

**MINUTES  
REGULAR MEETING OF THE  
CITY OF CLEVELAND BOARD OF ZONING APPEALS  
TUESDAY, SEPTEMBER 8, 2015 AT 12:00 PM  
CLEVELAND MUNICIPAL BUILDING 190 CHURCH STREET NE**

The regular meeting of the Board of Zoning Appeals was called to order by Charlotte Jones, Chairman, at 12:04 P.M.

Members present included Charlotte Jones, Dan Moore, Clint Taylor and Steve Wright.

Members absent were Ed Brown.

Staff present included Corey Divel, Senior Planner, Darla Jenkins, Administrative Assistant, Jonathan Jobe, Director of Development and Engineering Services, and Janice Casteel, City Manager.

Legal Counsel included John Kimball, Attorney for the City of Cleveland.

Others present were John & Mitch Kinder of Cleveland Surveying, Travis Nicholas, Michael Borin, Greg Morgan, Bobby Rutledge, and Tommy Owens of CMC, Doug Berry of the Bradley/Cleveland Chamber of Commerce, Joyanna Love of *The Cleveland Daily Banner*, Stacy Greene of Cormetech and Lynn Jones of L.J. Consulting.

**The minutes of the July 14, 2015 meeting were presented for approval.**

Clint Taylor made a motion to approve and Dan Moore seconded the motion. A vote of 4-0 passed the motion.

**There were no Public Hearings.**

**There was no Old Business.**

Charlotte Jones: Is there any old business? If not we will move into the new business.

**In New Business,**

- a. Request by Duggan Development Co, LLC to allow multi-family housing as a conditional use at 3015 20<sup>th</sup> St NE (Tax Map 50 Parcel 20.00) in the IL Light Industrial zoning district (pg1).**

Charlotte Jones: Request A is by Duggan Development to allow multifamily housing as a conditional use 3015 20<sup>th</sup> Street, NE. Kinders, you're here to speak for Todd?

Mitch Kinder:

If you want us to. We are here to answer any questions or anything. But I am Mitch Kinder with Cleveland Surveying, here with my Dad, John Kinder of Cleveland Surveying. And basically, I guess not trying to be humorous or crazy or whatever it may sound like, I guess in coming before here not as near often as the planning commission. The planning commission, both the city and county and other counties about twenty (20) or twenty five (25) years now, myself, and Dad, much longer. But it's kind of seems this thing has taken on a bigger than life persona or something. And I just want you know, you folks to know, and city staff and others, it not anything personal per se to us. And we all got to do what we feel is right. So I just want to say that kind of to start off with, I think that, echoes his sentiments as well. In fact he worded it better than I just did. But ah..we are here of course, I think the issue has been talked about and talked about and talked about. Of course just a brief background, the site is a little over about two (2) acres or a fraction more, has a house on it that was built in 1961 or around 1961 in unincorporated Bradley County. It was later annexed, I think, in the 90's, zoned IL. Of course the house is still there. It's grandfathered in. Then, come along and when Mr. Duggan brings this to our company to draw, Dad did the site lay out on it. And he brings this to us, and whether Todd Duggan had just looked at the chart or what, I don't know. But if you look, and I'm sure everyone's looked at this. But the chart from the city zoning code and I've got it highlighted, and this was printed directly off. It's just a little hard to read. But it's got conditional uses or uses allowed by right. And in this chart, multi-family is a...is a use allowed by right in both IL and IH zoning. By the X's, there's a C for conditional use. Now if you do go over to the narrative part, but this is, I think, independent on its own and especially if someone is looking at it and if he just stopped looking there. I can't say what he did. I can't say if he did or didn't. But you do go over and the expansion of existing multifamily is allowed. And if so basically if it was a triplex or something on the lot right now, he wouldn't even have to be here. And also conditional use is certainly allowed or at least at still at this point and, so I think it's kind of clear that you know this has been going on so long, even a comment was made at the planning commission last month by an official that I won't quote but that was here against it saying that this had been such common practice in Cleveland, it was pretty well expected. And I thought of anywhere of anybody and I just think that's something important to think about if you all want to see the chart or the other part. You can look at it that way. Of course here's the tax map. The site is just an acre and a half or so now that's left when the existing house comes out of it. I just cain't imagine that's there's going to be many industries that want an acre

and half of ground that's got what forty (40) feet of fall or something like that in it. And also it had been on the market for several months, to my knowledge, there was no industrial interest or anything. Mr. Duggan purchased it. He wanted to do this with it. He's got a use. He's got a plan. And I think everything else might be a what if. And I think, just for property rights, what the code spells out, then it would be good if we could show him our support. It would be a good thing for the tax base. It would be a good thing for workers and different things. And regardless, good thing or not, it's what I said in the planning commission last month, if it needs to be changed, I'm not necessarily opposed to it. I don't probably know enough on that angle to say, but regardless, I feel it's legal right now by the X on the chart. And we should even necessarily have to be here. That's why when I filled the application for Todd, I put that we were here for conditional use approval and zoning interpretation. But I think that's about all I got to say. If we've got any...if you've got any questions, excuse me, we'll try to answer them. If they're easy, I will answer them, if they're hard, I'll get Dad to.

Charlotte Jones: Do you all have any questions for Mr. Kinder?

Steve Wright: I do not.

Charlotte Jones: Mr. Mike Brown

Mike Brown: I represent CMC. Our attorney is not here. As a purchaser of the properties across the street, the old Bendix property, we bought that for one of two purposes. CMC currently occupies a place of business, 545 Urbane Road, and we have high density housing across from us right now. And it's not what if, if there's a problem, there's a problem. I mean it's noise, it's weekend, it's nights, it's parking, it's theft. Never happened when we there up until everybody...all the housing started getting built in. You can't...you can't say for sure what the cause of it, coincidental or whatever. But if the growth of CMC continues, we need a place to go, where we can be isolated and not have these issues or if CMC doesn't continue to grow, which we don't...hopes that happens because we are trying to create jobs, they can do something else with it. Based on our existing situation, with high density housing moving in after we were there, we don't have to guess if there's going to be a problem, we know. That's the life we live. Thank you.

Charlotte Jones: Corey I do have one question about the X on the chart. Was that a mistake by the City?

Corey Divel: I don't know if that was....that's been on there, I don't know if was intended or not. It probably could be there just in reference to the fact existing are allowed and expansions. They may have just done that. It may go either way when you are simplifying it on the chart. If you do go where amendments have been made, I think, John and I have looked at this. When it was amended to... I think at one time it was completely allowed and then it was taken out and so when the amendment is made to take it out, it does say effective if there's a conflict...(unknown) or whatever so the new ordinance would apply. So if it was intentional, I think it would ... been overridden by subsequent ordinance. But I think, you know, depending on how you wanted to write it, you could put it either way since it was...is allowed as an expansion currently. I don't know that it would be incorrect. It would be, you know, easy to make that mistake, but you would have to keep reading to see what the text of the ordinance intends. And there is currently, I think, I mentioned to staff report...an amendment pending to city council that would remove residential from industrial.

Charlotte Jones: From all industrial. Chamber, do you all have a statement?

Doug Berry: Yes, I'm actually here to speak on behalf of the Industrial Development Board today. My name is Doug Berry and I'm vice president for economic development for the Chamber of Commerce. But I'm serving in capacity to the staff to the Industrial Development Board and I'm speaking on their behalf today. The Industrial Development Board hates to be in a position of going against the desires of the businesses in this community but in this particular case we feel an obligation to express concern and our opposition as an organization to additional residential encroachment in the industrially zoned property. This occurred as a result of the fact that this community was hesitant to adopt county wide zoning for a number of years. In fact only did it in 1998, I believe, 99. And that's the reason we ended up with these conflicted mixed uses as it's been annexed into the city. Of course, they do and have had the zoning ordinance for much longer. But the bottom line for us is that multifamily residential has shown to be a consistent detraction to attracting new business to our existing properties that we have those areas. And for the reasons Mr. Brown stated, is the reason we see most of the companies that we bring to town to evaluate new locations here. When we take them and show them vacant sites, or existing structures, that have residential engagement at their boundaries...they typically say "thank you very much but we're not interested" because of potential risks, liability, and all the issues Mr. Brown mentioned. Not to mention the fact that it creates major safety issues on the transportation network

around that as many of these businesses have pointed out to us. After thorough discussion and debate, the Industrial Development Board has instructed us to stand as a matter of record in opposition to any attempts to add additional residential, whether it's single family or multifamily in an area that's zoned industrial. Only two percent (2%) of the total of the land area in Bradley County is zoned for nonresidential uses. We believe that there is plenty of land on alternate sites to provide residential housing that's more appropriate and better for the residents in the long term. As it relates to the develop-ability to that parcel of property, I've seen many different scales of development occur in industrial sites, and that remaining even if he breaks off and sells the existing single family house, which is my understanding they have a contract for, an offer for. The additional acre and half does have a viable industrial use whether it's absorbed into an adjoining parcel in the future or whether it's a stand alone support business enterprise. In particular, we have several suppliers will be serving Wacker and Whirlpool. There are several projects, I am aware of, that I'm making aware of this property. And it does have a viable reuse. I've been involved in the development of four thousand (4,000) acres of industrial property, and you can put a building on that piece of property that's industrial. Thanks so much.

Charlotte Jones: You guys have any more questions?

Steve Wright: Are there any more speakers?

Charlotte Jones: Anybody else?

Stacy Green: I would.

Charlotte Jones: Mr. Shane Green.

Stacy Green: My name's Stacy Green. I am the plant manager at Cormetech and we own the property that is on the other corner, which is right behind the ....where it used to be a Conoco station. I'm not sure what it is right now. The concern that we have and referenced earlier, if and when there's a problem. We are currently experiencing several problems. They...we have vandalism, we've had theft, and we are joined right across the street from our facility, I think there's about eight (8) to ten (10) housing units. From those eight (8) or ten (10) housing units, I know, of were a couple of stabbings a couple of years ago. There are several domestic disputes so the cops are over there quite a bit. And the thing that's the most disturbing for us is the trespassing of the children. These are families that a lot of them have single parents. And while the

parents are at school, sorry. While the parents are at work and the kids are out of school in the summer time, they just roam. So they are on our property, they're in the middle of the road and that is a deep concern for this particular property with all of the Coca-cola trucks that come in and out of the...that warehousing section back in off of Barney Lane. But children are constantly in our parking lot and the biggest concern for me is the liability in case one of those kids gets hurt. And I've actually had...we've asked a couple of kids to leave and I had their father come back over late at night. He got home 9:30 or 10:00 that night and he asked why his child couldn't be on our property. We have a basketball goal and why can't his child shoot on our property. And I let him know that it was trespassing and this was private property. And he said no it's not private property, it's commercial property. So I had to explain that it is owned by Cormetech and it is not a...not a public park. But we've actually had a vehicle stolen out of our parking lot. We did review the camera footage that we have of the parking lot and no vehicle pulled up before that car was stolen. So we know that it had to be someone there close by where they walked on to our property. As far as the traffic goes, I'm not sure how many units are expected to go on this property, but that is already a dangerous intersection. It is a safety concern. I know that one of our employees has personally has had a wreck at that intersection from somebody running that stop sign. And we don't own the property behind us with the warehouse that adjoins this property. But we have leased it. I've been at Cormetech for eight (8) years and we have leased that property the last eight (8) years. We have gone into talks with the current owner in hopes of being able to purchase that property which would put us in the adjacent to this but we have not pursued that just due the fact that's a lot of capital money to invest. But we have been on leasing this property for at least eight (8) years. But I just want to let you guys know that we are currently experiencing problems. It's not an If and when, it's happening. Thank you.

Mitchell Kinder: May I say one more thing?

Charlotte Jones: Yes, Mr. Kinder.

Mitchell Kinder:

I think that on the theft issue or something, I these people been having problems that's been alluded to twice. But you know we are talking about primarily owner occupied pretty nice units here. I don't think we're going to be talking about people who's going buy a house and the next day and they going to decide to get into theft. I mean, any thing's possible I realize but I don't think that's probably

realistic for this site. I mean, like I say we can't stand here and say a lot of what ifs and I think on people trespassing and things, there has to be something about personal responsibility that's telling them to get the heck off or whatever. That can also be true from all the apartments that are up on Old Tasso or anything. But regardless, I'm not saying I disagree totally with Mr. Berry or any of these gentlemen said. But I think you still look at the chart and it's showing that multifamily is allowed. And that's, I guess I think the concern we have with it more than anything else....

Stacy Green: Just one thing. That may be true in the short term. The company's been there for, you know, we've been there since 1999 and the short term, they may be nice units, but what I'm concerned about the long term. And from what we see across the street and also, what's behind, it's a... it used to be Sun Chemical. I can't think of the name of the property, what the company name is right now. But those... those units that are behind there, if you drive by there and look across the street from us, that's what the long term looks like.

Charlotte Jones: What he's saying is those are going to be townhouses, sold Individual and not rentals.

Stacy Green: Right, right...understood.

Charlotte Jones: All right this is a difficult...one of the most difficult came to us in a while. We all understand the private property rights of each person to do what they want on their own property. Then it comes down to the subsequent...I'm sorry.

Lynn Jones: I would like to speak.

Charlotte Jones: Sure Come on up. What's your name?

Lynn Jones: Lynn Jones.

Lynn Jones: Good to see everyone out. I'd like to say a few things about the piece of property that's trying to get a change. I don't know about you know how it is, how it's zoned and really all of that. But if that's the case I'm asking not only on that piece to hear today to that we really take a look at all of Bradley County. In some way and fashion, I've been very blessed in what I'm done here in Cleveland, been very busy to build a lot of warehousing and create a lot of jobs. And that's what we want. You know, it takes years to get a job and it takes about three (3) seconds to loose them. And that's

kind of the way...I wouldn't start off with that but as T&G Construction, I'm owner of, and L&G Consulting. I am, right now I'm over the 20<sup>th</sup> Street warehouse at 3075. The Bradley Industrial warehouse and I'm speaking on behalf of them, I'm speaking on behalf of Georgia Pacific that I've got leased, I'm speaking on behalf the chartered buses that's in there right now and I'm also, as the owner the old Sun Chemical building. And it's now Blend Pack that we're getting up and running now hoping to create forty (40) or fifty (50) jobs there. It is a problem. We have a problem with break-ins. Our fence is getting cut, and all that. Yes way back, you know, I had to ask for forgiveness..way back. As you grow up, you do that. But we don't know what goes through people's minds why they do it, and all this. But it just stands this could happen there after all this is built. And also, I'm representing Excel Logistics that is in the building, too. Altogether, it's three hundred (300) around three hundred (300) jobs, this is ...people is affected by and very concerned. When I moved to GE Electric into warehouse, that was one thing they wanted to make sure...that we had somebody there and it was secured. Since then we've had to call the police over,I think, three (3) different times and it's on record. The Sun Chemical building, I think, we've called two (2) or three (3) times for the fence bent. We've also...there was a case where some of the kids came by, and their parents came and seen us, too. We ask them, they had them to leave. How'd you even get in here, you know. Stuff like that, so I really, I really hope you all really take a good look at this. We do have a problem. I know Mr. Duggan. And I know he means well. And...but...as someone who grew up here the last thirty (30) years and built a lot of buildings and worked in the industrial park, I would ask you all to...not to let this happen. Thank you very much.

Steve Wright: Thank you.

Charlotte Jones: Thank you, Mr. Jones. There is an amendment, didn't you say, at the city council right now that will limit any residential in industrial from now on?

Corey Divel: Right.....Right.

Steve Wright: Madam Chairman, if I might, I'd like, based on...on the staff report, the testimony of witnesses, I would like to make a motion to not approve the request.

Clint Taylor: I second that.

Charlotte Jones: Call the roll.



Darla Jenkins: Ok...Steve Wright...and this is not to approve...right? Ok.

Multiple Unknown: Right. Yes.

Steve Wright: I vote not to approve it. Yes.

Darla Jenkins: Steve Wright

Steve Wright: Yes

Darla Jenkins: Ok...Clint Taylor.

Clint Taylor: Yes...to not...to deny

Multiple unknown: Deny....to deny

Corey Divel: Yes, it is to deny.

Darla Jenkins: Charlotte Jones

Charlotte Jones: We're doing it in the negative so we should do affirmative.

Darla Jenkins: So....Ok. Clint, and Mr. Wright. Charlotte Jones.

Charlotte Jones: Not to approve.

Darla Jenkins: Not to approve.

Corey Divel: Yes.

Darla Jenkins: Ok. Dan Moore.

Dan Moore: No, not to approve.

Steve Wright: Next topic

Darla Jenkins: Ok. Wait a minute. Dan is that....Are you?

Dan Moore: I deny.

Darla Jenkins: OK. Ok. Just want to make sure. Thank You.

Charlotte Jones: Any more staff reports? Special meeting?

Unknown: Unknown words.

Corey Divel: Do they need to make a interpretation on that to clarify that as well?

John Kimball: Yeah.

Corey Divel: I think just to clarify you don't interpret it....No, I think it's kind of implied by your...by the fact you just made that motion and passed it. But on the application, he had also noted zoning interpretation. So they are contending that it should be allowed. So if you could make a motion that you don't ....you interpret it that's it's not allowed. Just to clarify that.

Clint Taylor: I make that motion.

Steve Wright: Second

Darla Jenkins: Ok. And we have a...motion that...

Unknown: Unknown.

Charlotte Jones: We can't interpret something that is allowed.

Steve Wright: What are you talking about?

Corey Divel: That....

Charlotte Jones: We're just doing....We can't interpret something is not allowed when it is allowed. You even said it's allowed here even basing it on the subsequence ordinance. When there's a huge conflict like this, that we use our best judgement, but it is allowed.

Steve Wright: It's not there.

Corey Divel: That it's not a...that it's not a permitted use. Currently it's a conditional use.

John Kimball: Mr. Divel's interpretation of the ordinance is that only permitted as a conditional use by this board. You have denied that conditional use request. What he's asking you to do now is affirm his interpretation that it can only be done with conditional use approval because that's how he interpreted the ordinance.

Corey Divel: The only reason I bring that up is that it's actually on his application ...unknown....requesting interpretation.

John Kimball: And Mr. Kinder asked that you do that in his application so you're doing what Mr. Kinder asked you to do in his application on behalf of Mr. Duggan.

Charlotte Jones: On the piece of paper that was highlighted, it says that it with a conditional use...that it's....I'm totally confused.

Multiple unknown comments:

John Kimball: Mr. Kinder's position is that it's allowed without your approval as a matter of right. Mr. Divel's interpretation of the zoning ordinance is that it is not allowed as of right. It requires your approval as a conditional use which you've now denied. Mr. Kinder was also asking in his appeal application that you determine whether Mr. Divel's interpretation is correct because he checked that box on the appeals form.

Corey Divel: Page thirty (30), type of appeal, zoning interpretation.

Charlotte Jones: But in conditional uses, it says all uses allowed by the right CN,PI, and CP districts and multifamily housing allowed by right in the R-3 district which are not otherwise allowed by right in IL. Does that mean those are usually not allowed in the light industrial?

Unknown: No.

John Kimball: What Mr. Divel's interpretation is when the city council moved it by ordinance a couple of years ago to requiring your approval. It took it away from being as of right and it made it only available through conditional use approval which you denied. That's his interpretation.

Charlotte Jones: Ok.

John Kimball: He's just saying that one of the functions of BZA is to determine whether his interpretation is correct.

Dan Moore: So we need to make a motion to approve his determination.

John Kimball: That's correct.

Corey Divel: Yes

Dan Moore: I'll make a motion.

Clint Taylor: So we have two (2) things to vote on here. Is that what you are saying?

Corey Divel: Yes.....yes...

Multiple Unknown comments.

John Kimball: You've already voted on... you've denied the conditional use. Now the appropriate thing that Mr. Divel's asking you to do.....

Corey Divel: At their request...

John Kimball: At Mr. Kinder's request is to pass a motion that you agree with Mr. Divel's interpretation of the ordinance. Ok...That's one of the functions of the BZA.

Clint Taylor: Ok...Motion...to do all that he said.

Steve Wright: Second...the amended motion.

Charlotte Jones: But I still think.....now.

Darla Jenkins: Who made the motion?

Corey Divel: Clint made it and Steve seconded it.

Steve Wright: We're not here to interpret it, Charlotte. We are here to affirm what he said. The judge will interpret that if they feel seriously enough about it. It's why that's asked. Ok.

Charlotte Jones: Call the roll.

Darla Jenkins: Clint Taylor.

Clint Taylor: Yes.

Darla Jenkins: Steve Wright.

Steve Wright: Yes.

Darla Jenkins: Charlotte Jones.

Charlotte Jones: No.

Darla Jenkins: Dan Moore.

Dan Moore: Yes.

Darla Jenkins: Thank you.

Charlotte Jones: Any more business?

Charlotte Jones: We're adjourned.

**b. Request by John Woodward for a setback variance at 2251 Dalton Pike (Tax Map 66H Group B Parcel 25.04, 25.05). Property is zoned CH Commercial Highway zoning district (pg17).**

Corey Divil: On B. Sorry. Can you officially postpone that? We've found a couple of issues in that and we've spoken to the property owner, or emailed with the property owner or the civil engineer and they're going amend their application.

Charlotte Jones: We're not adjourned.

Clint Taylor: I make a motion to postpone the request for Jon Woodward.

Dan Moore: I second it.

Charlotte Jones: Call the roll.

Darla Jenkins: Clint Taylor.

Clint Taylor: Yes.

Darla Jenkins: Dan Moore.

Dan Moore: Yes

Darla Jenkins: Steve Wright.

Steve Wright: Yes.

Darla Jenkins: Charlotte Jones.

Charlotte Jones: Yes.

Darla Jenkins: Thank You.

Charlotte Jones: Any more business? We're officially adjourned. Thank you all for coming.

**In Summary,**

- a. Request by Duggan Development Co, LLC to allow multi-family housing as a conditional use at 3015 20<sup>th</sup> St NE (Tax Map 50 Parcel 20.00) in the IL Light Industrial zoning district (pg1).**

Steve Wright made a motion to deny approval of this item. Clint Taylor seconded the motion to not approve. Voting to deny approval of this item was Steve Wright, Clint Taylor, Charlotte Jones and Dan Moore.

Corey Divel asked the commission to vote on clarification of the IL Light Industrial zoning that residential is not allowed in the IL Light Industrial zoning. Corey's interpretation is that it is only permitted as a conditional use by this board. The commission has denied the conditional use request. It can only be done with conditional use approval.

Clint Taylor made a motion to approval to affirm Corey Divel's interpretation. Steve Wright seconded the motion. A vote to approve was provided by Clint Taylor, Steve Wright and Dan Moore. Charlotte Jones voted no to the motion.

- b. Request by John Woodward for a setback variance at 2251 Dalton Pike (Tax Map 66H Group B Parcel 25.04, 25.05). Property is zoned CH Commercial Highway zoning district (pg17).**

The commission voted to postpone this item. Clint Taylor made the motion and Dan Moore seconded the motion. Voting 4-0, the motion passed.

**There was no Staff Report.**

**There was no Board member Report.**

**The meeting was adjourned at 12:31 P.M.**