Board of Zoning Appeals
March 9, 2017

Members present: Chairman Phil Rooney, Sharon Rooney, and Doug Warren. Present on behalf of the City of Findlay is Todd Richard, Zoning Department Administrator, Erik Adkins, Zoning Department Code Enforcement Officer, Don Rasmussen, City Law Director, and Deidre Ramthun, Recording Secretary.

The meeting was called to order at 6:00 p.m. by Chairman Rooney. Mr. Rooney introduced the members to the audience and the general rules were reviewed.

Case #55513-BA-17 (2210 Beecher Street) was introduced. Mr. Richard read his comments as follows: Filed by George and Thelma Martens, the applicants have filed an appeal to an order by the Zoning/Floodplain Administrator that the referenced property is a nuisance and must be cleared of the open storage of building materials, window frames, and other unsightly debris and rubbish, as applied in section 1163.01A of the City of Findlay Zoning Ordinance.

The materials on this property have been stored in the open since at least August 2016. On August 29, 2016, Mr. Martens was going to be denied a zoning permit for another property because he wasn't considered to be in "good standing" with the City because three particular properties were considered in violation of regulations enforced by Becky Greeno of the Neighborhood Enhancement and Abatement Team. Mr. Martens protested and asked Mr. Richard to visit the sites. Three of the properties were visited and photographs were taken. All three were considered to be in violation.

There was a concern on Mr. Richard's part as to whether the violations were being processed properly as far as the notification declaring a violation that would put Mr. Martens in "bad standing" with the City. After a lengthy discussion, Mr. Martens stated that he would get the properties cleaned up. In an effort to expedite the situation, the zoning permit he desired was issued on the promise he would get the properties cleaned up.

By mid-November, there had been no action and the Mayor asked Mr. Richard to intervene. On November 17 and December 1, inspections were made, photographs were taken and notices were sent. After the final deadline passed, the property was still in violation as prescribed in section 1163.01A (nuisance) of our Zoning Code. Criminal charges were filed against both Mr. and Mrs. Martens in Municipal Court (two counts each). Mr. and Mrs. Martens are appealing my order to the Board.

The question is very simple: Do you agree the violation is valid? If so, we proceed with legal action unless the applicants choose to appeal your decision to the Hancock County Common Pleas Court. It is not your duty to decide if the ordinance has validity, but rather does the order have validity. Mr. Martens has submitted court documents and legal opinions from other jurisdictions that you have received by email and he's probably going to present other evidence regarding other properties unrelated to this appeal. We feel that the other evidence needs to be presented in the Common Pleas Court, not here. Mr. Martens was given ample time to clean the property. He did not live up to his verbal agreement and took advantage to get his zoning permit.

Mr. Rooney swore in George Martens, 747 East Sandusky Street, Findlay, Ohio.

Mr. Martens disagreed that the issue can be appealed by a Common Pleas Court and stated that it cannot be appealed. Tonight's hearing is the whole hearing. The Common Pleas Court gets nothing but a transcript on issues of law and fact. He has no ability outside of this meeting to say that ordinance 1163.01 is not an ordinance about litter control. It's not an ordinance about debris or trash. We have an ordinance for that – 52104, 52103 and have a department for that – NEAT. They are the ones that handle it. This is a zoning code; it is not a trash code or a debris code. Mr. Martens stated that he can show that that ordinance is wrongfully used by Todd Richard. It is not about litter.

Mr. Rooney stated that we are not a court so we cannot determine whether the City has the authority to create two different statutes, one under the police provisions of the 500 section of the code and one under the zoning code. Our sole ability here is to take Mr. Richard's determination that this is a nuisance property and either say yes, it's a nuisance, or no, it's not a nuisance. Mr. Rooney informed Mr. Martens that he understands that Mr. Martens thinks he needs to put all his arguments out, but whether he says them here has no bearing on his appeal to the Hancock County Common Pleas Court. You can go to that court and say this ordinance is invalid because the City does not have the power under the Ohio Revised Code to enact it, but that has nothing to do with the Board of Zoning Appeals. We can't make that determination. We can't tell the City that their codes are wrong. All we can do is say whether they have been properly enforced.

Mr. Martens replied that he is here to show that code is not properly enforced.

Mr. Rooney stated all that would have to do would be to look at the property.

Mr. Martens insisted repeatedly that the wrong ordinance was applied and gave several examples about noxious and offensive odor – 521.05; a minor misdemeanor, but they choose to use a wrong code – 1163.01. Mr. Martens stated that he has no opportunity, if not granted that opportunity here to show that that code is unlawfully used, wrongfully used, maliciously used against him. Mr. Martens also said that they checked his properties, gave him a permit, and that permit met good standing otherwise he couldn't have gotten the permit.

Mr. Rooney commented that has nothing to do with what we are looking at today.

Mr. Martens stated that he is allowed to cross examine him.

Mr. Rooney stated that we are looking at the condition of the property at 2210 Beecher Street. That's all we're allowed to look at.

Mr. Martens replied that he is appealing his order. It's not about the property condition. His appeal specifically states, "I am appealing the order" and am allowed to appeal the order. He is not here to argue the pictures. He is not here to argue; his appeal is on the order, and provided letters dated November 17, 2016 and December 1, 2016. The order is invalid.

Mr. Rooney stated that he understands what Mr. Martens is saying, but we don't have any authority over that order.

Mr. Martens disagreed with Mr. Rooney.

Mr. Rooney reiterated that Mr. Martens is contesting the validity of the City's zoning code. If Mr. Martens is saying that we can't put nuisance under zoning, that's a question for a court, not for BZA.

Mr. Martens disagreed and stated that he is not questioning whether you can put nuisance under zoning in this case and is not arguing the issue of what the City Hall can do. He is saying that City Hall never intended to put nuisance under this order because it's called a public nuisance per se. That means it affects the general public. Per se means it is strict liability. This is not a public nuisance and that is what that ordinance reads. 1163.01B says the aforementioned shall be called a public nuisance. This is not a public nuisance.

Mr. Warren asked Mr. Martens if he considers the property at 2210 Beecher Street to be a nuisance in the condition it's in right now.

Mr. Martens replied, "No".

Mr. Warren asked if Mr. Martens is arguing that too then.

Mr. Martens replied, "Well, that's in here; because first of all, it's a rented property".

Mr. Warren commented that doesn't matter. People don't care if it's rented or owned. The question is, do you think it's a nuisance and you're telling me no.

Mr. Martens replied, you said a nuisance now. No, absolutely not.

Mr. Martens argued again that the wrong ordinance was applied.

Mr. Rooney read 1162.01B at Mr. Martens' request which states that such uses of lands, buildings, or structures in any manner are hereby declared to be a public nuisance per se and may be abated by order of a court or of competent jurisdiction.

Mr. Martens – Correct, that's what the City said it was. He's now speaking about a nuisance per se. It is not a public nuisance, that's been defined.

Mr. Rooney asked why Mr. Martens says it's not a public nuisance.

Mr. Martens answered because of Ohio laws and articles he sent to the BZA. The article that stands in front of all articles is Brown vs. Scioto.

Mr. Rooney stated that Mr. Martens is reciting cases that were private nuisance claims between different private parties.

Mr. Martens disagreed that it was a claim between Brown vs. the City of Scioto.

Mr. Rooney asked Mr. Martens what he thinks he's appealing.

Mr. Martens says that 1115.03 says that he's allowed to appeal any order to the Board of Zoning Appeals and he is appealing the order which is a fabrication. You can't prosecute a trash in the back yard problem with a public nuisance claim.

Mr. Rooney stated that Mr. Martens is arguing legal theory which the BZA has no ability to address. We are not a court and can only address Todd Richard's recommendation and he thinks your property at 2210 Beecher Street is a nuisance. BZA cannot make a legal determination about the validity of the City of Findlay Zoning Code. 1715.44 of the Ohio Revised Code gives the Municipal Corporation the right to abate nuisances. It does not determine how or why they do it. If the City has decided to put it in their Zoning Code and in the 500

section of their code, that's their decision. We have no authority over that. We are conducting a hearing on the validity of the condition of the property at 2210 Beecher Street. If you want to put on evidence about the condition of the property, they will hear it. We are not going to argue about the validity of the City of Findlay Zoning Code.

Mr. Martens said that the State of Ohio requires him to take all action he can with the Board of Zoning Appeals and under 1115, he can appeal any order, not the condition. Mr. Martens wanted to cross examine Mr. Richard. Mr. Rooney responded that Mr. Martens could ask Mr. Richard about the condition of the property. Mr. Martens replied that there is nothing wrong with the condition of his property and he is not residing in the property. That Zoning Code doesn't identify the owner as being responsible.

Mr. Rasmussen stated to Mr. Martens that he has made his position clear. He is appealing the order. The order is that the property is a nuisance and he is to clean it up. If you would like to discuss facts about the condition of your property, and ask Mr. Richard about the condition of the property, show pictures of the condition of the property, let's proceed. This matter has to come to a conclusion. The fact is that the only issue here is that Mr. Richard had authority to issue that order because your property is a nuisance. This Board does not have any authority to challenge a legislative act by the City, the Common Pleas Court does not as well. They can only review administrative orders from the City.

Mr. Martens said that this Board is a Board of Zoning Appeals and are required to know the Zoning rules and apply them fairly. You are refusing to apply it.

Mr. Rooney disagreed and stated that we are applying it. The question is, is your property a nuisance in its present condition. Mr. Richard says it is. We can give you a variance that says, no, we don't think it's a nuisance in its present condition, but all we can talk about is the condition of the property.

Mrs. Rooney addressed Mr. Martens that he has repeated himself numerous times about the same thing and understands that it's very frustrating, but we need to move on. If he has something to say about the condition of the property, we are here to address exactly what Mr. Rooney said, the condition of the property.

Mr. Martens asked if he had a boat in his driveway, would that violate any ordinance. Mr. Richard asked where the boat was parked. It was determined that the boat was parked in the driveway in the front yard. Mr. Richard stated that it depends on how long it's been there and what time of year it's parked there.

Mr. Martens asked Mr. Richard if he gave him a permit after he inspected all the properties. Mr. Richard replied, "Yes". Mr. Martens stated that permit must be because you said we weren't going to give it to you because we're not in good standing, you inspected all the properties, and then you said we'll give you the permit. I was in good standing, he inspected them, and there was no issue then. All of a sudden he states that there is an issue. Mrs. Rooney asked Mr. Martens if he has a question for Mr. Richard.

Mr. Rooney stated to Mr. Martens that unless he has some direct questions for Todd, they are going to deliberate and make a decision because they understand his concern and have told Mr. Martens why they cannot address his concern. You do not want to agree with that, that's fine; it's been duly noted in the recording so you can appeal that to the court.

Mr. Martens asked Mr. Richard if you're able to keep building supplies on your property. Mr. Richard replied, in the case of an active construction site, there could be building supplies.

Mr. Martins asked, do you know that there was an active construction site? Mr. Richard replied, we had no active permit for the property. Mr. Martens asked, if I put a window in, do I need a permit? Mr. Richard replied, no. Mr. Martens asked, to install a new screen on the house, do I need a permit? Mr. Richard replied, no. Mr. Martens commented, so could there be building supplies on the property and not be in violation? Mr. Richards replied, it depends upon how long it's there. Mr. Martens asked, and how long can it be there according to code? 521.04D, how long can it be there? Mr. Richard said, I don't know what that section says. Mr. Martens replied, four months, correct? Mr. Richard replied, I don't know; I don't enforce that... Mr. Martens interrupted, yes, it can be there four months, at an active building site. So any building supplies you saw on August 28, September, October, November, December 28. After that it may have been in violation. You filed it December 20. There was no debris there or building materials outside of the allowed ordinance 521.04D. Everything there was allowed. If you say that nobody ever can have building supplies on a structure or against a structure, or a new window being put in, then everybody's in violation in this City because I'm allowed to under ordinances the City has approved. By law you cannot declare something a public nuisance that's sanctioned under law. Mr. Martens says that he's sanctioned to have building supplies if I'm doing a project. Just because you saw building supplies, and they weren't removed, doesn't mean they were unlawful. The building supplies there were lawful.

Mr. Rooney stated that is really doesn't matter because the enforcement provision is 1163.01 and it is what the BZA is addressing.

There were no written communications.

Mr. Martens wanted it on the record that he was not allowed to ask any more questions. Mr. Rooney responded that it is on the record that he is terminating Mr. Martens' time to speak. He has been given 35 minutes to speak and the Board clearly understands his position and they are going to determine whether they feel this property is a nuisance based on the condition of the property.

Mr. Warren commented that so far we've talked about building materials, but the pictures show debris as well as some building materials. It's not just a building material issue. Mr. Warren couldn't see the back of the property and asked if Mr. Richard has been to the property since November. Is the back in the same condition and hasn't been cleaned up? Mr. Richard replied that it's been several weeks since he's been to the property. Mr. Rooney and Mrs. Rooney both stated that there are building materials in the front. Mrs. Rooney commented that the building materials do not look like they've moved. They look like they've been there an extra few months and does not look like they've been touched or anything moved, they look weathered. The nuisance report is because of things like that being out there, and that being the case, it needs to be gone. It's been there too long.

Mr. Rooney stated this is different than a variance. We need to either grant the appeal or deny the appeal of Todd's order that this is a nuisance. Mr. Warren stated that based on the order, what Todd's intent is, based on the pictures, and what he could see at the front without change, a motion was made by Mr. Warren to deny the appeal. Mrs. Rooney seconded the motion. The appeal was denied by a vote of 3-0.

Case #55533-BA-17 (SW Corner of Interstate Drive and Northridge Road – Parcel 220001029413) was introduced. Mr. Richard read his comments as follows: Filed by Whitson Properties, the applicant is seeking a variance from section 1161.11.6 of the City of Findlay Zoning Ordinance. A new 112 room hotel has been proposed that will have 129 parking spaces when 178 parking spaces are required.

This project will be reviewed by the City Planning Commission on the morning of March 9 and was approved on the condition the variance be granted. The referenced parcel is being split and separated by a cul-de-sac and this project will be on the west side of the new street.

There is no specified parking requirement for a hotel, the number of required spaces defaults to a general formula and requires 178 spaces. We are in the process of formulating parking requirements specifically for a hotel. This requirement is usually less than what is desired for most projects. The difference is this project has multiple floors and the total number of required spaces is far more than what is practical.

The CPC will be asking to help formulate a parking standard for this use type as we are undergoing some minor code modifications. We have considered the standard of 1.1 or 1.2 spaces per room with some spaces available for the employees. We've suggested that perhaps a future parking agreement could be made with other properties as they develop since everything is in rather close proximity.

Perhaps a future parking agreement could be arranged with the new lot on the east side of the cul-de-sac.

Mr. Warren asked if you take 1.1 or 1.2 on 112 then the 129 is actually within that range or what you envision as the appropriate number of parking spaces in the future. Mr. Richard replied that Regional Planning has looked at other codes in other communities and that's somewhat the requirement that's been followed, so that's probably what we are going to adopt.

Mr. Rooney swore in Blake Helms, High Five Development Services, 202 West Main Street, Mason, Ohio. Also present were John Whitson and Paul Whitson, the project owners, and Todd Jenkins, the Civil Engineer on the project. Mr. Helms wanted to come before the Board to talk about how the parking ordinances formula has resulted in a parking count that is far in excess of what this project requires. For reference, a 112 room hotel, The Holiday Inn, a nationwide brand, requires a parking count that matches the precise guest room count. In the industry, there's also a recognition that 1.1 times the room count is a multiplier that provides for excess above the room count, provides for staff and management which is a realistic multiplier. Mr. Helms stated that in preparation for this meeting a survey was created, he did a count and compared all hotels in the C-2 District. The average parking ratio end up being 1.1 parking spaces to guest rooms. They are adding above that to be safe and allay any concerns about parking flooding onto the side streets around the hotel. Higher parking ratios are seen in hotels that have associated conference spaces and restaurants, like the Hilton Garden Inn, which is not the case here. Mr. Helms stated that they probably only need five (5) to a dozen (12) spaces above the room count. It's undesirable for the owner to build forty-nine (49) additional parking spaces, and for the City of Findlay as well, to build pavement that was unnecessary and far out of proportion to what has been done historically especially with the issues of watershed and ecological concerns that this City faces.

There were no written communications.

Mr. Warren stated that a unique condition is that the City already recognizes that the code needs to be adjusted and the adjustment would be in line with what they are proposing as an alternative.

A motion was made by Mr. Warren to approve the variance as requested as long as they pick their permit up within 60 days. Said motion was seconded by Mrs. Rooney. The motion passed by a vote of 3-0 and the variance was granted.

Case #55552-BA-17 (15028 U.S. 224) was introduced. Mr. Richard read his comments as follows: Filed by Thad Properties LTD, the applicant is seeking a variance from section 1135.04A of the City of Findlay Zoning Ordinance. A new facility has been proposed that will encroach into a required front yard setback by approximately 20 feet. The minimum setback requirement is 30 feet.

Mr. Richard thought the project was going to be reviewed by the City Planning Commission the morning of March 9, but it was not on the agenda.

The lot is on a corner and has two front yards. The encroachment involves the main part of the building and a canopy. This appears to be a simple case of too large of a building on too small of a lot. A hardship is not apparent to grant a variance.

Mr. Rooney swore in Shawn Garmong, Civil Engineer with Van Horn, Hoover and Associates. He asks that you consider the variance. The architect for N.W.O. has looked at the layout of the building and it's what it needs to be for a surgery center. The building is against the east side set back. It can't be pushed back because of the grading issues and the utility bank. The canopy does stick into the setback about 20 feet, the building is about 10.5 feet. The canopy doesn't have any columns and is off the ground pretty high so it won't obstruct site lines off of U.S. 224 or C.R. 236. N.W.O. is trying to put together a nice campus. They already have the main office building and urgent care center and would like to keep the surgery center with the rest of their buildings.

Mr. Rooney swore in Matt Bame, Thad Properties Ltd., 7595 C.R. 236, Findlay, Ohio. Mr. Bame said that the other issue they would like to consider with this parcel is as the City expanded the C. R. 236 corridor 10 to 12 years ago, there was approximately 15 feet of frontage that was shaved off of that property on the C.R. 236 side which limits their ability to be within the right of way requirement because it was removed from that side of the property.

Mr. Rooney asked the width of the right away at the corner. Mr. Garmong replied that the east side is 60 foot half way.

Mr. Warren asked about alternatives. It was already explained why the building can't be moved to the east and wanted to know if the building could be rotated a little bit more to the north and does the canopy have to be there. We have been diligent about following the code, line of site and setbacks.

Building layout, traffic flow, drop off and discharge areas, and utilities were discussed. Mr. Warren commented that 4 to 8 feet of the building past the setback, plus the canopy, in square footage isn't very much. This seems like a fairly significant variance for what we gain in order to make the square footage of the building work.

Mr. Bame stated that significant time was spent on trying to make the facility the most efficient operation possible within the smallest footprint possible and this is what they need functionally to be able to operate it.

Additional discussion was held regarding the building location on the property.

Mr. Rooney swore in Darren Nye, Northwest Ohio Orthopedics, 7595 C.R. 236, Findlay, Ohio. Mr. Nye commented that the concern with the setback is to try to maintain the site line around the corner of U.S. 224 and C.R. 236 and the only thing that would be obstructed would be a right hand turn from U.S. 224 westbound to northbound on C.R. 236. There is not really a concern about oncoming traffic, and is trying to ablaze some of the concerns about site line obstruction.

Mr. Warren disagreed with Mr. Nye about visibility at the intersection. He stated that there are no commercial and industrial buildings in the right of way in that area and this is a significant variance to grant.

Mr. Rooney swore in Joan Conine, Registered Nurse, Surgical Administrator at N.W.O. Orthopedics. She has been working with the architect for four or five months. With health care, there is certain criteria size requirements. They have tried making the building footprint smaller and have been challenged because of the regulations they have to meet. The building is designed to be efficient.

A motion was made by Mrs. Rooney that the variance be granted and permits are obtained within 60 days from the City Planning Commission Meeting. Said motion was seconded by Mr. Rooney. The motion passed by a vote of 3-0 and the variance was granted.

A motion was made by Mr. Rooney to approve the January 12, 2017 minutes as written. The motion was seconded by Mrs. Rooney. The motion to approve the minutes passed unanimously.

The meeting was adjourned.

Chairman

Secretary