

CITY OF CHARDON PLANNING COMMISSION

Meeting Minutes

October 22, 2024

Members Present:

Robert Emmons
Lene Hill
Dan Meleski
Dean Peska

Mary Jo Stark, Vice-Chairman
Colin Wantz

Members Absent

Andrew Blackley, Chairman

Also Present:

Todd Albright
Karen Blankenship
Ben Chojnacki, Law Director
Doug Courtney, City Engineer
Jared Flynn
Robin Fuller
Abby Jacobs, Woolpert
Chris Jones, Meijer
Eric Meister
Loreto Iafelice
Zack Iafelice

Becky Lemaster
Dale Markowitz
Anastasia Nicholas, Geauga Times Courier
Scott Pierce
Ken Pritt, Fire Marshall
Rebecca Repasky, Secretary
Brian Smallwood, Woolpert
Allison Wilson, Geauga Maple Leaf
Steve Yaney, Community Development
Administrator

Mrs. Stark called the meeting to order at 6:30p.m. The Pledge of Allegiance was said.

Attendance roll was called. Mrs. Stark reminded all that were present to sign in and swore in City Staff.

Mr. Meleski had a correction on page 2 – He abstained, not Mr. Blackley. Mr. Emmons had a correction on page 9 – remove ‘too’. Mr. Meleski made a motion to approve the amended September 24, 2024, meeting minutes. It was seconded by Mr. Wantz. Mrs. Hill abstained. Roll was called. The vote carried 5-0.

NEW BUSINESS

PC Case #24-232: Mr. Yaney explained the applicant, Dale Markowitz, is requesting Final Development Plan approval for a lot split. The lot split would split the existing 26.2656 acre parcel into two (2) new parcels. Mr. Yaney said this meets the zoning code. It has been reviewed and approved by the Geauga County Tax Map Department and City Engineer.

Mr. Jared Flynn was sworn in. He said this is a straightforward lot split.

Mr. Peska made a motion to approve the Announcement of Decision. It was seconded by Mrs. Hill. Roll was called. The vote carried 6-0.

PC Case #24-232: Mr. Yaney explained the applicant, Tractor Supply, is requesting an amendment to an existing Concept Plan approval to allow an outdoor propane filling station in their outdoor open air garden center. Additionally, a use variance to allow a propane filling station in the outdoor garden center. The request is to put a 1,000 gallon above ground propane filling tank in the outdoor garden center. Mr. Yaney explained in 2019, Tractor Supply requested several variances to expand the outdoor garden center that is in front of the building towards Water Street. The fence height was permitted to go from 3’ to 8’; a black

chain link fence was permitted. The floor area of the outdoor garden center was permitted to go from 15% of the store to 30% of the store. The conditions of these approvals were: adding brick piers on east, north and south elevations, add additional evergreen trees along the east side and plant acceptable species. These were all done. Items to be sold were to be contained in the fence area. The trailers along the driveway were allowed to be outside the fenced in area. Mr. Yaney said at that time, there was discussion with Staff to put in an above ground fueling station and Staff did not support that request. Mr. Yaney said the applicant has continued to ask for this and is now before Planning Commission. Mr. Yaney stated Staff's concerns have always been having a propane tank in the front yard because it will be the first thing seen when entering the lot. Items already inside that area will be moved outside. Mr. Yaney said that area was intended to be an outdoor garden center and not propane filling station. Mr. Yaney said there is concern with the proximity to First National Bank being just over 200'. It will be less than 200' from Thistle House. Mr. Phil Smith could not be at the meeting and submitted a letter. Mr. Yaney read the letter. Mr. Smith said his "official position opposes this request for potential safety issues that could arise because his facility is close and is an elder care facility."

Mr. Yaney reviewed the Findings of Fact. Mr. Yaney said currently the property is being used and can be used for retail/offices/restaurants. He said this variance request is not permitted by code. The condition is created by the applicant. Staff feels it will alter the character. There is no residential property nearby. There are concerns what it could do to the two (2) nearby businesses. This could be an issue of concern for safety and welfare. Staff is struggling to see this in the spirit of the code. Mr. Yaney said this is a use variance request on top of other variances that were done five (5) years ago. This is the minimal request to install the above ground tank.

Mrs. Stark asked if the items such as pallets, existing trade in propane tanks and ATV vehicles are permitted under the awning on the storefront sidewalk. Mr. Yaney said the intent was to have exterior sale items such as those inside the outdoor garden center. Mr. Wantz asked if the proposed location of the propane tank is within the fenced area. Mr. Yaney said yes. Mr. Wantz clarified the fence area facing Water Street is what Mr. Yaney is calling the front yard. Mr. Yaney said yes. Mr. Wantz said there are large arborvitaes growing there now. Mr. Yaney said it would still be visible.

Mr. Emmons asked if Tractor Supply leases the building. Mr. Yaney said yes. Mr. Emmons asked if the property owner's letter of support is included. Mr. Yaney said Jacob Berger's letter approving this request is in the packet given to Planning Commission.

Mr. Peska asked for the Fire Marshall's opinion on how big a potential explosion could be - would it be catastrophic to the assisted living facility.

Mr. Ken Pritt was sworn in.

Mr. Pritt said he is not sure the size of the explosion for a 1,000 gallon propane tank – but it could be a large explosion. Mr. Peska asked if there are any monitoring regulations through the Building Department or State. Mr. Pritt said there would need to be fire extinguishers next to the tank. He said he is unsure of any routine inspections by any agency. He said the Chardon Fire Department is not trained to do inspections of propane tanks. He said there is an emergency shut off and everything falls in safety wise – and follows fire code. Mr. Wantz asked if there is a permit with the State of Ohio Fire Marshall. Mr. Pritt said no, not with propane tanks. Mr. Pritt said a mass flow shut off valve would be put on the propane tank to shut the tank off in the event there is a leak.

Mr. Wantz said class 1 division 2 details were provided. He asked if there are any existing electrical outlets or lighting in the class 1 division 2 zone.

Mr. Scott Piers of SCM Construction was sworn in.

Mr. Piers said the entire assembly inside the rated space is class 1 division 1. The lighting which is above 54" is division 1 class 2, and there is no other existing line within that space. Mr. Piers said they have submitted several applications and received several approvals. He said he was personally involved in the design of this system that is utilized across the nation in Tractor Supply stores. He said propane tanks that do not get approved are because of distribution, restrictions and limitations. Not necessarily municipality restrictions. Mr. Piers said 200' is a great distance. He said propane expands into vapor and does not have an explosive quality. He said propane is the safest option. Mr. Piers said in a breach situation, 25' is safe. There is no chance of combustion. He said they have Building County and Fire Marshall approval. There is training for Tractor Supply employees. Tractor Supply has risk management for a safe environment and has an auditing procedure for the tanks. He said they have done market research for the value it would bring to the community. Mr. Piers said Sheetz sells exchange, and that exchange, sits 5' from the traffic. Mr. Piers said the propane tank is in a locked cabinet inside the fenced area. The propane provider requires annual inspections.

Mr. Meleski asked where items behind the fence now, will go.

Becky Lemaster and Robin Fuller were sworn in.

Ms. Lemaster said everything would be moved inside. Mr. Meleski asked about the pallets and ATVs. Ms. Lemaster said she did not know those items could not be on the sidewalk. Mr. Yaney said he spoke with several managers to make sure those items were in the fenced in area and that was also the intent of the 2019 variance conditions. Mrs. Stark asked Tractor Supply representatives how they intend to rectify that situation while adding a propane tank inside the fence area. Ms. Fuller said it is not an issue – everything else is moved around the perimeter of the fence. Mr. Piers said the propane tank takes up a 10'x28' space. Mrs. Stark said circulation space is needed. Mr. Piers asked if Tractor Supply manages their inventory differently, would the propane tank be allowed. Mr. Meleski clarified the issue is will the sidewalk items still remain on the sidewalk and not be placed inside the fence with the addition of a propane tank going in the fence too. Mrs. Stark said the answers are not meeting the terms for use variance approval. Ms. Fuller said all the stores across the country use the front walk to draw customers in with items being sold. Mr. Wantz clarified the fence is not being proposed to be expanded. Mr. Yaney said no, his concern is that the intent was for those items to be in the granted increased fence area, and those items are not and the propane tank will potentially displace more items that should be inside the fenced area.

Mr. Wantz summarized the concerns as the addition of the tank inside the fenced in area will possibly displace more items – but the original intent of that expansion was to see less items on the sidewalk. Mr. Yaney said yes. Mr. Wantz asked if there was a measurable to that condition; such as no items at all. Mr. Yaney said it was approved as an outdoor garden center for the outdoor sales of items and those items were to be relocated into that area. Mr. Yaney said it appears nothing was ever relocated into that area.

Mrs. Stark asked how this tank is going to be different from the tanks that are currently sold in front of the store. Mr. Piers said this tank is a 1,000 gallon water capacity with vapor space that holds 800 gallons of propane. He said the current cylinders are mass produced and have a 4% - 6% failure rate. He said having a propane tank is safer and more efficient. The tank is used to fill 20lb, 30lb and 40lb and 100lb cylinders.

Mr. Yaney said the discussion is getting beyond safety concerns. He said the applicant is requesting a use variance which means what they are asking for is not permitted in the code. He said there are standards that have to be met for Planning Commission to approve the variance. Mr. Yaney said there are other issues with outdoor sales and displays. Mr. Chojnacki said while this discussion is productive on some level, Planning Commission as a Board are tasked with weighing the factors for a use variance. Mr. Chojnacki said Planning Commission has heard the City's position with respect to the Findings of Fact and Planning Commission is entitled to hear the position of the applicant and members of the public. Mr. Chojnacki said he believes it appropriate to address those Factors and determine if the applicant has met them and exercise the quasi-judicial authority. Mr. Peska asked if the one in front of the store will go away. Ms. Fuller said

she is not 100% certain but would hope it would go away. Ms. Lemaster said it will go away. Mr. Piers said the practice has been once a propane tank was installed, the cylinders went away.

Mr. Wantz said he would like to further understand if there is non-compliance with having items on the sidewalk from the previous variances; but that does not have to hold up this discussion on the propane tank. Mr. Wantz added as someone that has built gas facilities, and after reviewing the drawings, and looking at the classification zones, he is not overly concerned from a safety factor. He said he does like that it is in a fenced in area. He said it isn't obvious to see from the outside, but it could have more trees in front. Mr. Wantz said he has no issues as long as the propane tank follows codes and standards from the State Fire Marshall.

Mr. Emmons asked if there is any area in the City that allows this to be built without a variance. Mr. Yaney said no, not for above ground fueling tanks. Mr. Yaney said Chardon Welding has one but it has been there for decades.

Mrs. Hill had no additional questions or comments.

Mr. Peska had no additional questions or comments.

Mr. Meleski asked if there is another viable location on this site. Mr. Yaney said this is the only leased site for Tractor Supply, and this would be the only location it could go.

Mrs. Stark said she is concerned with Tractor Supplying complying with the original variances from 2019 and she would like more information on that. Mr. Yaney said he can get Planning Commission the requirements. Mr. Meleski said those requirements need to go to the manager of the store also. Mr. Piers asked if a condition could be made that the zoning compliance as previously stated as part of the inspection process and going into service, this statute has to be met.

Mr. Chojnacki said Planning Commission is a Board of limited authority, and what is being asked is to decide if the elements for a use variance have been established. Mr. Chojnacki said it is not about whether the property is safe or the propane tank is going to be put in the right spot. Mr. Chojnacki said Planning Commission has to look at can the property be put to an economically viable use. Is the variance requested stemming from a condition unique to the property an issue. Is there some unnecessary hardship. Did the applicant or property owner purchase the property with knowledge of the zoning restrictions. Will the variance alter the character in use of the zoning district. Mr. Chojnacki said those are the questions Planning Commission needs to focus on. Mr. Chojnacki said if Planning Commission does not have the information it needs, or Mr. Yaney's report was not sufficient, the applicant has the burden of proof to show those elements and Planning Commission has to find they have all been satisfied then the use variance can be granted. If the applicant does not prove those elements to Planning Commission, a variance cannot be granted. The other discussion is great, but that is not what everyone is here for.

Mrs. Stark said the applicant's justifications were lacking. Mrs. Stark asked for a motion to table the case.

Mr. Wantz asked in regards to some of Planning Commission's questions about previous variances, would that be unrelated to the decision making right now. Mr. Chojnacki said no, because Planning Commission is looking at the Factors for a variance. Mr. Chojnacki said that has nothing to do with if the City is policing a previous variance or code or compliance on the site. Mr. Chojnacki said if Planning Commission has enough information to vote today on the Factors necessary for a variance, allow the applicant to address those items in detail to the extent that you do not have the information and allow the public to respond and address those accordingly. Mr. Chojnacki said to the applicant it is their application if they want to move forward or not. Mr. Piers said he would prefer to answer any questions if there are some. Mr. Chojnacki said for clarity for the record, address the elements for what is needed to satisfy Planning Commission for

the use variance, so the Board hears them and they are on the record. Mr. Chojnacki said the Board feels the needs are not met. Mr. Chojnacki said the applicant can respond to them in more detail now or not and let the Commission do what they want. Mr. Piers asked what the Commission feels is deficient. Mr. Yaney read the Findings of Fact to the applicant, one-by-one, to respond directly to.

- 1) The property cannot be put to an economically viable use under any of the permitted conditional uses allowed in the zoning district and an economically viable use does not mean more profitable.

Mr. Piers said: it is a retail sell product. Mr. Chojnacki clarified not the propane tank but the use of the property itself. Is there an economically viable use for the property now. Mr. Piers said yes. Mr. Chojnacki said to meet this standard the answer would have to be 'no'. Mr. Chojnacki said if the applicant cannot meet this, then probably will not be able to get a variance.

- 2) The variance requested stems from a condition which is unique to the property and not ordinarily present in other nearby properties.

Mr. Piers said: Tractor Supply offers services that people cannot get elsewhere. He said people cannot buy propane seven (7) days a week. He said people cannot buy propane at a value price. He said this drives value for the community. He said it is a safer method of distribution and storage. Mr. Chojnacki clarified the standard is what is unique to the property that justifies the use variance – not what is unique to the product being sold. Mr. Piers said the fencing is security and the tank is minimally visible. Mr. Chojnacki said the problem the applicant is running into is, the use variance runs with the land and those standards are difficult to meet.

- 3) The unnecessary hardship is not a condition created by actions of the owner or applicant.

Mr. Piers said: there is not a hardship to the store there is a hardship to the community. Mr. Chojnacki said that is not the standard for the variance.

- 4) Did the applicant or owner purchase the property with the knowledge of the zoning restrictions on its use or the zoning restrictions on an increase number of dwelling units on the parcel.

Mr. Piers said: he cannot speak to what Tractor Supply did when they bought the property. Mr. Chojnacki asked if the representatives from Tractor Supply have anything to say. Ms. Fuller said she does not have any information.

- 5) The variance will not alter the character and use of the zoning district.

Mr. Piers said: he does not see how it would because it is a retail item.

- 6) The variance will not adversely affect the rights of the adjacent property owners or residence.

Mr. Piers said: it does not because it meets all the safety requirements of NFPA 58 for spacing. He said there is no risk to the community or adjacent property owners. He said it is maintained and monitored in a way that competition is not.

- 7) The variance would not adversely affect the public health, safety or general welfare.

Mr. Piers said: it won't.

- 8) The variance is consistent with the general spirit and intent of the planning and zoning code.

Mr. Piers said: he does not know how to speak to that.

9) The variance sought is the minimum that will afford relief to the owner or applicant.

Mr. Piers said: he believes so.

Mr. Chojnacki said to Planning Commission, as a body, they have heard the case and said to open this up to public for comments. Afterwards deliberation or decision can take place. Or a motion to table this case can be acted on as well.

Mr. Todd Albright was sworn in.

Mr. Albright said probably not related to the variances directly, but in his perspective, that plaza struggles in general. There is not a lot of occupancy in it. He said if there was a way to increase traffic this would be a good way to do that.

Mr. Piers explained with 2,300 stores, they average a little over 10,000,000 transactions solely for propane which drives business and traffic.

Mrs. Stark asked for a motion to table the case for Tractor Supply management to provide more time to come up with detailed information/answers for the Findings of Fact.

Mrs. Hill made a motion to table the case. No Planning Commission member seconded it.

There was no motion made to deny the application.

Mr. Wantz made a motion to approve the use variance. It was seconded by Mr. Emmons. Roll was called. Mr. Emmons: no. Mrs. Hill: no. Mr. Peska: no. Mr. Meleski: no. Mrs. Stark: no. Mr. Wantz: yes. The motion failed.

Mr. Chojnacki said the motion failed, but that is not the same as a denial. He said if Planning Commission wants to take any action, they need to act to deny it or act to table it. Mr. Chojnacki said either of those will need discussion to determine if standards have been met so the record is clear what Planning Commission's decision is based on.

DISCUSSION

Mr. Peska said he would like someone from Tractor Supply, not a regional manager, return to Planning Commission, go back to the guidelines and review. And if the standards are not being met, Planning Commission is addressing the Chardon Tractor Supply directly. Not the propane company. Mrs. Stark agreed. Mr. Meleski added to make sure Tractor Supply receives the nine (9) Findings of Fact so they know what they need to speak to. Mrs. Stark agreed and directed the applicant and Mr. Yaney to connect.

Mr. Chojnacki clarified for the record: the applicant will return next month, after receiving a copy of the nine (9) Findings of Fact, and address and respond to the elements to satisfy in obtaining a use variance. Mr. Chojnacki asked if everyone was in agreement with that. Mr. Chojnacki said he is not going to treat the failure to secure approval as an appeal that triggers their right to go to court. Mr. Chojnacki said they want to have this matter addressed through this process. Ms. Fuller, Ms. Lemaster and Mr. Piers said yes.

Mr. Meleski made a motion to table the case. It was seconded by Mrs. Hill. Roll was called. The vote carried 6-0.

PC Case #24-232: Mr. Yaney explained the applicant, Eric Meister, is requesting a use variance to allow an automobile sales and automobile repair garage including outdoor storage of vehicles in the "I-WTTO" Industrial District.

Mr. Eric Meister was sworn in.

Mr. Meister explained this is a car wholesaler. They buy cars from an auction or other car dealers, and reconditions them – and then they are sent back to the auction. He said it is basically an auto repair shop. There will be no auto sales taking place at this location. A truck will drop off 20 – 30 cars at a time, they are reconditioned and sent to Columbus, Detroit or Pittsburg. They are basically an auto repair shop that requires an Ohio dealer's license. There is no retail sales or used car signs. There is no retail traffic.

Mr. Yaney said Staff has no concerns with this request – the issue is they need an auto dealer's license. The State calls the Zoning Department for approval. Mr. Yaney said they would like to store 30 – 70 cars in the back parking lot which leaves additional parking in the front and rear for other businesses.

Mr. Yaney said Staff does have three (3) conditions for approval: all storage has to be in the rear, no junk vehicles outside, and no auto parts outside. Mrs. Hill asked for 'junk vehicles' be defined. Mr. Yaney said missing engines, missing wheels, or up on jacks. Mr. Meister explained the vehicles are 2019 and newer – but will not have registrations on them.

Mr. Emmons asked what part of the building they are taking. Mr. Meister said the northeast corner of the building. Mr. Emmons asked if it was a two-story building. Mr. Meister said yes, he is using the ground level part. Mr. Emmons asked in regards to the rest of the building, how that would work with 70ish cars in the back. Mr. Yaney said it depends on the use of the building, but since it is zoned industrial, it is not like a shopping plaza with the potential for a restaurant or medical office that would have high intensity parking need. Mr. Yaney said most of the bottom of the building is warehouse space. Mr. Yaney said there is a trucking company there that uses almost no parking because they only have a handful of employees. Mr. Emmons said he is in favor of this because it is a good use for this location. Mr. Emmons said regarding getting approval from the neighbors, is the bike path owned by the City. Mr. Yaney said that part of the path is owned by the City. Mr. Yaney said they are using an existing parking lot that is not being used right now.

Mr. Wantz made a motion to approve the Announcement of Decision. It was seconded by Mr. Peska. Roll was called. The vote carried 6-0.

OLD BUSINESS

PC Case #24-200/201/202/203/204/205: Mr. Yaney explained the applicant, Brian Smallwood on behalf of Meijer, is requesting final development plan approval and architectural review for a new retail store and gas station. Mr. Yaney explained at the previous meeting Planning Commission approved a number of variances and sign deviations. The site plan and look of the building still needed to be addressed. Mr. Yaney said Mr. Durante and Meijer's architect met and worked through the issues. Mr. Durante has submitted a letter of approval. A brick vanier was added to the main building and mExpress store. There is more landscaping around the garden center.

Abby Jacobs, Brian Smallwood and Chris Jones were sworn in.

Ms. Jacobs presented a PowerPoint presentation showing the changes they made to meet Planning Commission's requests. The driveway on the north end of the site was made one-way and more landscaping and green space added. Planter boxes were added to the front of the building. Sidewalks on the street frontages adjusted to be further from curb lines. A number of species for planting were increased.

Mrs. Stark said she is glad everything worked out. She suggested having Meijer's Landscape Architect change the cornus florida flowering dogwood to a cornus kousa dogwood because it is an urban area and there is a potential for a dogwood anthracnose.

Mr. Meleski said he is grateful Meijer returned and worked with the City Architect. He said he appreciates Meijer's goodwill.

Mr. Emmons asked for clarification on what Planning Commission is voting on. Mr. Yaney said Final Development Plan approval and Architectural Review – what the building looks like and the final site plan.

Mr. Meleski made a motion to approve the Announcement of Decision. It was seconded by Mr. Wantz. Roll was called. The vote carried 6-0.

OTHER BUSINESS – none.

EXECUTIVE SESSION – none.

ADJOURN

Mr. Meleski made a motion to adjourn the meeting. It was seconded by Mrs. Hill. The meeting was adjourned at 7:58 p.m.

Respectfully Submitted:

MARY JO STARK, VICE-CHAIRMAN

Rebecca Repasky, Secretary