

BOARD OF ZONING APPEALS - Minutes of May 22, 2018

7:00 pm ★ Municipal Complex (687 Decatur) *Courtroom* ★ Vermilion, Ohio

Roll Call: Kevin Sorrell, Dan Phillips, Guy LeBlanc, Jerry Schrenk. Absent: Bob Voltz

Attendees: Bill DiFucci, Building Inspector; Barb Brady, Council Representative; Mayor Forthofer

NOTE: OFFICIAL ACTION REQUIRES 3 AFFIRMATIVE VOTES, See COV 1264.02(b); Therefore, *Motions will be stated in the positive (eg., To Grant... / To Waive... / To Determine...); and a member=s >Yes= vote means Agree and a >No= vote means Disagree.

Approval of Minutes:

G. LeBlanc MOVED; D. Phillips seconded to approve the minutes from the meeting held on February 27, 2018. Roll Call Vote 4 YEAS. **MOTION CARRIED.**

An **Oath** of truthfulness was administered to those in attendance who planned to speak during these proceedings. *Kevin Sorrell* described how meetings are conducted, explained the avenue of recourse available when a variance request or appeal might be denied, and gave a reminder that it takes 3 affirmative votes for an action (motion*) to pass.

Correspondence:

K. Sorrell noted the board is in receipt of an amended site plan which reflects one change.

Mayor Jim Forthofer said that economic development is critical for the future of Vermilion; not just any economic development, but responsible economic development. When Mr. Urbanek applied for the purchase of the property in question, one of the first things he did was call the Mayor of the city he currently resides and he testified that Mr. Urbanek is a good citizen and has responded to all requests by the city, and he has been compliant and has created jobs, and generally an all-around good citizen and good neighbor that they were sorry to lose to Vermilion. He feels that Mr. Urbanek is of good character and has made every effort to comply with the requests of the city in order to acquire this property. He said this property is for sale legally and reasonably, and will be purchased by a person who is purchasing it the same way. He asked the board to give good consideration to Mr. Urbanek's presentation and to remember the context of the overall importance of these types of issues to the city.

New Business:

[B-3] Baumhart Road – Permanent Parcel #01-00-027-000-074 – Leon Sampat – Ed's Equipment Co. (Height Variance)

Applicable City code section(s) cited:

1270.13(b) (1) (B) – Permitted uses – Like uses – machine sales and service – storage building – variance requested – to allow proposed uses

1270.13 (d) – Maximum building height 30' – proposed 41' 10 1/2" – variance requested – 11' 10 1/2"

Leon Sampat (Architect) of 22082 Lorain Road, Fairview Park, Ohio was present and introduced Ed Urbanek the future property owner. He said with regards to the height they are requesting a variance for the main building. They have several buildings on the property, but the main building is where they will do the majority of the repairs. The owner does specialty equipment; the equipment is for grinding trees and such. He needs the height to get the machines open. They have designed it where the equipment can be opened up in the center of the building. Therefore, minimizing the request they are looking for. The remainder of the building will comply. The storage buildings were at 30' and they moved a couple units and dropped that into the 50' setback line. One structure is for RV storage and the other portion is for Ed's business. K. Sorrell explained that the new correspondence was to make a change to the site plan moving the side setback from 40' as the last drawing indicated to 50', which is on the southwest corner of the property.

Ed Urbanek distributed some brochures to the board showing the sizes of their equipment which is produced from Idaho and noted they are in the wood grinding industry. They are very large machines and this new facility will enable more of an assembly line situation to where they will be able to get more equipment through to do a better job. The size of the machines by disassembling them to work on safely and properly taking them apart is why he needs the ceiling height. He has every intention of making this a beautiful site. Everything he does and anyone that knows him knows that they do very well. He keeps a very clean and organized operation. All of his employees are very hard working and dedicated to this business, and they take pride in what they do. They really would like to move to Vermilion. He always dreamed of having property off the highway because he is a little guy and his competition is very huge corporations, so with him being visible from the highway is a huge step for him and it will help him so much with advertising and word of mouth.

K. Sorrell asked Mr. Urbanek if he had photographs of his existing building and E. Urbanek said he didn't have any with him, but he would gladly get the board those pictures. He said it was a lot smaller and it has one door. There are overhead cranes inside the building that span the whole length of the building. K. Sorrell asked what the height of the existing facility is currently and E. Urbanek said 35' and about 20 times a year they have outside crane companies come in and set up in the lot to do some disassembly of certain models they work on. He has outgrown his existing facility as there is a lot more to the business and this would be a good final step for him. He said the proposed facility is good for his employees as they can do heavy cutting and painting all in one area and it will be safer with better ventilation. All work will be done inside the facility. They will be able to better service the whole east coast from this facility. He will hire a lot of people to do this work which is exciting. K. Sorrell asked how many employees work for him now and how many does he intend to hire. E. Urbanek said currently he has five employees plus himself, and he has second shift employees and weekend help. He is looking to transition some of the employees into full time. Until they can grow and expand their operation and have more of an assembly line situation, he will be able to hire people to manage certain portions of their job, rather than having everyone doing everything because they are always in transition.

G. LeBlanc asked what the nature is of the property line split. E. Urbanek said for future planning he needs to have this on its own parcel in case whatever happens down the road, so they are parceled off separately. G. LeBlanc asked if he bought the whole property and wants to subdivide it and keep his business separate and asked if he will be able to operate both businesses and E. Urbanek confirmed. E. Urbanek said the retention pond and fountain area will be very nice, well maintained and really appealing. The situation he is in now is that there is just no room to do this

stuff as the property is only so big. The property on Baumhart is a larger piece of land that will enable him to conduct business.

K. Sorrell said it seems as though from time to time he brings in a crane on his parking lot and he disassembles it outside and brings it inside. E. Urbanek said this facility on Baumhart would eliminate all of that because he will have the ceiling height. K. Sorrell felt this serves as one of the hardships as part of the criteria the board uses to make that determination. They can now bring all their equipment inside and they wouldn't have to disassemble outside anymore. E. Urbanek agreed and said this is currently a serious hardship for him as its weather contingent when utilizing their outside space. L. Sampat said this is the point of keeping the equipment inside so it doesn't look like a construction site. K. Sorrell said this is why he made the point as it would eliminate the issue they are having now. E. Urbanek said this is why he designed the building this way because all the money he spends each year on hiring those outside contractors will no longer be needed. The cranes he has now are plenty capable. D. Phillips asked if he would be doing any work outside at this facility and E. Urbanek said he doesn't intend on doing any work outside; the only thing they will see is them moving their equipment from the wash bay to the paint booth, or whatever it is. It will be just moving the equipment around as they don't enjoy working outside. All the tools will be inside. D. Phillips said so basically the height will be 6' higher than what he has currently at his existing building. E. Urbanek said it will be 10' higher. D. Phillips asked if this will alleviate all outside work and E. Urbanek said it will and right now they can't even unfold their conveyors in their current building; everything has to be unfolded outside, so with this facility they will be able to unfold and open it up inside which is a huge asset. K. Sorrell asked if there was any additional equipment other than what he showed the board that he repairs. E. Urbanek said no as they have grinders. He is in the recycling industry; concrete crushers, trash screeners. D. Phillips asked if his industry is seasonal or is it year round. E. Urbanek said they are on a global market and they ship machines all over the country, so they operate on a year round basis rather than seasonal. Right now they are very busy because their customers are in full production, so they tend to have breakdowns more often. They stayed busy even through the great recession and they have really excelled. He said they would like to put Vermilion on the map. In the current city he is in (Cuyahoga Heights) they deal with programs with yard waste, etc., and they process that for the residents at no charge and try to help out in that manner. He said Edwards Tree Service is close by too. J. Schrenk asked if they do any sales or is it all repair. E. Urbanek said sales are the biggest part of their business; without sales they don't have the service, parts, or the repairs, and they don't take the trades. They do have an equipment display area on the drawing and it's very important as they have to be seen. It's just like Pat O'Brien; people driving by see the cars and check it out. He said these are very big and expensive machines so it's not like they will have 30 or 40 of them; maybe 10 or 12, which is even a big number for him. They do need to be visible for sure. J. Schrenk questioned their lighting and E. Urbanek said it's whatever the city requires of him. He doesn't want a bunch of lights everywhere because they work during the day and he doesn't want pole lights everywhere; just indirect down-lighting is what will be necessary for safety. He's not interested in lighting this up like a football field.

B. DiFucci said there is a consent judgment on the property and there is a list of requirements they will need to meet and they are aware of those rules, and they're in full compliant with meeting every hurdle that's in front of them. They are aware of lighting, buffering, and everything that is mentioned in the consent judgment and they are working through that. E. Urbanek said his goal is to make it nice for everyone as much as possible.

Tom Palmer of 1680 Cooper Foster Park Road said he was one of the intervenors when the property owner sued the city to change the zoning. They had this consent judgment drawn up

with restrictions on the property to protect their interests. When he reads through this he doesn't see a 30' wide buffer zone against what is zoned R-1, so he doesn't think the plan lives up to this consent judgment. B. DiFucci said the discussion before the board is the use of the property so it does meet the zoning code as well as the building height; it does not meet the zoning code. The buffer zone and the lighting will all be addressed at the site plan meeting for Planning Commission. This process still has another step to go. All they are asking for tonight is that the use meets the permitted uses, which they have both of those uses currently. Second is the building height which is the point of contention tonight as this is what the board will be voting on. All the other items will be handled by the Planning Commission. T. Palmer asked if this should be reflected in the plan and B. DiFucci said this is not the full set of plans. This is a site plan. T. Palmer asked what he should be going by when this is what was given to him. B. DiFucci said they don't require the Zoning Board to have a full set of plans. They are voting on use and building height. This site plan dictates the use and the building height. All other items will be another venture, which will be Planning Commission. When the full set of drawings is complete, the City Engineer and Planning Commission will review all these other items that will be open for discussion at a later date. T. Palmer said that Mr. Urbanek talks to the Journal and the Chronicle and they talk about almost 14 acres. This is a 10.28 acre site, but they all talk about almost 14 acres; what's the deal with almost 14? If he knows from their consent judgment there's 13.71 acres that would be B-3; that tells him that's almost 14 acres. What are they trying to pull off here? It seems like they are not being upfront with them. B. DiFucci said he is not going to speak on behalf of that. He said the site plan is dictated on 10 acres; they are talking about final development of 13 acres. T. Palmer said the owner is talking about it and so is the Mayor; it's in the Chronicle and Journal. B. DiFucci said he would strike that up to an error. T. Palmer didn't think this was a good enough answer. B. DiFucci said the proof is in the site plans; 10 acres.

Don Neiding of 715 Foxwood Drive said he would like to see development in the city, but had a few questions. What kind of variance is he asking for? K. Sorrell explained there are two variance requests in front of them; one is the permitted use and clarification on the allowed proposed use and the second is the height of a requested variance of 11' 10 1/2". D. Neiding said what bothers him is the specific use. He would like it documented in the minutes on what is going to put in there. He's talking about grinding? E. Urbanek said he doesn't want to do any grinding there. Don Neiding asked if this is a 24 hour operation. K. Sorrell said his understanding is that they work during the day and it's grinding equipment, sales and repair. E. Urbanek said they do the best they can to work 8-5 or 6pm, and sometimes they have to leave at 3am and drive to Michigan. It's really on a case by case basis, but in their current situation they have tons of residential around them and they have never received any complaints about noise or sounds. D. Neiding asked where his operation is now and E. Urbanek said Cuyahoga, Ohio. D. Neiding said they have a problem with noise in Brownhelm and in the City of Vermilion and he wants to make sure they operate through the city's noise ordinance because they have weapons firing off in Brownhelm/City of Vermilion. He asked E. Urbanek where he resides and E. Urbanek said Marblehead, Ohio. D. Neiding asked if he is asking for any type of tax abatements from the City of Vermilion. E. Urbanek said no, but it's a good idea. D. Neiding said the thing that bothers him is use. He likes specifically to know what use he is going to use on that property as he's talking RV storage. E. Urbanek said it's indoor. .

Marilyn Brill of 1745 Cooper Foster Park Road said she lives directly across from the Palmers. They were in the same room several years ago about rezoning this corner of property. Her husband has lived here nearly 90 years and to see this growth happen it kind of hurts their neighborhood, and now they have a business coming very close to their back yards. They want growth in the city but there is so much in the city where businesses can be appropriately stationed. They feel they are being squeezed out by the 10 acres, which is right in their back yards. They

feel they have to speak up and say they don't feel they need his business in their back yard/front yard. She asked where his driveway is going to be and will it be on Baumhart Road. K. Sorrell said according to the drawings the driveway sits on the southeastern side. M. Brill asked how many feet there is from the right of way of Route 2. B. DiFucci said its 300 feet. M. Brill asked them if they realized how much traffic is going to be created by having a business with parts delivery and heavy equipment being brought into his property on a very narrow Baumhart Road; where their intersection at Cooper Foster is close to that driveway; how many accidents they have seen in her short time on earth is tremendous. She just thinks it's for the safety of their neighborhood and it's not going to be welcomed. What kind of trucks deliver to him; semis, FedEx? K. Sorrell imagined all sorts of delivery trucks. E. Urbanek said it is all large oversized equipment, but Edward's Tree Company is the largest clearer in the State of Ohio and they are right across the street, and they go the other way on Baumhart Road and it's all industrial, and Route 2 is a main intersection. M. Brill said Edwards Tree is on Cooper Foster Park in Lorain, not on Baumhart Road. B. DiFucci said with regards to entrances there are studies being done by engineers and it does meet the requirements. M. Brill asked how wide the entrance will be and B. DiFucci said this is up to the engineering department. What is required will be covered by engineering when this goes to the Planning Commission. A full set of prints will be reviewed by the engineer for any errors, improvements, etc. M. Brill said when they come to a variance meeting and they bring up issues they are concerned about and the boards are the proper people they talk to and make these decisions; she hopes in five years when his business is up and running and they have a terrible accident that they will look back and say, "Why didn't somebody mention that".

Katie Brill of 4946 Whittlesea Road, Amherst, Ohio, asked to see where the driveway will be located and K. Sorrell showed her the plans. She said there have been so many wrecks and she is horrified at the thought of a car going through her house on the corner with her grandchild in it because of this business. K. Sorrell said he can certainly understand her concern and appreciates what she is saying. K. Brill said she has watched many accidents go into her neighbor's yard because the Gammons house is so close already and now they're going to bring more big equipment in. She asked who she gets to sue when somebody comes through her house on the corner. K. Sorrell assumed that was a rhetorical question. K. Brill said she knows where K. Sorrell lives and asked him if he would want this across the street from him. She looks out her kitchen window and looks at this every day. She doesn't want to see a building and she lives in a rural community because that's where she wants to live. If she wanted to live in Fairview Park or Cuyahoga Falls she would live there, but she doesn't like it. She said K. Sorrell's house is in a pleasant and calm area. Theirs is now being ruined between the guns and all of this. It is unbelievable; the peace and quiet is gone, the enjoyment of her property is gone and the value of her property is gone.

K. Sorrell clarified they can only talk about the variance requests presented and from there it goes to the Planning Commission as this is where they will sort out the legal restrictions. K. Sorrell asked if this has gone to Planning yet and B. DiFucci said it has only gone to BZA as it needs board approval for the height restriction first. He said the permitted uses - like uses that exist in the B-3 zoning district are machine sales and service and storage building. The variance request for height is 11' 10 1/2" which is higher than what is permitted by code.

D. Phillips clarified if the proposed use meets the code. B. DiFucci said the uses he is proposing already exist; the code says any other retail business or service establishment, or use which is determined by the Board of Zoning Appeals to be of the same general character; same general character means they exist in the B-3, so the first variance request is a formality and the second variance request is the 11' 10 1/2' on the height because it exceeds the maximum code of 30'. He

said they don't rewrite the code every time a like use is granted by a board because they would be rewriting the code every month, so they say the current use already exists and it matches the existing uses and it needs the board's approval, and part two is the height which exceeds the current code. The other issues will be addressed down the road at Planning Commission.

Jim Ziemnik, Director of the Lorain County Metro Parks of 12882 Diagonal Road in Carlisle Township questioned that if the Zoning Board grants the variance and then it goes to the Planning Commission and they know there are things in the consent judgment that the current site plan doesn't reflect, then can they come back and request additional variances if they have to modify their site plan based on the consent judgment. B. DiFucci said at the next step along the way and if the design is modified or there is something discovered during that process and they need another variance, then it would come back to the Zoning Board for another variance request of a different nature. These two variance requests that are before the board now are definitive requests and they are absolutely required, and nothing else has been shown to need a variance, but they have a right to come back if something presents itself at a later date. B. DiFucci said they can't seek a variance against the consent judgment; the consent judgment is its own governing body and they are willing to comply with the consent judgment. Therefore, the next set of drawings is going to be based on the city's zoning code and the consent judgment to the way it's written. J. Ziemnik said the consent judgment and modifications could require it to return back to this body for additional consideration. B. DiFucci said it's possible, but with the two variances tonight he didn't think the drawing was going to change enough to dictate another trip to the Zoning Board, but it could. The modifications to the drawing are going to show definitive proof that they are within the constraints of the consent judgment. It will show the buffering zone and landscaping. It will be a full set of prints ready for engineer review. J. Ziemnik hypothetically asked if they compress the site plan there is a potential that the building height could be modified further because to get more space on the site they might have to go vertically. B. DiFucci said they don't need more space on the site; for the buffering they already have 50' and the buffering only calls for 30', but they can go up as long as they don't exceed 30' maximum height for this or 25' for the consent judgment which is less than 200' to the property line, but the building that is shown as 100' to the property line is already under 25'; specifically to comply with the consent judgment, so every step they take at this point has been in compliance with the consent judgment. They want to do it the right way and in the confines of the consent judgment, and within the confines of the code. The hardship presented tonight is the height of the building and the use which already exists because they already have storage and retail service.

G. LeBlanc MOVED; D. Phillips seconded to accept the first variance request under the permitted use for the allowed business to operate under the permitted use guidelines. Roll Call Vote 4 YEAS. **MOTION CARRIED**.

D. Phillips MOVED; J. Schrenk seconded to accept the variance request to exceed the maximum building height of 30' to a proposed 41' 10 1/2' which equates to a variance of 11' 10 1/2'. Roll Call Vote 4 YEAS. **MOTION CARRIED**.

Adjournment:

Chairman K. Sorrell adjourned the meeting after no further business was entertained.

2018 MEETINGS:

4th Tuesday monthly (except December) - Next: June 26, 2018 @ 7:00pm
Municipal Complex Courtroom, 687 Decatur, Vermillion

*Transcribed:
Gwen Fisher, Certified Municipal Clerk*