

**MINUTES OF THE
CITY OF PATASKALA BOARD OF ZONING APPEALS**

The City of Pataskala Board of Zoning Appeals convened in Council Chambers, City Hall, 621 West Broad Street, Pataskala, Ohio, on Tuesday, November 13, 2018.

Present were:

Rob Platte, Chairman

Alan Howe

Chadd McKitrick

Bruce Ashcraft

City of Pataskala Planning and Zoning Staff:

Scott Fulton, Planning Director

Jack Kuntzman, City Planner

Lisa Paxton, Zoning Clerk

Chairman Platte opened the hearing at 6:30 p.m., followed by the Pledge of Allegiance. Roll call was made. Present were: Rob Platte, Alan Howe, Chadd McKitrick and Bruce Ashcraft. TJ Rhodeback was not present.

First on the Agenda, remove from table Variance Application VA-18-018.

Mr. McKitrick made a motion to remove Variance Application VA-18-018 from the table. Seconded by Mr. Ashcraft. Mr. McKitrick, Mr. Howe, Mr. Platte and Mr. Ashcraft voted yes. The motion was approved.

Next on the Agenda, Variance Application VA-18-018, Carlos Daniel Segovia, 5624 Mink Street.

Mr. Kuntzman gave an overview of the Staff Report, noting the application was heard and tabled at the October 9, 2018 hearing, including the Applicant's request for a wellness center that would include yoga, meditation, Tai Chi, mental therapy and massage therapy, utilizing outdoor space for classes and therapy sessions.

Carlos Daniel Segovia, 5624 Mink Street, was placed under oath.

Mr. Segovia had no follow up.

Paul Loper, 5601 Mink Street, was placed under oath.

Mr. Loper noted his concerns regarding commercial businesses in a residential district.

A discussion was had regarding rezoning and conditional uses.

A discussion was had regarding different areas of professional counseling.

Mr. Segovia stated counseling would include family, couples, stress-related counseling.

Mr. Howe asked if there would be a PA system.

Mr. Segovia indicated there would be no audio systems or outdoor lighting.

Mr. Platte gave an overview of use variances, noting the Board not taking those requests lightly.

Mr. McKitrick noted possible concerns for future uses.

Discussion was had regarding different types of counseling and safety concerns.

A discussion was had regarding possibly limiting or eliminating counseling.

A discussion was had regarding a one-year review for compliance.

Mr. McKitrick made a motion to approve a use variance, pursuant to section 1211.07(b) of the Pataskala Code for Variance Application VA-18-018 with the following supplementary conditions:

1. The applicant shall obtain all necessary permits from the City of Pataskala, Licking County Building Department, the Licking County Health District, and Ohio Environmental Protection Agency prior to operation.
2. The variance shall remain in effect only while the applicant remains owner, or part-owner, of the two parcels for which this variance is granted (PID: 063-141636-00.003 and 063-141636-00.004).
3. The applicant shall reside on either one of the two parcels for which this variance is granted (PID: 063-141636-00.003 and 063-141636-00.004).
4. Hours of Operation shall be limited to 9:00AM to 9:00PM Monday-Friday, and 10:00AM to 6:00PM Saturday-Sunday.
5. Permitted uses shall be limited to Yoga Classes, Meditation Classes, Tai Chi Classes, Massage Therapy, and general Counselling as stated in the Applicant's narrative.
6. A maximum of twenty (20) customer or clients shall visit the site in a day.
7. No additional outdoor lighting or sound amplification.
8. The application shall be reviewed by the Board in one year to ensure compliance with the terms of the permit.

Mr. Ashcraft seconded the motion.

Mr. Platte noted his concerns supporting the application due to the zoning text and intent of the zoning district.

Mr. Ashcraft, Mr. McKitrick, Mr. Howe voted yes. Mr. Platte voted no. The motion was approved.

Next on the Agenda, Variance Application VA-18-020, Faith Seed Investments, 21 Benton Street.

Mr. Platte mentioned the application was tabled at the October 9th hearing and asked if the Applicant is requesting the application to remain tabled.

Mr. Fulton indicated in the affirmative.

Mr. Platte reported residents being present in the audience for Variance Application VA-18-020, and noting being unable to notify residents when an application has been requested to be tabled. Mr. Platte stated not being in support of tabling the application at the December hearing and further stated being inclined to take the application off the table and allow the audience to share information they have. Mr. Platte inquired as to the legality of testimony being provided and the Applicant not being present. Mr. Platte noted the hearing is being recorded and questions or testimony being presented is accessible to the Applicant.

Mr. Fulton noted after the hearing, the audio will be available to the public on the City's website.

Mr. Platte asked the Board if there were any concerns to hear testimony.

Mr. Fulton stated in the past the Board has allowed testimony to be provided when applications were tabled.

Mr. McKitrick noted being in support of taking testimony.

Mr. Platte reported another option would be to un-table the application, deny it, and request the Applicant to come back with a new application when they are prepared.

Mr. Fulton stated the Board has the option to deny the tabling request. Mr. Fulton further stated speaking with the Applicant's attorney prior to the October 9th meeting, regarding the tabling process, and informed him that it is not a guarantee that the Board approves a request to table.

Mr. Ashcraft asked if the Applicant intends to appear at the December hearing.

Mr. Fulton indicated that he assumes the Applicant's intent is to appear for the December hearing. Mr. Fulton further noted the Applicant has the option to request tabling the application.

Mr. Howe stated the Board has the option to deny the tabling request.

Mr. Fulton explained that it is up to the Board to approve or deny an application to be tabled.

Mr. McKitrick asked if the application is denied, the Applicant would be required to submit a new application.

Mr. Fulton indicated a new application, new fee, would need to be submitted.

Mr. Howe suggested to take the application off the table and give citizens the opportunity to speak.

Mr. Ashcraft made a motion to remove the application from the table to listen to the people that are present on the record. Seconded by Mr. Howe. Mr. McKitrick, Mr. Platte, Mr. Howe and Mr. Ashcraft voted yes. The motion was approved.

Mr. Platte explained the Board has not heard the Application, but would like to hear from the people that has taken the time to attend the hearing.

Mary Jenney, 65 Benton Street, was placed under oath.

Ms. Jenney stated living at 65 Benton for 12 years and noted her concerns regarding the appearance of 21 Benton Street. Further noting a commercial truck with no tags along with cars, trucks, an RV, boxes, and furniture. Ms. Jenney also stated the sidewalk is not accessible due to the RV.

Sarita McDaniel, 64 Benton Street, was placed under oath.

Ms. McDaniel concurred with Ms. Jenney, having a beautiful neighborhood until the past year. Ms. McDaniel noted concerns of multiple dogs, noise, complaints, police and dog catcher at the location. Ms. McDaniel further stated concerns regarding trash and dog waste. Ms. McDaniel stated she will be present at any upcoming hearings. Ms. McDaniel further noted the neighborhood has changed, wanting to be good neighbors,

everyone takes care of their own property. Ms. McDaniel also noted hearsay and possible criminal activity.

Ms. Jenney also wanted to note a dog kennel in the shed, and businesses not being permitted in a residential district. Further concerns were noted regarding the property being close to a church and elementary school.

Ms. Colvin, 460 Township Road, was placed under oath.

Ms. Colvin stated she has lived there for 30 years and the Benton Street property has become a mess and can see it from her front windows. Ms. Colvin noted unable to walk down the street with her grandchild due to dogs being loose and an RV parked on the sidewalk. Ms. Colvin noted agreeing with the previous witnesses regarding the property's appearance.

Mark McDaniel, 64 Benton Street, was placed under oath.

Mr. McDaniel noted safety concerns and issues with dogs.

Mr. Ashcraft made a motion to deny the application and the Applicant may reapply. Mr. Ashcraft further requests the Zoning Inspector look into what is really going on with the property. Mr. McKitrick seconded the motion.

Ms. Ashcraft noted being familiar with the property and it is a problem that needs to be taken care of. Mr. Ashcraft further noted not wanting to get into the practice of continuing to table items.

A discussion was had regarding tabling the application.

Mr. McKitrick noted tabling applications to no end could set a precedence.

Mr. Platte noted his concern is that testimony has been allowed and, in all fairness to the Applicant, the Board hasn't heard the Applicant's testimony or Staff's Report. Mr. Platte suggested tabling the application to the December meeting.

Mr. Ashcraft made a motion to rescind his original motion and table to the December hearing.

Mr. Fulton stated the other option would be to vote no on the original motion.

Mr. Platte, Mr. Ashcraft, Mr. Howe and Mr. McKitrick voted no on the original motion. The motion was approved.

Mr. Platte stated he will not support tabling the application for another month and asked to make it extremely clear to the Applicant to be prepared for the December meeting.

Mr. Platte made a motion to table Variance Application VA-18-020 to the December 2018 meeting. Seconded by Mr. McKitrick with the condition that today's tabling will be the last to occur and will be heard at the December meeting.

Mr. Howe noted the testimony today sounds more serious than just the application. Mr. Howe asked if the Zoning Inspector could address some of the issues.

Mr. Fulton advised the Board the Zoning Inspector is aware of the property, as the property owner has been in

Mayor's Court multiple times. Mr. Fulton stated the Applicant has been a repeat offender since moving to the property, with multiple Mayor's Court summons, multiple violation letters, and the Zoning Department is doing what they can to rectify the situation with what the Zoning Code allows them to do.

Mr. Ashcraft, Mr. Howe, Mr. McKitrick and Mr. Platte voted yes. The motion was approved.

Mr. Platte made a motion for a five-minute recess. Mr. McKitrick seconded the motion. Mr. Ashcraft, Mr. McKitrick, Mr. Platte and Mr. Howe voted yes. The motion was approved.

Recess was taken at 8:22 p.m.

Back on the Record at 8:28 p.m.

Next on the Agenda, Variance Application VA-18-021, Jeff Wyrick, unimproved property on Jefferson Street.

Mr. Kuntzman gave an overview of the Staff Report, noting the Applicant is seeking a variance to allow for the construction of a two-car garage on a lot without a principal structure that will exceed the maximum permitted accessory building square footage, and to be located within the front yard. Mr. Kuntzman also noted if the Applicant combined the lots it would negate the need for a variance from Section 1221.05(D)(4); however, variances would still be required from sections 1221.05(B)(1) and 1221.05(D)(1).

Jeff Wyrick, 25 Atkinson Street, was placed under oath.

Mr. Wyrick noted the garage will match the house.

Mr. McKitrick asked if the Applicant intends to operate a business out of the garage.

Mr. Wyrick stated he does not intend to operate a business.

A discussion was had regarding lot combinations.

Findings of Facts were reviewed.

Mr. Howe made a motion to approve Variance Application VA-18-021. Seconded by Mr. McKitrick. Mr. Platte, Mr. Howe, Mr. McKitrick and Mr. Ashcraft voted yes. The motion was approved.

Next on the Agenda, Findings of Fact.

Variance Application VA-18-018:

- | <u>Yes</u> | <u>No</u> | |
|------------|-----------|---|
| ✓ | | <i>Whether the property in question will yield a reasonable return or if there can be a beneficial use of the property;</i> |
| | ✓ | <i>Whether there are unique physical circumstances or conditions that prohibit the property being developed in strict conformity with the zoning regulation such that a variance is necessary to enable the reasonable use of the property;</i> |
| ✓ | | <i>Whether the variance requested is substantial;</i> |
| | ✓ | <i>Whether the essential character of the neighborhood would be substantially altered or the adjoining properties would suffer a substantial detriment as a result of the variance;</i> |

- ✓ *Whether the variance, if granted, will substantially or permanently impair the appropriate use or development of adjacent property;*
- ✓ *Whether the variance, if granted, will be detrimental to the public welfare;*
- ✓ *Whether the variance, if granted, would adversely affect the delivery of government services;*
- ✓ *Whether the property owner purchased the subject property with knowledge of the zoning restriction;*
- ✓ *Whether the property owner's predicament can be obviated through some other method than variance;*
- ✓ *Whether the variance, if granted, will represent the minimum variance that will afford relief and represent the least modification possible of the requirement at issue; and,*
- ✓ *Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.*
- ✓ *The Applicant/Owner created the alleged hardship; or*
- ✓ *The Board finds that the application is primarily made for purposes of convenience or profit; or Whether there are unique physical circumstances or conditions that prohibit the property being developed in strict conformity with the zoning regulation such that a variance is necessary to enable the reasonable use of the property;*
- ✓ *A substantial ground offered in support of an application for use variance is the existence of other non-conforming use of neighboring lands, structures, or buildings, in the same zoning district or in other zoning districts.*

Mr. McKitrick made a motion to approve the Findings of Fact for Variance Application VA-18-018. Seconded by Mr. Howe. Mr. McKitrick, Mr. Platte, Mr. Howe and Mr. Ashcraft voted yes. The motion was approved.

Variance Application VA-18-021:

- | <u>Yes</u> | <u>No</u> |
|------------|---|
| ✓ | <i>Whether the property in question will yield a reasonable return or if there can be a beneficial use of the property;</i> |
| ✓ | <i>Whether there are unique physical circumstances or conditions that prohibit the property being developed in strict conformity with the zoning regulation such that a variance is necessary to enable the reasonable use of the property;</i> |
| ✓ | <i>Whether the variance requested is substantial;</i> |
| ✓ | <i>Whether the essential character of the neighborhood would be substantially altered or the adjoining properties would suffer a substantial detriment as a result of the variance;</i> |
| ✓ | <i>Whether the variance, if granted, will substantially or permanently impair the appropriate use or development of adjacent property;</i> |
| ✓ | <i>Whether the variance, if granted, will be detrimental to the public welfare;</i> |
| ✓ | <i>Whether the variance, if granted, would adversely affect the delivery of government services;</i> |
| ✓ | <i>Whether the property owner purchased the subject property with knowledge of the zoning restriction;</i> |
| ✓ | <i>Whether the property owner's predicament can be obviated through some other method than variance;</i> |
| ✓ | <i>Whether the variance, if granted, will represent the minimum variance that will afford relief and represent the least modification possible of the requirement at issue; and,</i> |
| ✓ | <i>Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.</i> |

Mr. Howe made a motion to approve the Findings of Fact for Variance Application VA-18-021. Seconded by Mr. McKitrick. Mr. Platte, Mr. Howe, Mr. McKitrick and Mr. Ashcraft voted yes. The motion was approved.

Next on the Agenda, Excuse of Absence of Bruce Ashcraft from the October 9, 2018 hearing.

Mr. Platte made a motion to approve the absence of Bruce Ashcraft. Seconded by Mr. McKitrick. Mr. Howe, Mr. Platte and Mr. McKitrick voted yes. Mr. Ashcraft abstained. The motion was approved

Next on the Agenda, Approval of Minutes from the October 9, 2018 hearing.

Mr. McKitrick made a motion to approve the October 9, 2018 hearing minutes. Seconded by Mr. Howe. Mr. McKitrick, Mr. Ashcraft, Mr. Howe and Mr. Platte voted yes. The motion was approved.

Next on the Agenda, Other Business.

Mr. Platte gave an update of his involvement with the City and Law Director regarding the litigation between the City and Licking Heights School District.

Next on the Agenda, Adjournment.

Mr. Howe made a motion to adjourn the meeting. Seconded by Mr. McKitrick. Mr. McKitrick, Mr. Platte, Mr. Howe and Mr. Ashcraft voted yes. The meeting was adjourned at 9:09 p.m.

Minutes of the Tuesday, November 13, 2018 meeting were approved on

_____, 2018.
