

**MINUTES
REGULAR MEETING OF THE
CITY OF CLEVELAND BOARD OF ZONING APPEALS
TUESDAY, OCTOBER 11, 2016 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 Peak, Chairman, at 12:00 noon.

Members present included Ray Garner, Charlotte Jones, and Clint Taylor.

Members absent included Ed Brown and Dan Moore.

Staff present included Corey Divel, Senior, Planner, Darla Jenkins Executive Secretary I, Ryan Stephens, Stormwater Technician, Mayor Tom Rowland, and Beverley Lindsey, Executive Secretary II.

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

Others present included Joel Beard, John Styron of the Bluemont Group (Dunkin Donuts), Joyanna Love of *The Cleveland Daily Banner*, Gary McCune of Subway, and Jeff McCoy of Subway.

The minutes of the September 13, 2016 meeting were presented for approval.

Clint Taylor made a motion to approve and Ray Garner seconded the motion.

There was no Public Hearings.

There was no Old Business.

In New Business,

- a. **Request for a variance by Joel Beard at 1665 25th St NW (Tax Map 41K Group B Parcel 2.01). Property is zoned CH Commercial Highway zoning district (pg1)**

There were two votes:

1. **A vote to approve the parking variance to accommodate the restaurant:**

Clint Taylor made a motion to approve and Ray Garner seconded the motion. Voting to approve were Ray Garner, Clint Taylor and Charlotte Peak-Jones.

2. A vote to deny the drive through variance:

Ray Garner made a motion to deny the request for a drive through variance. Charlotte Peak-Jones seconded the motion to deny the request. Voting to deny the request were Ray Garner and Charlotte Peak-Jones. Voting not to deny the request was Clint Taylor.

Charlotte Peak- Jones: In new business, request for variance by Joel Board...Joel Beard on 25th Street....Joel if you would like to take stand, please. State your name for the record.

Joel Beard: My name is Joel Beard. And I am here, appreciate you all being here, to ask for, I guess, two (2) items. One is the parking variance to allow Subway to come into the building there..next to...space next to Dunkin. And also a variance for a pick up window that is twenty...about twenty-five feet short of the one hundred twenty feet...to a right of way and I want to point out first that the...I think the plan is in your...is in your packet. But I want to show what we are proposing... hold the corner of this...versus what...what is existing...the right of way that makes it short is the property line that runs on the inside of the state property. There's an additional thirty (30) feet of state property that is the entrance, and then a ten (10) foot shoulder and then the highway. We are not proposing to use any of that as our stacking lane. We're proposed to wrap in the front of this drive area with...automobiles to the pickup window at the corner of the back south west corner of the building. Dunkin's drive through starts here and comes all the way around to the corner of the building here. I bet there's about one hundred sixty (160) feet, which is forty (40) feet over, the hundred twenty feet (120) required for their stacking. The issue with, I think, Corey and them's concern was that cars would come in this egress and would try to stack out this way. When you look at that, that's ninety-five (95) feet from the property line. If you add that thirty (30), which if they did come in that way, would still be one hundred twenty-five (125) feet, or five (5) feet over what their...the regulations says we got to have. So, and again we are not proposing you to do a (unknown), we're proposing to wrapping in front. There was some concern about blocking these two parking spaces. But in your own picture that you all took, the Hardee's next door shown and the Zaxby' is shown in both of those drive throughs wrap in front of parking spaces. So... and those are more traditional restaurants being used rather than the Dunkin, and the Subway which has much less queue times which I've also provided in your packet that a traditional restaurant offering. People buying donuts and coffee don't take a long as somebody buying lunch. The Subway pick up window is traditionally that, a pick up window. It's for, and these are the Subway guys here...they can explain more if you you've got questions. But it's more about call ahead pickups. It's also about more of a quicker menu pickup and they're...they also will have someone staffing a separate bain in that restaurant which is the sandwich making counter. So it will be independent of who is standing in the store. The reason I want the pickup

window is because parking ...which is the second thing we are asking for...we need...we need variance for three (3) spaces...is parking is limited at busy times. So the pickup window actually helps that. It gets people on and off the property verses having to come in and park and order. So that was another positive for putting that there. There's been some questions and photographs from Dunkin. They have a representative here, also. Where that drive through wraps around and all the way out to here at certain times...usually those times are in the morning. So Subway has agreed and provided a letter in your packet to limit their window operation to after 10:00 A.M. in the morning. So they won't even be operating their drive through until the majority of the traffic is gone through the Dunkin Donuts morning hour. Now, they also provide some pictures showing the traffic backed up at 10:15. I was there 10:30. There was no one in the traffic line and three (3) cars in the parking lot. So I think you can look at it from a flow stand point is a variable, but we still and always maintain the exit lane...the wrap lane...if in fact somebody did pull out into that lane and...and during times when both were open. We are proposing to put up signage and...the traffic markers to show...to signify what's the Subway window and what's the Dunkin window and let them get around to...to pull out. If they do choose to leave, then they always pull through the...the escape lane. So... I think that's...I think that's all I had. I did explain that they had one hundred and sixty (160) feet which was forty (40) feet over what was required for their drive through. That's just to the back corner. So they have more than enough stacking with their queue times which are I think a little over three (3) minutes the busiest time of the day. Whereas, Subway's times are less than two and half (2.5) minutes the same time their business would overlap. I think with some reasonable...we've all been through drive throughs, we've all had to wait in a parking space at different restaurants, and we've all had to do certain things. But I feel like with reasonable signage and the different menu offerings, the different busy times, that it wouldn't be a...wouldn't be a...a issue. Any questions?

Charlotte Peak- Jones: do you have any?

Corey Divil: To clarify...there's the a...with the drive through window there's...a hundred twenty (120) foot distance. There's also a...it's on page two (2) ...directly a copy out of the zoning board ordinance 3.7. A. The standards of drive through windows... a drive through service standards points one (1) and two (2). Point one said "the facilities and stacking lanes should be located and designed to minimize turning movements in relation to the driveway access to streets and intersections". Point two (2) says "the facilities stacking lanes shall be located and designed to minimize or avoid conflicts between vehicular traffic and pedestrian areas such as sidewalks, crosswalks, or other pedestrian access ways". And, point three (3) talks about bypass lane provided. Excuse me. The traffic engineer could not be here today but we contend

along with him that the drive through lane wouldn't allow standards to be met. And there are somewhat of a judgement call, I think, but that's sort of our position.

Joel Beard: Do you know specifically which ones would be met.... cause we got traffic flowing all in the same direction, we don't cross any sidewalks, we don't cross any... cross one (1) ...the stacking for the Subway...there would be one place for you to walk across which is exactly the same as the place you walk across on the Dunkin Donuts side for the handicap people. They can walk right in front of the drive thru lane also to get to their spots. And it's marked...

Charlotte Peak- Jones: Could you....

Joel Beard: and (unknown) which is of course what we would do.

Charlotte Peak- Jones: Could you hold that up and bring it up here and I'll kind of show what I'm thinking that one of those...wait a minute...might be better if I come down there to you all.

Charlotte Peak- Jones: Ok...Typically people don't wrap this direction, typically. And what they are saying if they do come in in this direction...

Joel Beard: Um-hmm.

Charlotte Peak- Jones: Then they are blocking the access to the Dunkin, also, and, therefore, there is no bypass lane. You can't get to the second lane even if they wanted to, they are in the Subway lane if they wrap this direction. You can put signs all you want, but you and I both know people don't usually look at the signs. They just go where they want to. So if they come in here and start stacking out into the road...which I've seen even Dunkin Donuts do that on occasion...then this bypass lane is blocked. So you would almost need a third lane to make sure that there's a bypass for even Subway people. So, once the Subway people get out of here, they can go to the bypass lane, but if somebody wants to go here, there's nowhere for them to go if these people are blocking in this direction. See what I'm saying.

Joel Beard: Well, if they are lined out here which again the bain time don't even call for less than or the pickup don't call for less than three (3) cars in their two-and-a-half (2.5) minute deal. So if they are wrapping this way, or this way, you're showing six (6) cars there now which is normally going to be three (3) ...one (1) in between the order window and one at the pickup window. But I can show you on your picture the same...the same wrapping scenario next door and in Zaxby's parking lot. It's the same way. They wrap...they wrap right in front of the parking spaces. And I understand that you're saying if they come out here, but if they come out here that's an additional thirty (30) feet from the ninety-five (95) out to even the shoulder.

Charlotte Peak- Jones: But you can't even consider that. It's state.

Joel Beard: Right. But. But.

Charlotte Peak- Jones: Even though we're saying yeah. But you're not using it...we can't even take it into consideration that's available.

Joel Beard: Which that the case, and somebody does do that; you still have the safety of the same ordinance that five (5) feet over...that you're calling for when we show it wrapping the other way. I understand your point but I think that that thirty (30) feet needs to take in to consideration for people that don't follow the directions. There's a thirty foot which gives you five (5) feet over the standard one hundred twenty (120) ordinance that is a cushion that's available if they don't follow the rules. Cause when people pull in here now, I mean I went up there and sat. I backed in here and sat for two (2) days, during the early morning hours, the lunch hours, and the evening hours. And most people when they pull in here...number one most people use this second entrance for turn on Guthrie and come in back here. And then they will drive around. But if people who come in here, they will make a decision rather to park or drive thru or drive around pretty quickly. So I think that once you, and their order window, we said was going to be in this hashed area so, I think once they see where it's going to be, then they will make the call to decide if they are going go Dunkin, go...and we'll make that very clear. And we even talked about putting traffic stanchions, those little things to denote this is this line and this is this line.

Charlotte Peak- Jones: Do you want to go over the parking that you changed for the variance?

Joel Beard: Yes, we added...what we did is we added...if you can see. Mind holding this up? We added a space here, because we relocated the dumpster and then we reduced this patio size and added two more there. And what that does is put you within...we did not take away any impervious area...or we didn't....

Corey Divel: You didn't create any more.

Joel Beard: Anymore. Right. Thank you. We didn't create anymore impervious area. We just were able to do that by how the site laid out and reducing that patio. Anything else?

Charlotte Peak- Jones: Thank you, Mr. Beard.

Joel Beard: Thank you.

Charlotte Peak- Jones: Anyone else? Subway? Or not Subway...Subway is that everything you want to say?

Unknown: Yes.

Charlotte Peak- Jones: Ok. Dunkin Donuts.

John Styron: Dunkin Donuts.

Charlotte Peak- Jones: State your name for the record please.

John Styron: I'm John Styron and I'm in real estate with the Bluemont Group which is the owner and operator of Dunkin Donuts. Pardon me, I've got something in my throat. First, thanks for the opportunity to come in here and talk just a little bit about Dunkin Donuts. It's been a great experience for us being in Cleveland. We have no objections and welcome Subway as a neighboring tenant in that space. So, our objection is that the issues that the drive through will create we believe are significant and we believe that they are a little understated. So just...just very quickly, and, I was over there this morning and again we provided some information. Yes, I'll agree with what Joel's said. There are times when there not a lot of traffic there. There are other times when there is a lot of traffic there. And, I think, we have to deal with the facts of when there is a lot of traffic there. So, very quickly, and, I pulled these from our records this morning relative to how much car traffic there is at various day parts. So between 5:00 in the morning and 10:00 in the morning, we average about fifty (50) cars an hour, if you look at it across the week. About fifty (50) cars an hour go through that drive through. So that kind of gives you that sense of how much traffic there is and if each one takes a couple of minutes to get through, as you know, there can be significant stacks there. 10:00 to 11:00 is typically downtime and sort of a shift change/ clean up time. For whatever reason people aren't getting donuts and coffee between 10:00 and 11:00. And I think that we appreciate the efforts, that Subway has made to try to accommodate and said it wouldn't open the drive through window during that period of time till after 10:00. But I look at a traffic study and how much business we're doing between 11:00 A.M. and 2:00 P.M. and I mentioned that we are averaging about fifty (50) cars an hour when you look at seven...over seven (7) days. About fifty (50) cars an hour and obviously there are better days than others in the morning. Between 11:00 in the morning and 2:00 in the afternoon, we average about forty (40) cars an hour. So, yes, it is less, but it's about eighty percent (80%) as much as the morning traffic. And, so our concern really...and again, what Joel said was right about that other restaurants have to deal with that stack that comes around and the drive through and the pedestrians. But what if we introduce a second restaurant, and, you know, in the case of Hardee's and everything, one restaurant. They're dealing with one drive through window. If you look at what would have to happened in our building, you'd have to get on the inside lanes to go to the Subway, and, then you would have to somehow or rather get outside that lane to try to escape thru the bypass lane, assuming that the bypass lane available. What will really probably going to happen is, during busy times, it's likely that traffic is going to

wrap around the bypass lane and then duck back in somewhere around where the Dunkin window is and that will create a lot of issues for both the Subway folks trying to get out of there, as well, as Dunkin folks trying to get in there. So, you know, again, we have no objection and welcome Subway as a partner and as a neighboring person in that development but we strongly believe that it just will not work to have a drive through in that facility. Are there any questions that I can answer?

Joel Beard: Can we comment, too?

Charlotte Peak- Jones: Sure.

Joel Beard: At fifty (50) cars an hour, that is a car every 1.2 minutes, which a car every 1.2 minutes, is going to, if we are using averages, which equates to about eight (8) cars at any time stacked. And, eight (8) cars, stacked with about one-half a car difference, to the back corner of that building and do not and are not entering that flow. And I understand that there is sometimes ten (10), sometimes three (3). This morning there was none when I went at 10:30. So, and again, those were again at his busiest times. I just think that it will work. There might be some...some...in this business, I've learned in traffic you have to train your customer and...and once, I think, those customers are trained and they understand what we are doing there and the times we are doing it, we won't have a problem.

John Styron: Can I comment on that? Again, I agree with what Joel just said at some point and time you can train your customers. But particularly since this is going to be the closest Subway off the interstate, I think, that what you're going to end up also adding is a number of customers that's going to come in there who have no familiarity, and it will end up being a big potential problem. So, again, we strongly believe that this is not a workable solution for Dunkin, and I'll just say that if Dunkin...if we were evaluating it today and Subway was the tenant and was there first, Dunkin would not even try to go into that space because it is not a workable solution.

Charlotte Peak- Jones: Thank you, gentlemen.

Unknown not identified and not at the podium: Can I ask a question?

Charlotte Peak: Sure

Unknown not identified and not at the podium: How did you come to the.... what did you get the...how did you come to figures of fifty (50) per hour, and forty (40) per hour? Where does that come from?

John Styron: We actually have...we have a POS system.

John Kimball: Sir.

Charlotte Peak- Jones: I need for you to state your name.

John Kimball: Would you identify yourself?

Unknown not identified and not at the podium: Sure. My name is Gary McCune. I'm one of the Subway owners.

Unknown: Go ahead and answer.

Charlotte Peak- Jones: Go ahead.

John Styron: We have a very sophisticated POS system and the POS system actually records the date parts and the transactions and when the transactions occur. So when we talk about that, that's where those numbers are coming from and so...

Gary McCune: Transactions, right?

John Styron: Yes, sir. They're transactions at the window.

Gary McCune: Ok, I just know from our experience transactions...unknown....and you can have one person doing two (2) to three (3) transactions sometimes, too...so...

Charlotte Peak- Jones: Any further comments from either side? Do you guys have any comments...

Corey Divel: unknown...you have two...

Charlotte Peak- Jones: Two variances, yeah.

Corey Divel: Right.

Charlotte Peak- Jones: I'd like to take on the parking variance first. I really don't see an issue with that whatsoever. That would even help you down the line if the Subway doesn't come in there. So...if I can get a motion...let's do that one first.

Clint Taylor and Ray Garner: Make a motion.... motion.

Clint Taylor: Motion to approve it.

Charlotte Peak- Jones: and second?

Ray Garner: Second.

Charlotte Peak- Jones: Call the roll please.

Darla Jenkins: Ok...Clint Taylor?

Clint Taylor: Yes.

Darla Jenkins: Ray Garner?

Ray Garner: Yes.

Darla Jenkins: Charlotte Jones?

Charlotte Peak- Jones: Yes.

Darla Jenkins: And this is on the parking ordinance?

Charlotte Peak- Jones: Yes. Parking variance, yes.

Darla Jenkins: Variance.

Charlotte Peak- Jones: As to the other variance request, I just have a comment. I hate to say anything negative to someone that wants to do something with their own property. It just...I have property everywhere. I hate to...somebody to come in and tell me what to do on my own property. City knows this. But...and I've incurred a lot of costs, myself, from having to go by city ordinances, city codes, and variances that aren't grounded. I'll...I'll tell you, I have paid a lot in the city to do that but I choose to do business in the city. And I also know their ordinances and things out there that are supposed to protect us, and protect everybody else, and make our city look better and safer, and I really do think that...that the second drive through...I mean I have no issues with Subway being there whatsoever. That's your choice of what you want to get in there and...but I do not think the drive through lane would be appropriate in that building. It's just too cramped, too small, in my opinion. And I know we are not experts, but I am in the building field myself, and I try to do everything that I'm supposed to do. And for that reason, I won't be in favor for the drive through lane. Do you guys have any comments?

Ray Garner: Well, I think that everybody up here is in favor of business. But I do think...I go through the Dunkin line. You can tell that. And...there's a good bit of traffic there. Now I definitely have concern about that. And, maybe, there might be some alternatives down the road, but...but I do not see where we could approve this variance at this time, myself, personally.

Charlotte Peak-Jones: Comments? A motion to approve or deny, please?

Ray Garner: Motion to deny.

Charlotte Peak-Jones: Get a second to deny? Can I second? I mean I'm chair...I've never...I can?

Charlotte Peak-Jones: I second the motion to deny. Call the roll please.

Darla Jenkins: Ray Garner?

Ray Garner: Yes.

Darla Jenkins: This is a motion to deny the drive through variance. Ok. Ray Garner?

Ray Garner: Yes

Darla Jenkins: Charlotte Jones?

Charlotte Peak-Jones: Yes.

Clint Taylor: No.

Darla Jenkins: Thank you.

Charlotte Peak-Jones: Any staff reports? Board member reports?

Unknown: Can I ask two (2) questions?

Charlotte Peak-Jones: You sure can.

Unknown: Jeff McCoy, the other Subway owner. I'd just like to know what you would approve. This kind of ties our hands from going in. Is there some options that you see down the road that we could propose?

Charlotte Peak-Jones: On a drive through lane? On that lot? Probably not on that lot.

Jeff McCoy: If we changed...if we changed the entrance so that they are forced to go to the lower lanes...would that make a difference?

Charlotte Peak-Jones: I still think you're going to have that in and out, sir. Sorry Mr. Garner. I still think as...Dunkin Donuts said...I still think after you get. You have to take the worst case scenario, in my opinion, worst case scenario is fifty (50) cars in there at one (1) time. You've got Dunkin Donuts lined all the way around here but then you've got some Subway people on the inside. You're still going to have people diving into Dunkin Donuts and Subway people going out. I think it's the other side of stacking lane that's the issue not entrance and exits.

Joel Beard: What if I add a third lane out there?

Ray Garner: I went over there this morning and looked at the situation. I believe that there is some things from my experience that could be done that might open it up. Might not. But I do not think from where you are positioning things at now, that it's feasible.

Charlotte Peak-Jones: Is there property enough to do a third lane?

Jeff McCoy: That's what I'm asking...what would you approve?

Ray Garner: Well...

Charlotte Peak-Jones: City Planner would have to look at it again.

Corey Divel: And the engineer would have to look at it. There's so many variables. I'm not sure.

Charlotte Peak-Jones: Yeah. Engineer.

Corey Divel: I can't think of anything off the top of my head. I mean you just have to kind of...

Joel Beard: Well, now when I spoke with...when we started this...and we spoke with...Jonathan Jobe. He told me that...that...a...first he told me that the 10:00 letter delayed opening would probably suffice. I met with Corey and we talked about the wrapping and the blocking of the parking which...I...I really don't think that's an issue with Hardee's and...Zaxby's doing the exact same thing. As far as the escape lane is the issue, Jonathan did say that if I put a third lane or widen the escape lane on that north, I guess, the north west side building, and came out the back alley that...might be a consideration.

Jeff McCoy: I know this is Cleveland and I know it may be different but I've been in a lot of stacking lanes where there is no escape. Just about every Starbucks won't let out.

Charlotte Peak-Jones: Yeah, that's our ordinance though. Unless somebody changes that ordinance.

Jeff McCoy: So but my real question is the ordinance is prohibited because of the right of way that we don't meet the regs for. We can fix that with the way we enter. But that's not what I'm hearing. I'm hearing that the real issue is not with the entrance, it's with the exit which I think is.....

Corey Divel: I think it's multi-faceted. I think...

Ray Garner: I think.

Jeff McCoy: So I just need to know exactly what we are denying and, so we can come back with a...

Ray Garner : I think it's multi-faceted there.

Joel Beard: In case what, I'm sorry?

Ray Garner: Concerns the entrance and the exit.

Jeff McCoy : Sorry, I guess I just need to know exactly.

Jeff McCoy : We'll follow...we can get there with the entrance. We can make that adjustment. That's a quick....

Ray Garner: Yeah.

Jeff McCoy: We wouldn't even need that approval. We could make that decision today.

Charlotte Peak-Jones: The bypass lane.

Jeff McCoy: That's something we got to talk about. The something Joel just told us. But I'm talking about we can fix the stacking on the entrance so that we meet the ordinance. That's not an issue. What we have to do is change the entrance lane. And I haven't talked to Joel about this.

Joel Beard: Well I mean our proposed entrance lane is wrapping in front of the building.

Jeff McCoy: Right. But, I know, there is an opportunity to come in and at the top now.

Joel Beard: Right

Jeff McCoy: Which would eliminate that...which...

Corey Divel: I don't know if they could tell.

Jeff McCoy: I'm just saying that would meet the ordinance so we wouldn't have to be here to ask for a waiver.

Charlotte Peak-Jones: Well, you have two different restaurants though...

Jeff McCoy: That's what I'm asking is there another waiver that we are looking at that we are not aware of.

Charlotte Peak-Jones: I don't think so. You're still going to block parking. If you do wrap that around and even though Hardee's block parking, it's their own restaurant. So you've got two restaurants you've got to contend with, and you have to consider Dunkin Donuts came into this facility not knowing there was ever going to be another restaurant because originally it was two retail spaces and a restaurant. We just gave you...gave him a variance for parking so that he can do a restaurant there. However, if I was Dunkin Donuts in the original and I saw there was two retail spots, I would have said no. You can't ever have a restaurant there because it was originally proposed as retail. So now you got two restaurants, and you're going to block parking if you wrap around the front to Dunkin Donuts. So you can't hinder...if it was all Subway, block your own parking if you wish, but since you got Dunkin Donuts parking, you have to be

considerate of them. So that's not an option to wrap around and you're blocking all of theirs...I'm not an engineer though...I mean I don't know...

Corey Divel: I think you have to.... it's hard to speculate.

Charlotte Peak-Jones: If he was here, he could tell you.

Corey Divel: I think you've got to get something drawn up, and maybe meet Dave Sheely...be a really a good person to talk to. If you had something else, maybe run it by him, it would be my suggestion. If we could get him to...and I could get with him, and we both reach a consensus, maybe we could bring it back at that point.

Charlotte Peak-Jones: Before you spend any money, I'd talk to him personally and sit down with him and say, "Hey, what are the other options that you would allow us to do?"

Jeff McCoy: No, we can't spend any money.

Charlotte Peak-Jones: Yeah.... don't spend any money. Just sit down with him and see what he says.

Jeff McCoy: Unknown.... meet the budget...unknown...

Charlotte Peak-Jones: Right. That would be my suggestion. Get back with him when he's back in town. And...

Corey Divel: Is he gone all week?

Charlotte Peak-Jones: It's fall break. I'd say he's on vacation.

Corey Divel: I texted him earlier...I didn't know he wasn't here today.

Charlotte Peak-Jones: Everybody is on fall break but me.

Jeff McCoy: Ok, there is a path. We need to sit with him and come back with something that he's approved. Correct?

Charlotte Peak-Jones: Correct.

Jeff McCoy : Ok, good. Thank you.

Charlotte Peak-Jones: Is there any more business? Thank you gentlemen for being here, and ladies. We are adjourned.

The meeting adjourned at 12:30 P.M.

