Board of Zoning Appeals
May 10, 2018

Members present: Chairman, Phil Rooney; Doug Warren; Kerry Trombley.

The meeting was called to order at 6:02 p.m. by Mr. 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 proceeded with his review as follows: This case was remanded by the Hancock County Court of Common Pleas to be reheard by the Board of Zoning Appeals because the court found the appeal well-taken as the Board of Zoning Appeals denied the Appellants the ability to present evidence and arguments regarding the orders issued on November 17, 2016 and December 1, 2016 by Mr. Todd Richard. More specifically, the Appellants should have been permitted to present arguments and evidence regarding whether it was appropriate for the zoning administrator, Mr. Todd Richard, to enforce the ordinances of the City of Findlay in the manner he chose, and whether the issues raised by the zoning administrator should have been properly addressed pursuant to a different section of the ordinances by the City of Findlay. The owners have appealed an order by the Zoning/Floodplain Administrator that the 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.

Based on what has been ordered by the Common Pleas Court, Mr. & Mrs. Martens need to have the opportunity to present evidence regarding their case. Additionally, you will have to decide if I have chosen to enforce the proper ordinance (1163.01A). Based on Chapter 1165.01, I clearly have the authority to enforce the provisions of the Ordinance (see attached).

This takes us back to the original appeal, as stated during the hearing of March 9, 2017: The applicants have filed an appeal to an order by the Zoning/Floodplain Administrator that the property is a nuisance (about at this time, Mr. Martens made an objection. Mr. Rooney told him that this is not a court. Mr. Martens insisted that Mr. Richard be placed under oath. After some debate, Mr. Richard was sworn in) 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 Ordinance.

The materials on this property had been stored in open space since at least August of 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" (see definition) with the City because of three particular properties were considered in violation of regulation enforce by Becky Greeno of the Neighborhood Enhancement and Abatement Team. Mr. Martens protested and told me to visit the sites for myself. The three properties were inspected and photographed. All three were considered to be in violation.

I had concern if the violations were processed properly and if there had been notification declaring that Mr. Martens was not in good standing with the City. After a lengthy discussion with much debate, 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 that he would get the property cleaned up.

By mid-November, there had been no action and the Mayor asked me to intervene. On November 17th and December 1st, 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. & Mrs. Martens in Municipal Court (two counts each). Mr. & 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 by email and he will probably try to present other "evidence" regarding other properties unrelated to this appeal. If he thinks they are related, then he needs to present that evidence in a real court, not here.

The bottom line is Mr. Martens was given ample time to clean up this property. He did not live up to his verbal agreement and took advantage to get his zoning permit.

Finally, the fact Mr. Martens has pending cases with the /municipal Court, he is not in good standing with the City and is not eligible to obtain a permit, except to correct a violation. Is the Board in agreement with that position?

Over the past year, Mr. Martens has presented multiple appeals to the common pleas, district, and federal courts- all of which have been dismissed, with the exception of the common pleas court remanding this case back to the Board.

In the packet are other photographs of the property during the past year. The property continues to be a nuisance and we ask that you uphold the order of the Zoning/.Floodplain Administrator; declare that the proper ordinance was used to have the violation corrected; and agree that Mr. & Mrs. Martens are not in good standing with the City.

Mr. George Martens, 747 E. Sandusky Street, and Mr. Charles Williams, 804 Fishlock Avenue were sworn in. Mr. Martens stated that he wanted to cross examine Mr. Richard. He discussed the notices that Mr. Richard sent him in 2016. The wording in the two notices was compared.

Mr. Martens argued that this was an active construction and the only things left on the site were construction materials.

Mr. Rooney stated that he has observed the material being there for several years and Mr. Martens insisted that Mr. Rooney be sworn in. He argued that Mr. Rooney cannot act as a witness and a judge.

Mr. Martens stated that he never received any of the photos with his notices.

Mr. Rooney looked at the photos and decided that this is not an active construction site.

Mr. Trombley wanted to know what construction was occurring on this property and when it started. Mr. Martens replied that he was installing windows, doors, siding, etc. He believed the project started in about November of 2016. The project has been more or less halted because Mr. Richard will not issue any more permits and will not allow him to appeal that decision to the Board.

Mr. Richard affirmed that he has denied Mr. Martens two permit about a week ago and Mr. Martens was denied the ability to appeal since he is not in good standing with the City.

Mr. Richard reminded Mr. Martens that permits were not required for the work he wants to do to this dwelling (siding, roofing, etc.).

Mr. Martens then brought up the fact he was denied a permit for a wind damaged house on Monroe Avenue. Mr. Richard stated that he has not been denied the ability to repair the dwelling.

Mr. Richard stated that the deck replacement has never been an issue. There has been no application made. A permit for the deck would not be issued because Mr. Martens is not in good standing with the city and he cannot appeal that decision to the Board of Zoning Appeals.

Mr. Martens asked Mr. Richard if he has police powers and who has the authority over him. The current chain of command was reviewed by Mr. Martens.

Mr. Rooney asked Mr. Martens what his legal argument or case is. He asked Mr. Martens to present his facts. Mr. Martens wants the hearing to be used to produce evidence for the common pleas court.

Mr. Martens asked if there are any "S.O.P's"? Mr. Richard stated that there is nothing written. Form letters are used and most of them have standardized deadlines. Mr. Richard stated that the zoning code is used as the S.O.P.

Mr. Martens objected that Mr. Richard introduced facts regarding the August 2016 meeting that had nothing to do with the order because it dealt with NEAT, not zoning.

Mr. Martens then focused on exhibit I, which dealt with the term nuisance. Mr. Martens asked Mr. Richard what a nuisance was and Mr. Trombley stated that section 1163.01A of the zoning ordinance defined a nuisance. There was discussion about a public nuisance, public nuisance per se, and a private nuisance.

Mr. Martens asked Mr. Richard what a public nuisance per se was. Mr. Richard stated that he didn't know. Mr. Martens read exhibit D-3. Scioto vs. Brown was introduced by Mr. Martens. He also presented information from Cornell Law School. Mr. Trombley reminded Mr. Martens that the Board has to rely on what the code says, not the information that Mr. Martens is presenting. Mr. Rooney sated that there is confusion as to how Mr. Martens is interpreting a private nuisance vs. a public nuisance. There was a reference of a ruling by the Ohio Supreme Court. Mr. Richard told Mr. Martens that a nuisance is an annoyance.

Mr. Martens focused on exhibit I and the wording of the ordinance. Each phrase was discussed in detail. Mr. Martens gave a number of hypothetical scenarios regarding the language of the code.

There was detailed discussion about whether active construction sites can be nuisances. There was detailed discussion of chapter 521 of the General Offences Code. The discussion centered around how long that code section allows building materials can be stored on a property.

Mr. Rooney reviewed numerous photos of the property and why Mr. Martens is exempted from Mr. Richard's orders and why they are invalid.

Mr. Martens stated that 1163.01A does not deal with litter. He said that the materials are not his. Chapter 1163.99 says the violator is responsible, not the owner. Mr. Martens says that he is not the violator. Mr. Richard stated that he spoke to the tenant one time.

Mr. Rooney told Mr. Martens is in violation Of Chapter 1163.01 and Chapter 521. And he attempted to summarize Mr. Martens' arguments up to this point; (1) this is a private nuisance, not a public one; (2) Mr. Martens cannot be in violation of 1163.01 because he is not in violation of Chapter 521; (3) the building materials on not his; (4) the violator is responsible, not the owner (the author of the code references an "owner" in another section of the code- Corner Clearance); (5) the abatement of the violation must come from a court of competent jurisdiction, not the Zoning Department; and (6) the City can't sanction someone for actions that are legal.

Mr. Martens asked Mr. Richard what the heading of the letter states. He wanted to know where that language came from.

Mr. Rooney summarized his thoughts at the moment: Mr. Martens does not know the difference between a private and public nuisance; Chapter 521.04 precludes 1163.01, which it doesn't; this is not an active construction site; and Mr. Martens is responsible for the property.

Mr. Martens asked Mr. Richard if the materials are allowed in a utility trailer in the rear yard. Mr. Richard stated that a utility trailer is allowed to be legally parked on the property. We don't know what is inside utility trailers.

Mr. Martens mentioned ORC (exhibit O) regarding landlord/tenant law. Mr. Rooney stated this has nothing to do with the city ordinance. Mr. Martens contends that he is not being allowed to present evidence. Mr. Rooney is limiting Mr. Martens' time unless he is going to present new evidence pertaining to this code and this property.

Mr. Warren asked if Mr. Martens if he had other information to present to the Board.

Mr. Rooney accepted Mr. Martens statement that he has a tenant and the building materials are the tenant's.

Mr. Martens next contention involved due process and he was not given a right to appeal. He had to find out for himself. Mr. Rooney reviewed the due process that Mr. Martens has had up to this point.

Mr. Martens stated that the supplies and materials changed, proving that it is an active building site. The orders are only in reference to that time frame, not what is on the property today.

Mr. Martens wanted the opportunity to cross examine his tenant. Mr. Rooney said the Board will ask the questions.
Mr. Martens stated that he has receipts from Lowes and new materials have been brought in. Mr. Martens wanted to ask Mr. Richard more questions regarding the photos and the deck. The span of the letter was 33 days to have the violations corrected. There is nothing detrimental to having building materials on his property.

Mr. Rooney said the materials are detrimental to his comfort or welfare of the neighbors because they have to look at the junk.

Mr. Martens stated that the term "unsightly" is vague, ambiguous, overly, broad, and capricious.

Mr. Rooney asked Mr. Martens if he has any more legal argument. Mr. Martens placed a number of handouts as part of the record. He said the Board has done its best to implement Judge Starns' ruling in this hearing. He stated that Mr. Martens has gotten more time to make his presentation than anyone else would be afforded. At this time Mr. Rooney formally closed the time for Mr., Martens to give testimony.

David Plansanis, tenant of the subject property, was sworn in. He stated that some of the "stuff" was his. He said that he is at a standstill because he cannot get a permit to finish the job. He cannot do any part of the job because he cannot get a permit. He stated that he is renting it to own it. He said he has the property cleaned up along the front and half of the side.

William Charles Williams, 804 Fishlock Avenue, asked Mr. Rooney about a statement he made regarding a variance request made by Roger Best. He claims Mr. Rooney stated that Mr. Best can do anything he wants to do with his lot. Mr. Rooney said that it had to be within the confines of the zoning code. There was debate how the statement was made and Mr. Rooney could have made a misstatement. Mr. Rooney wanted to know what this had to do with case.

Renea Leguire, 148 Larkins Street, was sworn in. She stated that the photos showed that things were removed from the property and building materials should be allowed. Progress was being made.

No other testimony was presented.

In discussion, the Board agreed that Mr. Richard had the authority to use Chapter 1163.01 for the enforcement of the zoning code.

Mr. Rooney made a motion the appeal be denied due to Mr. Martens' arguments are not valid; Chapter 1163.01 does gives Mr. Richard the authority to site Mr. Martens for a violation because the property is a nuisance; the building site is not active; owner is responsible for the maintenance of the property.

Mr. Trombley seconded the motion. The motion to deny the appeal was approved 3-0.

Case number 56967-BA-18 (213 E. Crawford Street) was introduced: Filed by Alex Treece, Findlay Brewing Company, requesting a variance from section 1161.12.10(B)(2) of the City of Findlay Zoning Ordinance. The applicant is looking to install an internally illuminated, projecting sign that will only have a clearance of 8.5 feet between the baseline and the sidewalk.

The required clearance for such a sign is 10 feet from the baseline of the sign to the sidewalk. The Findlay Brewing Company has few options available for the placement of a projecting sign due to the gable end of the building being glass windows. The second option location is at the top of the ramp located at the west end of the building, but the clearance is only 7.5 feet.

Given the situation, we think the request is reasonable.

Alex Treece, Esq., restated the reason for putting the sign at that level. They are still installing it as high as they can in order to minimize the magnitude of the variance. They need the visibility for this projecting sign, given the location of the business. Most foot traffic will be from the west.

There was a letter from Cathy Weygandt as follows:

Dear Todd,

If you could bring up my objection to the variance request in changing the clearance on a sign for the up and coming Brewing Company.

As I have stated before, these ordinances have been placed with much discussed thought, judgement and time. Especially now that the Downtown Design ordinance had 3 passes (yes!)

Keeping things in order will add to the beauty downtown.

Who do I discuss the horrible piped music in all of the speakers downtown? No one ever replies to me when I ask. I want those to be included in a noise ordinance if we make one. The speakers should only be utilized for special events: parades, races.....

Thanks,
Cathy Weygandt
204 Greenlawn

Mr. Trmbley thought a hardship existed.

A motion to approve the variance was made by Mr. Trombley seconded by Mr. Warren. The motion to approve the variance passed 3-0. A permit must be obtained within 60 days.

A motion to approve the December 14, 2017 minutes was made by Mr. Rooney and seconded by Mr. Warren. The motion passed.

Mr. Gies was in attendance to approve the minutes of April 12, 2018 minutes. Mr. Trombley made a motion approve them was seconded by Mr. Gies. The motion to approve the minutes passed.

The meeting was adjourned.

Chairman

Secretary