

Oakwood, Dayton, Ohio

May 3, 2006

The planning commission of the city of Oakwood, State of Ohio, met this date in the council chambers of the city of Oakwood, city building, 30 Park Ave., Dayton, Ohio, 45419, at 4:30 p.m.

The Vice Chair, Mr. Jeffrey Shulman, presided and the Clerk, Ms. Cathy Blum, recorded.

Upon call of the roll, the following members responded to their names:

MR. WILLIAM KENDELL.....ABSENT
MR. JEFFREY B. SHULMAN.....PRESENT
MR. STEVEN BYINGTON.....PRESENT
MR. ANDREW AIDT.....PRESENT
MR. CARLO C. McGINNIS.....PRESENT

Officers of the city present were the following:

Mr. Norbert S. Klopsch, City Manager
Mr. Scott Lieberman, representing City Attorney Dalma Grandjean
Mr. Jay A. Weiskircher, Assistant City Manager
Mr. Dave Bunting, City Inspector

The following visitors were present:

Roger Doolin, 228 Byers Road
Doug Wurtzbacher, 2419 Far Hills Avenue
Ann Wurtzbacher, 2419 Far Hills
William Siedling, 245 Park Road
Mrs. Schreck, Park Road

It was moved by Mr. Aidt and seconded by Mr. Byington that the absence of Mr. Kendell be excused. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

It was moved by Mr. Byington and seconded by Mr. Aidt that the minutes of the commission meeting held April 5, 2006 be approved as submitted and the reading thereof be dispensed with at this session. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

Application #06-4. the special use request from The Medicine Shoppe to vary from the Business District Design Guidelines (BDDG) for an illuminated sign at 2419 Far Hills was reviewed. Mr. Aidt announced that he will recuse himself due to his relationship with the shop owners. Mr. Shulman explained to the applicant that there are five members of the commission; however, with one absent, one recused and only three to vote, the special use request must be approved unanimously; so if they'd prefer to postpone the hearing, they were welcome to do so. Mr. Wurtzbacher asked to proceed. Mr. Weiskircher welcomed the Wurtzbachers and Medicine Shoppe to Oakwood. He referenced a Power Point presentation and reviewed the self-illuminated sign that was relocated from the former shop location in Kettering. When the contractor obtained the permit it was not clear to staff that the sign was self-illuminated. He indicated the self-illumination is problematic since the 1998 Business District Design Guidelines (BDDG) prohibits this lighting mechanism. Since adoption of the BDDG, no such signs have been approved, although there are several that were grandfathered. Also since the BDDG was adopted, a number of new signs have been approved, most with shadowed backlit letters and all the new store owners were informed that self-illumination was not permitted. He reviewed signs with lit letters as well as those signs with no lighting. He also reviewed the C'est Tout sign which has uplighting. Mr. Weiskircher indicated if the owners feel lighting is that important, staff suggests they use up or down lighting.

Mr. Wurtzbacher had thought the sign contractor indicated the sign was self-illuminated and it took three weeks to get the sign moved. When they received the letter from Mr. Bunting, they disconnected the electric so the sign has not been lit since. Mr. Shulman asked for an explanation of the self-illumination. Mr. Wurtzbacher is not familiar with that term but explained that the sign has fluorescent back lighting

and the eye mechanism turns the sign on at dusk and off in the morning. Mr. Shulman asked if it is important to their business to have the sign lit. Mr. Wurtzbacher explained most of their customers are older and have had a problem finding the new location. He indicated the illumination is not needed in the summer but during winter months. He explained they are also a specialty pharmacy, make compound medications, so many come from other areas and aren't accustomed to Oakwood. Mr. Shulman asked if up or down lighting would work in case the self-illuminated sign is not approved. Mr. Wurtzbacher personally feels that up or down lighting detracts from the building. Mr. Shulman asked about the individual lit letters. Mr. Weiskircher explained each letter is individually lit and it creates a shadow effect; the light does not shine through the letters.

Mr. Byington wondered, since he was not on the commission in 1998, why it was decided that self-illuminated signs were not acceptable. Mr. Weiskircher explained that was a recommendation from the consultant who worked on the BDDG. Mr. Byington believes self-illuminated signs are easier to read than backlit signs. Mr. Weiskircher recalled it was also because the businesses are in close proximity to Far Hills, not set back as in a strip mall. Mr. Shulman wondered if approved is there concern with precedent setting. Mr. Weiskircher concurred, particularly since others have asked for self-illuminated signs and were told no. Mr. Shulman asked what is being done on the new building. Mr. Weiskircher indicated backlit shadow letters. Mr. Klopsch noted to date they have been able to follow the BDDG without exception and recalled concern with C'est Tout's proposed yellow awning. Mr. Weiskircher noted one of this year's projects is to review and recommend adjustments to the BDDG. Mr. Klopsch indicated one approach would be to leave the sign as is, but without any illumination and if they later amend the BDDG then the owners could flip the switch. Mr. Shulman referenced the owners concern with winter hours. Mr. Byington asked about their hours. Mr. Wurtzbacher indicated 9-6 Monday through Friday and early Saturday hours. Mr. Byington indicated that only impacts a couple hours in the winter time. Mr. Weiskircher indicated staff is not opposed to the sign, only the self-illumination aspect.

SPECIAL USE STANDARDS

- A. The proposed use at the specified location is consistent with the Comprehensive Plan.
PRELIMINARY STAFF FINDINGS: Under new objectives, the Comprehensive Plan recommends that the BDDG be reviewed to ensure that all new retail and business developments complement the traditional image and character of Oakwood. Self-illuminated signs are prohibited under the BDDG regulations adopted in 1998.
PLANNING COMMISSION FINDINGS: Sustained.
- B. The proposed building or use will not adversely affect or change the character of the area in which it is located.
PRELIMINARY STAFF FINDINGS: While there are existing self-illuminated signs in other locations throughout the Business District, since 1998, no new businesses have been permitted to install self-illuminated signage.
PLANNING COMMISSION FINDINGS: Sustained.
- C. That the establishment, maintenance or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, convenience or general welfare.
PRELIMINARY STAFF FINDINGS: While the granting of the special use will not be detrimental to or endanger the public health, safety, morals, comfort and convenience of the general welfare, it will be a deviation from the policy the Planning Commission has applied to new signage since the BDDG were adopted.
PLANNING COMMISSION FINDINGS: Sustained.
- D. That the proposed use will not be injurious to the reasonable use and enjoyment of other property in the immediate vicinity for the purposes already permitted, or substantially diminish and impair property values within the neighborhood.
PRELIMINARY STAFF FINDINGS: The proposed use will not be injurious to the reasonable use and enjoyment of other property in the immediate vicinity or substantially diminish or impair property values.
PLANNING COMMISSION FINDINGS: Sustained.
- E. The proposed use at the specified location will not significantly adversely affect the use and development of adjacent and nearby properties in accordance with the regulations of the district

in which they are located. The location, size and height of proposed buildings and other structures, and the operation of the use will not significantly adversely affect the use and development or hinder the appropriate development of adjacent and nearby properties.

PRELIMINARY STAFF FINDINGS: The proposed sign will not adversely affect the use and development of adjacent and nearby properties but it will be a change in the Planning Commission's sign illumination policy.

PLANNING COMMISSION FINDINGS: Sustained.

- F. That the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood, or the character of the applicable district as to cause a substantial depreciation in the property values within the neighborhood.

PRELIMINARY STAFF FINDINGS: This sign will be a change from the restrictions which have been applied to new business signage during the past eight years.

PLANNING COMMISSION FINDINGS: Sustained.

- G. That adequate utilities, access roads, off-street parking and loading facilities, drainage and/or other necessary facilities, have been or are being provided at the applicant's cost.

PLANNING COMMISSION PRELIMINARY STAFF FINDINGS: This standard is not applicable to this application.

PLANNING COMMISSION FINDINGS: Sustained.

- H. That adequate measures have been or will be taken at applicant's cost to provide ingress and egress so designed as to minimize traffic congestion in the public streets and avoid hazards to pedestrian traffic.

PRELIMINARY STAFF FINDINGS: This standard is not applicable to this application.

PLANNING COMMISSION FINDINGS: Sustained.

- I. That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulation may, in each instance, be modified by Council pursuant to the recommendations of the Planning Commission.

PRELIMINARY STAFF FINDINGS: Except for being self-illuminated, the sign complies with all other zoning regulations.

PLANNING COMMISSION FINDINGS: Sustained.

Therefore, it was moved by Mr. Byington and seconded by Mr. McGinnis that whereas the Planning Commission has heard and considered the evidence presented by the applicant and has heard and reviewed the staff's preliminary findings, the Commission concurs with the staff's findings; and based on the foregoing, the Planning Commission finds that the special use standards set forth in Oakwood Ordinance Section 1004.6 are not met; and wherefore, the Planning Commission denies application #06-4. the special use request from The Medicine Shoppe to vary from the Business District Design Guidelines (BDDG) for an illuminated sign at 2419 Far Hills Avenue, and known as pt lot 2872. Upon a viva voce vote on the question of the motion, said application was denied and it was so ordered.

Mr. Shulman indicated the request was not approved but they will review this type of lighting during the BDDG review. Mr. Wurtzbacher asked if the permit is valid. Mr. Bunting replied yes as long as the sign is not lit. Mr. Weiskircher noted if they want to up or down light the sign, they may proceed. For the record, Mr. Aidt returned to the meeting.

Application #06-5, the request from William Siedling for a yard variance associated with the subdivision of the property at 245 Park Road (lot #3716) into two new building lots, was reviewed. Mr. Weiskircher referenced a PowerPoint presentation and the preliminary proposed subdivision of 245 Park Road pointing out Mr. Siedling's home (former Stan Smith home), the Schreck's lot where the new home is being built, and the proposed two new lots on the south edge. He indicated the commission reviewed a similar subdivision request last fall when the city was planning to vacate the right-of-way on Park Road. At that time, Tract II was 43,000 square feet, Tract III was 48,000 and Tract I (with the house) was 2+ acres. Subsequently the city decided not to vacate Park Road, to leave options open in case they decide to reopen the road. Consequently, this revised plan reduces the acreage; Tract I with the residence is 1.8

acres; Tracts II and III at 40,000. Mr. Weiskircher indicated Tract III has the requested variance, the front yard setback is required to be 70' and they are requesting a 60' setback. He reviewed the generous building envelopes, topography, etc. He also pointed out the required preservation easement off Deep Hollow and that Mr. Siedling has agreed it be 60' and added tree clearing is limited to the building footprint. Mr. Weiskircher noted that Mr. Doolin can give additional information and has worked with Mr. Weaver on the cul-de-sac the city plans to install when Park Road is abandoned.

Mr. Doolin, Norfleet, Brown & Petkewicz, referenced a more current drawing which the commission received in their packet. He explained their goal is to make the best building site for each of the two lots. He indicated originally they included the roadway easement which made the lots bigger but since that easement encroached into Tract I, they had to change the layout of all three lots. On Tract II he is suggesting the drive be brought in from the rear. In regard to the horticultural plan, it notes all the large trees and Mr. Doolin indicated they plan to save as many as possible. The requested variance to Tract III gives more flexibility to build a home and balances out the lot. In regard to drainage, given the topography and slopes, trench drains are not suitable so dry wells will be installed. Mr. Doolin indicated both he and Mr. Siedling are available to answer any questions. Mr. Klopsch indicated since the property butts up against the corporation line; they could request approval from Dayton and Five Rivers Metro Parks to receive the additional water as a means to help re-establish the wetlands. Discussion ensued in regard to setbacks, through lots, etc.

Mr. Byington questioned the drive access. Mr. Doolin explained given the topography on Tract II, there is a 30' drop from Park Road to the front of the home, so they noted the option of the drive from the rear which will wind through the existing large trees. Mr. Shulman questioned the drop off from Deep Hollow. Mr. Doolin indicated the topography isn't that extreme from the rear. Mr. Shulman asked if they would be amenable to sharing the front drive access. Mr. Siedling indicated Mr. Doolin has worked through many revisions so he is agreeable to whatever Mr. Doolin believes would work. Mr. Shulman asked if preference is for the drive off Deep Hollow. Mr. Doolin agreed due to the grade. Mr. Shulman noted the intent of the hearing is not to decide on the drive.

Mr. Byington asked what the buildable area is if they don't grant the variance. Mr. Doolin indicated he hasn't calculated that since the shape of the lot is unusual. Mr. Shulman wondered if there are mature trees within that 60' area. Mr. Doolin responded yes, there are several and he has noted them on the horticultural plan. Mr. Shulman noted the issue is to address the variance. Mr. Weiskircher concurred and inquired of Mr. Siedling if there are any potential buyers. Mr. Siedling responded he has had many calls and they were waiting to see how the cul-de-sac issue was resolved. They also plan to have a lot of trees saved, as per Mr. McGinnis' concerns. He commended Mr. Doolin on all the different scenarios he has worked up.

Mr. McGinnis asked why it is being requested to be replatted again; he thought it was only two lots. He asked to see how the Schreck home lines up with the proposed lots and suggested the drive not be off Deep Hollow. He also recalled that subdivisions abutting wooded areas need to be carefully protected. Mr. McGinnis pointed out the owner is asking them to vary from policy and although the current owner wants to preserve the wooded area, the next owner might not. Mr. Siedling reminded him that last year he agreed to an extra 20' wooded easement, more than is required. Mr. Klopsch explained last fall the owner presented two new lots; similar to what is being reviewed at this meeting, but a different layout. He indicated there are several steps for a replat and the former Schuster subdivision took over a year for the entire process. He recalled after the first review last fall, Mr. Siedling wanted to refinance Tract I with the home so a simple lot split, which can be done administratively, was undertaken. However, rather than one new lot, this application is to have two new buildable lots as was originally requested. Mr. McGinnis recalled a concern with the west side of the property. Mr. Klopsch explained when the VanderHoevens originally subdivided; a lawsuit was filed by Mr. Smith. After Mr. Zorniger bought the VanderHoeven property, Mr. Smith agreed to cancel the suit and entered into an agreement if Mr. Zorniger would agree that any future development could only be accessed off Deep Hollow. When Mr. Zorniger sold the property, he got Mr. Smith to cancel the aforementioned agreement so the Schreck lot was not restricted to access from Deep Hollow. Mr. Shulman questioned the status of the private drive. Mr. Klopsch

indicated the Siedlings and Sheridans own part of it, and the Burkes have an easement to travel over same. Discussion ensued in regard to the right-of-way, cul-de-sac, etc.

Mr. McGinnis reiterated his concern that the property not be accessed from Deep Hollow. He would also prefer that it remain one, not two buildable lots, given the topography. Mr. Shulman reiterated the commission is only to decide on the front yard variance request, however, it is difficult to determine since they have not yet seen building plans. Mr. Weiskircher concurred but understands Mr. McGinnis' concern with maintaining the buffer. Mr. Byington questioned the required buffer area. Mr. Weiskircher indicated between 20-50' and Mr. Siedling has agreed to set it at 60'. The commission discussed the buffer easement regulations.

Mr. Siedling indicated he has come to the commission twice and complied with Mr. McGinnis' concern that a canopy of trees remain, only 20-25' is required and he has already agreed to 60'. Mr. Klopsch explained this also relates to approving the preliminary replat and whether the owner may proceed with the project. They hope to work on the city's cul-de-sac within the next few months. Later on, they will review the final plat which can be recorded for two buildable lots. Mr. Aidt questioned the minimum lot area requirement. Mr. Klopsch indicated it's 40,000 square feet. Mr. McGinnis believes if they approve the variance, they will lose control, he'd prefer to keep options open and review a plan. Mr. McGinnis expressed concern with three lots and all the changes that have occurred on this property. Mr. Klopsch indicated Mr. Bunting had mentioned there may be something in the subdivision regulations regarding access to new lots which may require access from Deep Hollow. Mr. Shulman asked if there are any drives off Deep Hollow. Mr. Klopsch responded yes. Discussion ensued in regard to the subdivision regulations and that this matter is not forwarded to council for their review. Mr. Klopsch also referenced the Comprehensive Plan which urges the preservation of green space.

Mr. Shulman doesn't believe the 10' variance is necessary at this point. Mr. Doolin explained they have been following the normal process and it will be easier to sell the lot to a buyer who knows they have the variance. Mr. Siedling indicated Mr. Doolin has worked on many variations and this is the best configuration. Mr. McGinnis expressed concern that in order to maintain the integrity of the Comprehensive Plan the wooded canopy needs to be maintained. Mr. Byington indicated the setback and requested variance won't change the parameter of the lots. Mr. McGinnis asked why the lot division was changed. Mr. Siedling explained it was a financial move and also in response to Mr. Weaver who asked for a revised drawing to reflect the cul-de-sac rather than right-of-way. He indicated Mr. Doolin made revisions as requested by Mr. Weaver and he has met concerns about the trees by extending the wooded easement. Mr. McGinnis appreciated that. Mr. Klopsch explained that Mr. Weaver had originally asked for a dedicated right-of-way due to the closing of Park Road but later amended that in case they decide to reopen the street at a later date. Mr. Klopsch also gave Mr. Siedling credit for complying with the city's wishes.

Mr. Byington expressed his discomfort in granting a variance without specific plans so suggested they decline the variance until a property owner submits a design. Mr. Siedling indicated the potential buyers want to know about the building envelopes. Mr. Byington asked what is in the 10' topography area that would require the building at 70' and added based on his architectural experience, the variance is usually requested with a specific design. Mr. Doolin indicated the variance will give the buyer more flexibility, given the lot shape and trees; however the topography isn't an issue in that 10' area. Mr. Klopsch indicated if they deny the variance, the zoning code states the application cannot return for twelve months unless the request is changed. Mr. Shulman suggested they not deny but table that portion. Mr. Doolin asked if the preliminary plat can be addressed so they may market the property. Mr. Klopsch referenced 1171.03 which states as long as the provisions are met and acknowledged by the commission, the plat may proceed. He added that they can't sell the lots until the final plat has been approved and recorded. Mr. Shulman believed this will be a nice development.

Therefore, it was moved by Mr. Byington and seconded by Mr. McGinnis that application #06-5, the request from William Siedling for yard variances associated with the subdivision of the property at 245 Park Road (lot #3716) into two new building lots, be tabled as to the variance request but a preliminary

plat of the proposed subdivision was approved. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

Mr. Klopsch updated the Commission on the recent sale of Sugar Camp, 24-acre site previously owned by NCR and purchased by the Oakwood Investment Group. He reported plans for a mixed use with potential empty-nester housing to the west. He indicated Building D will remain as office space, including NCR leasing space on one floor; Building B will be for a non-profit use, Synagogue; Building C will also be used for office space and they are still reviewing plans for Building A. Mr. Klopsch reviewed how the city may be involved in financial assistance with parking plans and the tax benefits to the city and schools. He indicated the 7 ½ acre site at the corner is being reviewed by the Versant Group for a possible mixed office and medical building. Mr. Klopsch was pleased that the two groups are working together and to date the intended plans fit with the Comprehensive and Subarea Plans. Discussion ensued in regard to the parties involved, price, etc.

Mr. Klopsch indicated that Mr. Guttmann plans to open the new business district building in August, prior to the opening of the Greene Mall.

The Planning Commission adjourned. The public meeting concluded at 6:26 p.m.

VICE CHAIR

ATTEST:

CLERK