

Jackson Township Board of Zoning Appeals
January 8, 2015
BZA Meeting Minutes

Members Present: Leon Vitale
Edward McDonnell
Daniel Creighton
Patrick Snyder
Charles Rohr-Recused due to not being present at original hearing.
Richard Lutz-Alternate

Zoning Inspector: Joni Poindexter

Mr. Vitale stated that the first order of business is the election of Chairman and Vice Chairman for the year 2015.

Mr. McDonnell stated he thinks Mr. Vitale has done a fine job as Chairman in 2014 and would like to nominate Mr. Vitale to continue as Chairman.

Mr. Creighton seconded the motion

The vote was: Mr. Snyder-yes, Mr. Creighton-yes, Mr. McDonnell-yes, and Mr. Vitale-recused.

Mr. McDonnell stated that he has been the chair or co-chair for the last several years and thinks Mr. Creighton would do a great job as co-chair so he would nominate Mr. Creighton for Vice-Chairman.

Mr. Vitale seconded the motion.

The vote was: Mr. Snyder-yes, Mr. Creighton-recused, Mr. McDonnell-yes, and Mr. Vitale-yes.

Appeal #2291 – Circle K c/o John Iski, 935 E. Tallmadge Avenue, Akron, Ohio 44310 agent to Chi Ming LLC, property owner, 3115 Blue Ash NW, Canton, Ohio 44709 requests a variance for a 10 ft. front parking setback along Fulton and to have zero trees within the parking setback along Fulton and 2 trees within the parking setback along Frank where a 20 ft. front parking setback along Fulton is required and seven trees are required along Fulton and Frank. Property located at 5151 Fulton NW, Sect. 23SE Jackson Twp. Zoned B-3.

Mr. Vitale stated that appeal #2291 was continued from December 11, 2014 meeting and those that were sworn in are still under oath.

Mr. Iski, 935 Tallmadge Ave. NW, Akron, Ohio stated he had plans to have the landscaper in attendance but he was unable to make it. He went to management and has a revised plan to give to the board.

Mr. Vitale marked the revised plan as exhibit #1.

Mr. Iski stated they have amended it to add two more trees to the property. One along Frank and one on Fulton so there would be a total of three trees along Frank including keeping the two that are currently there.

Mr. Iski gave the board photos of the types of planting.

Mr. Vitale marked the photos as exhibit #2 which consisted of 8 sheets.

Mr. Iski stated that the pictures are from the landscaping consultant that they use. At the bottom of each page it shows the approximate size of maturity based on each species.

Mr. Iski present exhibit #3 and stated it is an aerial view of the intersection showing what is existing today along the entire corridor. It is his feeling that it is minimal.

Mr. Iski gave the board exhibit #4 that consisted of three sheets and stated it is an aerial and different street views of the surrounding properties. The color plan shows a total of 59 shrubs planned with 48 being along the peripheral of the property closer to the intersection. The plan shows a total of nine trees with five in the rear, three being along Frank and one along Fulton.

Mr. McDonnell asked what are 18 inches and 24 inches on exhibit 1 symbol B.

Mr. Iski stated he thinks that is the start size per caliber.

Mr. McDonnell stated so the caliber is 24 inches.

Mr. Iski stated that is his understanding.

Mr. McDonnell asked what 2 to 4 ft. by 3 to 4 ft. meant.

Mr. Iski stated he thinks it is height by width.

Mr. Vitale asked what the change is from the first proposal to the revised plan.

Mr. Iski stated they added 2 more trees.

Mr. McDonnell stated one tree was added along Frank and one on Fulton and asked why more trees are not being added along Fulton.

Mr. Iski stated they are unique as a retailer. They are a convenience location as oppose to a destination. Fuel sales are driven by price and you really wouldn't be able to see the signs if there were more trees. They have added trees in other places on the property along with shrubs. They are going to be competing with Speedway down the street and they have no trees and full visibility from all four directions. Without visibility they don't feel they would be successful they couldn't justify putting in a 3.5 million dollar investment to come and be at a disadvantage from day one.

Mr. McDonnell asked if Mr. Iski thought that over 4 ft. is the max anything should be. For example in looking at item C, which is a Compactus burning bush, it shows a maturity of 8 ft.

high by 10 ft. wide and if he understands Mr. Iski correctly, it will never reach 8 ft. high because they will cut it down to 4 ft.

Mr. Iski stated that's in a perfect world scenario. They are comfortable with the plan location. If the board approves the plan then they will do the plan. He spent a lot of time with senior management and the decision makers and he has everybody on board. They are more than prepared if the plan is approved that is what they will do.

Mr. Vitale stated this would be planted but as it matures it would be cut back to 4 ft. Not that the board is asking them to, it is a hypothetical question.

Mr. Iski stated he is not sure what the code calls for once they plant. If they plant them and can't touch anything then it is what it is. It's whatever the code says.

Mr. Vitale stated the board isn't that specific. He agrees they have to be seen.

Mr. Creighton asked how high the sign would be.

Mr. Iski stated he didn't know but it would be within code.

Mr. Iski stated that at the last meeting Mr. McDonnell had asked if the canopy would be lit and he checked and confirmed that the canopy will not be lit on the exterior and the only lighting would be down lighting for safety and customer visibility.

Mr. McDonnell stated what was presented to the board is that the Compactus bush mature size is 8 ft. high by 10 ft. wide, and Mr. Iski says whatever the resolution requires but the point is if it is presented to the board that they will put in some Dwarf burning bushes that are eventually going to be 8 ft. tall by 10 ft. wide then he is going to expect those will be allowed to reach mature size if the board approves the plan.

Mr. Iski stated he understands but maybe he shouldn't have said that because that is in a perfect world. They aren't going to go cut everything to 4 ft. every other week. Even at 8 ft. at full maturity that is still not going to block the fuel pricing sign as opposed to a mature tree that would. Even at 8 ft. the fuel price sign is going to be higher than the bush. They are a unique retail business and visibility is the key. The aerial's show the entire corridor does not have the trees.

No one else spoke in favor of or in opposition to the appeal.

Mr. Vitale closed the appeal to public input.

Mr. Snyder stated that when looking at the original appeal they have a 10 ft. parking setback and the trees.

Mr. Vitale stated the way this is written and he asked Ms. Poindexter to correct him if he is wrong, but they are going to give them the variance for the parking.

Ms. Poindexter stated they already granted the parking setback and are only looking at the trees.

Mr. Snyder stated he understands their request for it and he likes the plan and it will be nice looking. He doesn't have an issue with the request.

Mr. Creighton stated he appreciates the reason for the trees in the book is to help hide some things and keep Jackson Township nice looking but in this case and in fairness to Circle K this is a developed area and there aren't many trees in front of the businesses along Fulton Rd. If this were a place with all new construction they would have to put the trees in but in fairness to them and considering everything around them he would approve the plan.

Mr. Vitale stated that he agrees and thinks the landscaping plan is adequate. He knows it is not what they are asking for but they tried and he agrees the area is well developed and most of them do not have landscaping that they are offering. A lot of the stuff is low verses the higher trees and he understand they have to be seen. He doesn't want them to dump a bunch of money in Jackson Township and then four years from now be out of business. He doesn't have a problem with the variance.

Mr. McDonnell stated that he doesn't disagree with the other board members but when looking at what the applicant presented, most of these locations, existing businesses, were there, like Fishers, over 30 or 35 years, at least since 1980. The board had a variance request for speedway 15 or 20 years ago that the board turned down. The question is, are they holding this applicant to a higher standard than the other businesses along Fulton Rd. Maybe they are, because they don't know what the standard was back then. The real question is, are they holding the applicant to the current standard. That is what they have to touch upon. On the flip side he does have a little bit of a problem because now perhaps the applicant does have a practical difficulty but the difficulty is the nature of the business not the property. He has little bit of a problem with that but has the applicant tried to accommodate the spirit and intent of the resolution without compromising their business. He believes he has. But with that when the motion is made there are a couple of things he thinks that should be added as conditions to the approval if the board is so inclined to approve it. The variance now is for 3 trees along Frank and one along Fulton. He thinks if the board grants it that there are some conditions that need to be added to it. The first being that the applicant presented to the board in exhibit #2, here is what they are going to put in and this is the maturity size. But then he starts talking about four feet. Then the maturity size goes out the window when he talks about four feet. He thinks Mr. Creighton brought up the fact that they could chop it down to four feet. The applicant came back and said what it is, it is. What they presented was the plan that includes having these bushes and trees and here is the maturity size and that is what the board has to work with. So he thinks the first condition that he would suggest is that if it is granted all the landscaping that is presented to the board including but not limited to the trees, bushes and

shrubs shall be allowed to grow to at least the mature size as presented to the board by the applicant in exhibit #2. If he says this is a bush that is going to be 12 feet tall by 24 ft. wide then that is what he said they are going to plant and that is what the board should expect. That is the rationale behind that. The other thing is the applicant did indicate that the canopy shall not be lit other than down lighting. He thinks that should also be a condition on any variance granted that the pump canopy will not be lit other than with down lighting. So he would like to throw those two out.

Ms. Poindexter stated she doesn't think the board can do that because it has nothing to do with the variance. The canopy has nothing to do with the landscaping variance.

Mr. McDonnell stated that is for the board to decide. If the board doesn't want to add that, then it works for him also but he thinks the first condition, in his opinion should be added.

Mr. Vitale stated that the canopy lighting, he is not sure they could put that condition on it so he would rather not have that in there. As far as letting the landscaping grow to maturity, as long as it is trimmed properly, he thinks what they are looking for is don't whack everything down. That seems to be the driving issue.

Mr. McDonnell made a motion to approve appeal #2291 with regards to landscaping to allow three trees within the parking setback along Frank and one tree along the parking setback Fulton with the condition that all the landscaping presented to the board including but not limited to the trees, bushes, shrubs, etc. shall be allowed to grow to at least the mature size presented to the board by the applicant in exhibit #2 and be properly maintained and trimmed.

Mr. Creighton seconded the motion.

The vote was: Mr. Snyder-yes, Mr. Creighton-yes, Mr. McDonnell-no, and Mr. Vitale-yes.

Respectfully submitted,

Joni Poindexter
Zoning Inspector