seeking a variance to allow for the elimination of the required escape/abort lanes for a drive-thru facility. The variance request is consistent with Section 1109.13, Variances and, more specifically, with the variance standards of Section 1109.13, D Variances.
- b. The variance is supported if the following conditions and safeguards (Section 1109.13, Variances, E) are met:
 - i. Allow for the variation of a drive-thru lane and an escape/abort lane (Section 1103.13, L) to a drive-thru lane only servicing a drive-thru addition to an existing restaurant.
 - ii. To allow for better circulation, relocate the refuse dumpster and enclosure slightly to the north and east to within the parking lot island area to allow use of the circulation isle for maneuvering. Or, restrict pick-up hours to after business to take advantage of the space vacated by parked cars.

Mr. Liebowitz on behalf of the applicant, Covelli Enterprises, which operates the Panera franchises explained how this was developed in 2002 and consumer behavior has changed. Covelli wants to reinvest in the area and stay in the center by creating a drive thru, that is a permitted use. The site conditions create a situation where it is difficult to create a required full escape lane for the drive thru. In the plan they have worked to allow the stacking before the order board to create as much of an opportunity to bail out before getting to the ordering board. In the letter they included was that the proximity to the site sidewalk for TGI Friday's and the memorial tree would create more conflict by moving the escape lane closer. They are trying to take a 20 year old building and adapt it for today's consumer. In terms of dumpster location, the applicant has no problem working through that with staff. Mr. Liebowitz also agreed to work on the signage that was pointed out in the staff report. They feel as is Panera and Covelli are on the same page and don't want to create a traffic headache. With Covelli having multiple properties that function without an escape lane, they know it can be done safely.

Mr. Furst asked if they have thought about an easement with TGI Fridays.

Mr. Liebowitz explained that they own the property and they have mixed use of the property. They do have to be cautious of the leaseholder rights, but it does make it simpler since they own both.

Ms. Bulls asked what the hours were because there was mention of getting the dumpster after hours.

The business is open 6 to 9, but they feel if they reorient the dumpster on the site that it will help alleviate the point on the hours.

Mr. Meyer explained that the planning comment was an either or. If they aren't able to adjust the dumpster that is satisfactory to the planning team, then they could service the dumpster after business hours. Mr. Meyer recommended leaving the dumpster in the location and in the event the geometry of the adjustment didn't work they wouldn't have to come back to the board.

Mr. Furst: Would there be a reduction or a hindrance in the reasonable use of this structure or would this become a less viable location for Panera if we were not to grant this variance?

Mr. Liebowitz: Yes, in today's world over the last three years and consumer behavior, we all adapted very quickly, but a lot of those efficiencies with experienced operation changed and made their business more efficient. To your questions, does this make it less viable in today's world? Yes, and that's why we're here today. It's a very big part of the business plan and to have a business like Panera stay here is important to us.

Mr. Furst asked if they explored any other options that were available under the code as far as what a plan might be that didn't require a variance.

Mr. Liebowitz: Yes. There just wasn't enough room. We don't have a full escape plan, but we tried to get there as much as we could, avoiding vehicular and pedestrian confrontation along the sidewalk and the former service member memorial.

Pastor Linder asked if the pickup parking spaces will be impacted by this drive thru agreement or possibly eliminated.

Mr. Jackson from Cavalier Enterprises explained that the need for additional parking spaced drastically decreases with a drive thru.

Mr. Meyer pointed out a few minor comments in the staff report about that we would want as a condition of approval.

Mr. Furst: Mr. Meyer, if I understand you correctly, your request is that the parking materials match any legal agreements that are necessary to use the property between the two sites would be obtained and that the applicant would be amenable to adjusting the rubbish structure subject to administrative approval and that there be proper signage at the entrance and exit the drive through. Is that accurate?

Mr. Meyer: Yes.

Mr. Furst: Are all those conditions amenable to you?

Mr. Liebowitz: Yes.

Mr. Furst: Having considered the various factors in section 1109.13d of our code. I do move that we accept this application with the following conditions that the parking and any new pavement materials that are constructed match the existing. That the rubbish container be adjusted subject to administrative approval. And that the entrance and exit of the proposed drive thru contain proper signage subject to the city's administrative approval. And that if the city attorney does identify the need for any legal agreements, such as easements that those be obtained.

Ms. Barnhart: I'll second.

Mr. Anderson: Ms. Barnhart. Yes. Ms. Bulls. Yes. Mr. Furst. Yes. Pastor Linder. Yes.

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| RESULT: | APPROVED [UNANIMOUS] |
| AYES: | Linder, Furst, Bulls, Barnhart |
| ABSENT: | Davis |

2. 772 Robbins Loop Ct; Application #2022-5311; Applicant Kimberly Adams; Variance

Mr. Meyer read the staff report into the record.

Mr. Fluharty lives at 761 Robbins Loop Ct and is the neighbor to the applicant. Mr. Fluharty and the neighbors support the fence and the variance. He feels this will be a beautification process.

Ms. Adams explained that it took eight months to get this fence approved by her HOA. The seven foot between the fences is to beautify the fences because she can see three different types of fences out her backyard. She has concern that if the city didn't approve that the HOA would take longer to approve a second time and she has already spent the money on the fencing.

Mr. Furst asked for clarification on what variance was requested.

Mr. Meyer stated that the left and top side is what is in need of a variance. The one that is 23 feet is considered part of the corner yard and therefore would be acceptable to be off the property line as it is. The code says the rear and side yard fences should be placed on the property line, so the strict interpretation of the code is property line.

Mr. Furst asked the applicant to describe the special circumstances or conditions that exist on their property that may not be applicable to other properties in the surrounding area.

Ms. Adams explained that her yard backs up to the side of the neighbor behind her. If the fence is placed as asked the fence will be in his front yard.

Mr. Furst asked how this is anything other than an esthetic issue, HOA issues aside.

The Applicant thinks this is unique because other houses on a court might not back up to the side of a property. She did find one other similar property where they took the fence diagonally, so it appeared to separate the two yards. The applicant feels as it doesn't make sense right up to another fence without connecting to the, which is something she doesn't want to do.

Mr. Furst asked if they has explored other options that were available. The applicant does have permission from the neighbors to attach to their fence, but that is not her preference. She has purchased the fence, so she will have to put it up however it is determined she can. Mr. Furst explained that the law doesn't have a section for preference and preference is not something they can consider. He asked is there is any hardship or practical difficulty that may exist by not granting this variance.

Mr. Baker, Council Member, discussed how he has visited the property and has seen where the placement of the property on the fence line would cause more of a hardship or burden on her neighbor if the board didn't grant the variance.

Ms. Barnhart asked about the seven foot in between the existing fence and the proposed fence. Ms. Adams will be responsible for that land. Ms. Barnhart mentioned moving the fence closer the property line and how she feels as if the placement just doesn't fit.

The applicant described placement to the board and told them she just wants to leave the meeting with an agreement of what she can do.

It was asked if she considered an electronic fence and the applicant is not in agreement with an electronic fence.

Mr. Furst asked if the city didn't approve this variance if the applicant would argue that city was depriving her of reasonable use of her property. The applicant replied that she will accept whatever the board decides, her plea is to just be able to install a fence.

Mr. Brown commented about the ascetics, the electronic fence and what the neighbors would prefer.

Pastor Linder asked what the hardship is. What are things that are happening now that will be fixed by granting this variance?

Mr. Brown commented that is will maintain the animal properly, help her elderly mother take care of the pet and be ascetically pleasing.

Ms. Barnhart and Mr. Furst were struggling with the hardship factors and the applicant asked if they could try to explain it again.

The applicant explained that the real hardship is that it is a struggle working with the HOA and she wasn't aware that the city would be an issue outside of the HOA. She has purchased this fence and if the city denies this it could be another year before the HOA gets back around to approving the application.

Mr. Furst suggested Ms. Adams reviews the factors in section 1109.13D. He also said the board would be amenable to tabling this application so the applicant could come back and speak further on the hardship factors.

The applicant doesn't want to delay the project anymore and wants to know what they can do. She also mentioned the fence going to the sidewalk. Ms. Barnhart clarified that the fence going to the sidewalk is not the variance, which it is about the seven foot gap on the rest of the property. Ms. Barnhart, Ms. Bulls, and Mr. Furst all agreed that the 23 foot side is ok, if the applicant was to go to the property line on all the rest they wouldn't have a problem with that.

The applicant asked if she was to butt up to the neighbor’s fence, would any further action be needed. Mr. Meyer said that is something we can work out with staff as additional information is needed.

Mr. Brown asked if the board would be amenable to the gap between the privacy fences. The board doesn't see a meaningful distinction there.

There was conversation back and forth on fence placement and what would and wouldn't need a variance. Mr. Meyer said we would need updated drawings showing the new fence placement.

At this time the applicant wishes to withdraw the application as they don't have a need for a variance.

Mr. Furst accepted the applicant's withdrawal application

Ms. Barnhart: I'll second.

Mr. Anderson: Ms. Barnhart. Yes. Ms. Bulls. Yes. Mr. Furst. Yes. Pastor Linder. Yes.

RESULT: WITHDRAWN

- 3. 6585 Fusilier Ave; Application #2022-5347; Applicant John and Lynne Montgomery; Variance

Mr. Meyer read the staff report into the record.

Mr. Montgomery explained that the old fence is rusting and falling apart and he just wants to replace the existing fence that is already in place at an angle.

Mr. Furst mentioned that he is fairly certain that AEP is not willing to move the utility box and Mr. Montgomery agreed.

Ms. Barnhart made a motion to accept this variance request for fencing.

Ms. Bulls: I second.

Mr. Anderson: Ms. Barnhart. Yes. Ms. Bulls. Yes. Mr. Furst. Yes. Pastor Linder. Yes.

RESULT: APPROVED [UNANIMOUS]
AYES: Linder, Furst, Bulls, Barnhart
ABSENT: Davis

- 4. 1036 White Butterfly Ct; Application #2022-5342; Applicant Arguelles and Arroyo; Variance

Mr. Meyer read the staff report into the record.

The applicant is amenable to changing the back/ side lot line, they just need clarity on how much it needs changed. The purple area on the map shown is a tiered creek area and the applicant wants the fence on the top portion of the tier to still be able to see the water. The applicant has issued multiple plans to staff and they were all denied. The applicant is ok going to the property line in the back and can go chain link, if that's what it takes to get approved. They want this fence for safety of the dogs and the kids.

Mr. Furst: Certainly having your property line terminate in the middle of the creek is a special circumstance.

Mr. Meyer visually showed on the screen to the board and applicant side yard/ rear yard and where the fence could terminate and change to a chain link in the floodplain/ floodway. Mr. Meyer and the applicant went back and forth regarding mixed materials and where chain link is permitted. The purple and blue area on the map submitted doesn't allow for a wooden fence, only chain link.

Mr. Meyer said that staff's view would be to approve this application with the conditions that the top area in yellow, that fence is moved to the property line. The applicant will work with staff to ensure the fence is in the rear yard only to avoid the side yard noted on the left. And if the board would be amenable to a variance for not having the fence on the property line on the left side due to the creek.

Mr. Furst commented that this was a very complex application and definite proof of hardship and special circumstance that necessitate a variance.

Ms. Barnhart asked about the right side of the property and how the existing fence doesn't seem to be on the property line. The applicant explained that on the property line there are two big pine trees they don't want to knock down, so when the neighbor built the fence they went on their side of the trees. The applicant did talk to the neighbor about connecting to the corner of their fence and they said it was ok. Mr. Meyer explained that a wood fence is ok on that side of the lot, but we would need a letter from that neighbor saying it was ok.

Mr. Furst asked Mr. Leist about whether the potential easement with the neighbor and placement of the fence should be a condition on this approval. Mr. Leist agreed it should be.

Mr. Furst: I feel like we've discussed a number of the various factors here and in section 1109.13d. I do move that we accept this application under the following conditions that the fence materials be such that according to staff's engineering report, that they do not impede drainage or that they do not otherwise violate the code as far as appropriate materials for the front and side of the house. That the rear yard setback of the fence be subject to administrative approval pending engineering review as far as the suitability of the placement of the fence. And that any necessary easements for property boundary issues be otherwise obtained.

Ms. Barnhart: I'll second.

Mr. Anderson: Ms. Barnhart. Yes. Ms. Bulls. Yes. Mr. Furst. Yes. Pastor Linder. Yes.

Mr. Meyer offered to the applicant to come in for a meeting to discuss the drawing in person as it is very complicated.

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| RESULT: | APPROVED [UNANIMOUS] |
| AYES: | Linder, Furst, Bulls, Barnhart |
| ABSENT: | Davis |

5. 7322 Marlan Ave; Application 2022-5305; Applicant Michelle Buck; Appeal - Home Occupancy

Item was removed from the agenda.

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| RESULT: | WITHDRAWN |
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D. OTHER BUSINESS

None

E. ADJOURNMENT

Chairman

Planning and Zoning Administrator