

**WESTFIELD TOWNSHIP
BOARD OF ZONING APPEALS
PUBLIC HEARING
May 27, 2009**

PUBLIC HEARING

Chair Schmidt called the public hearing of the Westfield Township Board of Zoning Appeals to order at 7:32 p.m. Permanent Board members Daugherty, Micklas, Oiler, Simmerer and Schmidt were present. Alternate Board members LeMar and Kramer were also in attendance as well as Tim Kratzer, Carolyn Sims, Terrance Connelly, Pat Jameson, Gary Harris and Lee Evans.

MINUTES

Mr. Oiler made a motion to approve the Board's March 16, 2009 minutes as amended with minor grammatical errors corrected. It was second by Mr. Simmerer.
ROLL CALL-Oiler-yes, Simmerer-yes, Daugherty-yes, Micklas-yes, Schmidt-yes.

VARIANCE REQUEST

Truckstops of America variance request- Lake Rd.

The applicants, Mr. Terrance Connelly and Mr. Pat Jameson representing Truckstops of America (T/A) were sworn in by the Secretary. Mr. Connelly stated approximately two months ago, T/A put a banner on a trailer in front of the building to advertise reduced bailout pricing for the buffet offered at Country Pride restaurant. The price of the buffet was reduced 50% to bring the locals back into the restaurant and to give customers a price break for a period of time. The trailer was there for about 2 wks. when we received a call from ZI Harris that we would have to move the trailer because it was not in compliance with the zoning code. The trailer was then moved to the back lot. Mr. Connelly stated it was discussed with ZI Harris about moving the banner and placing it on the building over the canopy for Country Pride.

Mr. Connelly stated they were before the Board this evening to request a variance to use the trailer with the banner as once they moved the trailer to the back of the building they did see a drop in business. Mr. Connelly stated they would like the trailer to be able to advertise, to bring the locals back into the restaurant and offer the reduced buffet price and make people aware of it. The buffet is offering a \$5.99 breakfast, \$6.99 lunch and \$7.99 dinner. Another reason for the variance request is due to the construction issues in the area. About a month ago the entrance coming west was closed. Truckers now just bypass the area and or hit Pilot to avoid fighting the traffic. Mr. Connelly continued that they were looking at having the trailer there for another 30 days or so; or even two weeks to bring business back into the restaurant.

Chair Schmidt asked the applicants if they knew that trailers were not permitted for advertising purposes per the zoning code? Mr. Connelly stated he was made aware of that

regulation. Chair Schmidt stated the Board could not grant a variance for something that was not permitted in the zoning code. All you did was move the trailer in the back. Mr. Connelly stated they moved the trailer to the back parking lot.

Mr. Simmerer asked if the banner was on the building? Mr. Connelly stated yes one of the banners was on the building. Mr. Simmerer asked the size of the banner? Mr. Connelly stated 42'x8'. Mr. Simmerer stated the code allows for a 20 sq. ft. temporary sign with two (2) 30 day periods. Mr. Simmerer stated the canopy sign is a permanent sign.

Chair Schmidt asked if the package submitted were all the signs that were approved because there were a lot of other signs at T/A than those in the package. He added he went and took pictures of all the signage at T/A and there was a lot more signage than what was supposedly approved. Chair Schmidt stated until all those signs were corrected, he was not in favor of giving T/A any more signage unless they were going to address all the other signage that is up.

Chair Schmidt showed the applicants the pictures he took of all the signage at T/A. Mr. Connelly stated there were variances granted for some of the signage but did not know which one's they were or what year they were approved.

Chair Schmidt stated the code allows for one sign per gas pump island. There are multiple signs on the pumps and on the sides and in between them as well. There were also signs in the window which were not permitted to take up more than 30% of the window space. Mr. Connelly stated those signs were just monthly promotions and were more than likely never approved. Chair Schmidt stated then they would need to come down.

Mr. Jameson stated some of the signs mentioned were actually product sold in the building and did not feel they were window signs just because they could be seen through the windows. Chair Schmidt then asked if those signs were not designed to be seen through the window? Mr. Jameson stated they were merchandising materials in the interior of the building but can be seen from the outside. Chair Schmidt stated in his opinion those signs are illegal. Chair Schmidt stated there was also signage advertising tires i.e. Firestone, Kelly and Dunlop. He added until T/A had the existing signage addressed i.e. removed or confirm it was approved he would not consider granting any more signage. Chair Schmidt stated T/A has been very blatant about putting signs up. He stated he felt the "Now we sell Beer" sign disgusting and was offended by that and had several residents ask him about that specific signage.

Mr. Jameson stated it was not T/A's intent to offend. Chair Schmidt asked why did you do that? Why didn't you go through the proper channels? Now you come before this Board when you finally have been called out on this? You have been flagrant about putting up signs whenever and wherever you want just because the Township has not

been enforcing it. Does that make it right? Mr. Jameson stated they had a hard time understanding the concept of signage...He stated he thought they had updated some of the signage that is there currently.

Ass't ZI Evans brought out the two site plans/signage that were approved previously for T/A.

Mr. Oiler asked Mr. Connelly and Mr. Jameson if they had a copy of the Zoning Resolution? Mr. Jameson stated no but they could probably get one on line. Mr. Daugherty stated he remembered T/A bringing the signage for Krispy Kreme and some of the other signs on the pylon before the BZA. Mr. Micklas asked if the canopy was 120 sq. ft.? Mr. Connelly stated no, just the sign (logo) for County Pride.

Chair Schmidt stated there was at least double the signage up at T/A than what was approved. Chair Schmidt stated they could have a copy of the pictures he took or they could go take their own pictures. Mr. Jameson stated they were of the understanding that the point of sales signs for merchandise that they get from the vendors were temporary. Such signs that were in the windows had a life of 2-3 wks. If that is a misinterpretation of the signage code than that was our error. Mr. Micklas stated the biggest issue with all the window signs was security.

Mr. Simmerer stated this seems to be an enforcement issue. Chair Schmidt stated yes you're right. The signage hasn't been enforced. Maybe in other places you (T/A) got away with it or it wasn't a big deal but...Mr. Connelly stated he did not think they were trying to get away with anything. He added these are young kids running the stores and don't know anything about zoning. They are sent things from vendors a 1,000 miles away to put up and they just do it. He stated why the construction company did not go through the process and get all the signage approved he did not know. Mr. Connelly stated he was sure they could have this processed now that they were made aware of the situation.

Mr. Daugherty asked ZI Harris what was added to the original pylon sign in terms of signage for the other tenants? ZI Harris stated he thought Popeye's was the last approved. Chair Schmidt stated he did not think the other tenants on the pylon sign were approved. Mr. Daugherty stated that would need to be researched. If the signage submitted this evening by the applicant was the signage that was approved there were a lot more signs at T/A that have not been approved.

Mr. Daugherty asked if there was someone at T/A that keeps this information as to what was approved for the company? Mr. Jameson stated that would be the sign company and unfortunately the original sign company is no longer in business. Mr. Jameson stated the copies T/A had was what was presented.

Mr. Oiler asked who has the job of managing signage for the organization? Mr. Connelly stated many departments were cut during a reorganization, and there was probably

nobody delegated to do that now. He continued that each T/A site has a revenue center where there was a director and a manager for the restaurant division which he was, but other than that there wasn't anybody.

Mr. Micklas stated there was nothing on site about signage requests, approvals or changes? Mr. Jameson stated there was no one on site but those records were kept at the home office and apparently those records are incomplete.

Ass't ZI Evans was sworn in. He stated when the "We Now Sell Beer" signs went up it only took a phone call to T/A and they were taken down. Also when an inflatable Sponge Bob went up on top of Burger King at T/A it was taken down immediately as well. T/A has tried to comply with issues that have happened after the fact. Mr. Connelly stated he was not even aware T/A got a liquor license to sell beer and then the signs went up.

Mr. Connelly stated if they put the trailer out back with the banner on it to address the truckers he did not see problem with that. It was outside the visual site of the area and figured it was outside of the zoning.

Mr. Daugherty stated the application states a 864 sq. ft. variance. On the application it states 48'x9'. Mr. Connelly stated he wrote that on the application. Mr. Daugherty stated Mr. Connelly said the sign would be 42'x8'. He added that there is a banner on the trailer and one on the canopy. Mr. Connelly stated he really did not remember as he made a lot of signs dependent on what they build. Chair Schmidt stated the two signs would be 864 sq. ft. total. Chair Schmidt stated what they were originally granted was 120 sq. ft. Mr. Daugherty stated the 120 sq. ft. was for a permanent wall sign. This is a temporary sign per Section 407. C. which only allows a 20 sq. ft. temporary sign. Actually 824 sq. ft. is the actual requested variance for both signs. Two signs at 412 sq. ft.

Mr. Simmerer asked if the temporary signs have already been up for 60 days? Mr. Schmidt stated they have been up for 4 months. Mr. Connelly stated they have been up since January.

Mr. Oiler asked if T/A had hard numbers as to what the drop in business has been for T/A with the construction? Mr. Connelly stated he did not have hard numbers but industry wide fuel sales were off across the nation 20%. Lodi used to be a \$120,000 a month restaurant before we started the promotion and then it was \$80,000 which was a huge drop. The idea behind the promotion was to bring the locals back. It has worked as since we implemented the program we hit \$98,000. We also advertised in the local papers as well.

Mr. Micklas stated he thought there were two closed ramps to date. The ramp coming 71 south was closed as of this morning. People are avoiding that intersection especially truckers. Mr. Connelly agreed.

Mr. Daugherty stated if they took the 120 sq. ft. sign down then he would consider it a swap. Mr. Micklas stated no, the 120 sq. ft. Country Pride sign was a permanent sign. A temporary sign is a temporary sign. It is not a variance request that they will take the permanent sign down...Mr. Daugherty stated for consideration purposes it is 120 sq. ft. less because the permanent sign would come down.

Mr. Oiler asked if there could be anybody from corporate to police or be in charge of these signs? Mr. Connelly stated with the restructuring the GM's were released. This all started 1yr. ½ ago. Mr. Jameson interjected that T/A was sold and changes were made. He added that T/A got crushed by the price of fuel. That cut the labor of the corporate offices. Mr. Jameson stated they would be happy to assign someone to police every sign and bring those signs without approval before the Board.

Mr. Micklas stated the variance states the signage is to be up for 60 days. You are currently at 120 days now that the signs have been up. Mr. Daugherty stated the sign would be from this day forward if granted. He added the period before would have just been an illegal sign. Chair Schmidt stated he thought everyone was missing the point. In his opinion until T/A is in compliance with all the signage...Mr. Daugherty stated he was not saying he would grant the variance request, but if T/A got all the signage cleaned up, if the variance was granted it would go from this day forward.

Mr. Micklas stated until that was done T/A had illegal signage and it may be another 60 days before that gets addressed. Chair Schmidt stated he hoped these gentleman understood where the Board is coming from. If they ever want to erect a sign legally they are probably going to have to clean house and get it in order.

Mr. Daugherty asked the applicants how long they think it would take them to clean up the signage issues? Mr. Connelly responded he did not know. Chair Schmidt stated T/A needed to work with ZI Harris to go over what was approved. Chair Schmidt stated if there was something T/A felt strongly about regarding signage they could ask the Board. At this time ½ the signs were illegal signs.

Secretary Ferencz stated she spoke with Bill Thorne regarding the product advertisement and he did say that was signage. Also, if the Board decided to table this hearing and it was not done to a specific date and time notices would have to be sent out to the property owners as well as a legal notice and another fee charged to the applicant. Secretary Ferencz stated the signage on the trailer is a use variance and the banner on the canopy is an area variance. Personally she stated she felt T/A should review their signage, determine what has been approved, what can come down and what they wanted to remain and then proceed with the variance for additional signage.

Mr. Daugherty stated the Board could set a date to continue this hearing and hopefully the applicant could be prepared by that date and if not it could be tabled again if needed.

Chair Schmidt asked how long it would take the applicant to confirm the signage approved and then move forward? Mr. Connelly stated he could do it as soon as possible but to remove the signage on the canopy would take longer because it was actually bolted to the building. The other signage in the window could be removed right away.

Mr. Jameson stated that they would do a survey of all the existing permanent signs and resubmit them all for approval. This could be done in 60 days. Some of this could be done by themselves but the pylon sign and the BP sign that was on the gas canopy would have to be handled through an updated survey by a sign company and an application submitted.

Mr. Simmerer asked if this whole complex of businesses was owned by one company or are all of these little businesses inside the complex considered tenants? Mr. Jameson stated it was one company. For example the Burger King was T/A's as well as the Starbucks. T/A pays a franchise fee and we own the business. Mr. Simmerer asked, if there is a core company that is responsible for all the signs? Mr. Jameson stated yes.

The Board members stated they were in favor of a continuance on this variance request until all the signage was addressed.

Chair Schmidt then opened up the hearing to anyone who wanted to speak and offer evidence and testimony.

Mr. Tim Kratzer was sworn in. Mr. Kratzer stated the variance request was for a banner on the trailer and a banner on the existing canopy. If there are other violations then the Zoning Inspector and T/A need to get together and correct those violations. He added that the BZA needs to address the variance(s) before them this evening. You just can't throw your hands up and say you're not going to do anything unless the existing signage is straightened out. This is my opinion.

Mr. Simmerer stated this variance request is not related to the violations and has no bearing on this application.

Mrs. Carolyn Sims was sworn in. Mrs. Sims stated that she agreed with Mr. Kratzer that the variance before the Board this evening was a separate issue. If there were other issues that need to be addressed with the zoning inspector it was her opinion that those should be worked separately. ZI Harris or Ass't ZI Evans should list the potential violations which can be dealt with through enforcement, modification or possibly additional variance request(s). She stated she suggested this because the proposed banners are to be temporary signage and they were already x amount of days into them being up.

Mrs. Sims continued that ultimately it was up to the BZA and appreciated the diligence of the Chair going to the site and bringing these issues to the Township's attention. If the

issues were worked separately it would give ZI Harris the opportunity to review the original site plan and the zoning in effect at that time to see if some of those signs were grandfathered. Chair Schmidt stated that was worth consideration but he was trying to avoid having them pay another variance fee. Chair Schmidt then asked the Board members their opinions.

Mr. Micklas commented that the sign on the trailer is not permitted at all so he agreed with Chair Schmidt that the Board could not consider a variance for that. Mr. Micklas stated he did not see any issues with the canopy. It is oversized but it is secure and not a safety issue and does not change the character of the area. There is nothing in the Duncan Factors you could say is inconsistent. Again Mr. Micklas stated he did not have an issue with the banner over the canopy but the sign on the truck is not permitted. Chair Schmidt asked Mr. Micklas how long the sign on the canopy could then remain?

Mr. Micklas stated the Zoning Resolution has a 60 day clause for temporary signs and the sign has already been there 4 months. Mr. Micklas asked the applicants how much longer they wanted the banner on the canopy up? Mr. Connelly responded, that if the banners aren't up then business goes down and as a result the price of the buffet would be driven back up. Mr. Connelly stated the plan was to have the reduced buffet prices through the summer. He added if the Board says 30 days then in 30 days the banner will be taken down. The trailer he will have down tomorrow.

Mr. Oiler asked if the 2 (two) thirty day periods would suffice from today forward? He added that regarding the trailer it is use variance and the BZA cannot rewrite the zoning code. We are not supposed to so we should not consider approving the use variance for the trailer. Mr. Oiler stated he went through the Duncan Factors and everything seems to be in order with them. Mr. Micklas interjected that the only thing is the banner on the canopy may be a safety hazard but the applicant has stated that the banner is secured to the canopy.

Mr. Simmerer stated he did not feel the sign size, height or duration are within keeping the spirit and intent of the Zoning Resolution. He added he did feel there were other options for the applicant such as they could have put up a temporary sign that meets the zoning regulations and effectively posted them on the premises. Mr. Simmerer continued that he thought the variance was substantial in area of the sign and the trailer is strictly not permitted. It was his opinion to deny the application for the variances.

Mr. Daugherty stated he struggled with these issues. On one hand he wants to see compliance with the code but on the other hand he understood T/A's position. He added he did not necessarily want to penalize anybody and deny T/A a sign that on any other day was warranted, justified i.e. construction issues, closed exit ramps, etc. The recession is effecting everybody. Mr. Daugherty stated if T/A was willing to comply with things then he was willing to work with them. However if that is not the case don't ever come

back and ask for another variance as he would hold that in his memory not to grant a variance if requested at a later date.

Having said all that, Mr. Daugherty said he was not in favor of the banner on the trailer as a use variance. It does not keep in the nature of the rest of the neighborhood. Regarding the sign on the canopy, he would be inclined to grant that. It would be a variance of 412 sq. ft. It would cover up the 120 sq. ft. permanent sign but it would still be a variance for a temporary sign. Mr. Daugherty stated he would be willing to grant the temporary sign on the canopy to show good faith in the hopes that T/A will take the effort and work with the Zoning Inspectors and clean up the excess signage. Mr. Micklas interjected that the sign on the canopy was not offensive.

Mr. Connelly stated the sign on the canopy would be useless once it got dark as the lights would block out that sign completely. Mr. Daugherty stated he would also be inclined to go along with 2 (two) 30 day time period for the sign.

Chair Schmidt stated he was not in favor at all of the sign on the trailer. Regarding the sign on the canopy, it was quite a bit larger than he would like to see. The variance request was significant. Also, an issue was the sign has already been up for 4 months. Whether ignorance is bliss or nobody knew about it...Even if you don't know about a law or regulations it is not alright when it is violated. Chair Schmidt stated he was not inclined to grant the variance for the canopy as it has already been up twice as long as it was permitted to be.

Mr. Oiler made a motion to approve an area variance of Section 407.C.1 for HTPA Properties Trust for 412 sq. ft. for a 432 sq. ft. temporary sign to be placed existing Country Pride canopy for a period of 60 days from today's date for Truckstops of America located at 8834 Lake Rd. PP# and to deny the banner on the trailer request per Section 405.H as that is a use variance and not permitted per the Zoning Resolution. The application and pertinent documents are to be attached to the approved minutes and noted as Exhibit A. It was seconded by Mr. Daugherty.

Discussion

Mr. Oiler also asked the applicants to get a copy of the Zoning Resolution and meet with the zoning inspectors to go over the signage. Any signage that has not been approved will be required to be in compliance and or come before the BZA with an application for variances. Mr. Oiler added that if the applicants do not comply with this request, don't expect him to back T/A on any further requests.

Secretary Ferencz stated so as not to cause confusion as a member may vote one way on the banner on the trailer and another way on the temporary sign on the canopy, she would call separate roll calls for each.

Mr. Oiler made a motion to approve an area variance of Section 407.C.1 for HTPA Properties Trust for 412 sq. ft. for a 432 sq. ft. temporary sign to be placed existing Country Pride canopy for a period of 60 days from today's date for Truckstops of America located at 8834 Lake Rd. PP# The application and pertinent documents be attached to the approved minutes and noted as Exhibit A. It was seconded by Mr. Daugherty.

ROLL CALL-Oiler-yes, Daugherty-yes, Simmerer-no, Micklas-no, Schmidt-no.
The variance request was denied.

Mr. Oiler made a motion to deny the banner on the trailer request by HTPA Properties Trust per Section 405.H as that is a use variance and not permitted per the Zoning Resolution. The application and pertinent documents be attached to the approved minutes and noted as Exhibit A. It was seconded by Mr. Daugherty.

ROLL CALL-Oiler-yes, Daugherty-yes, Simmerer-yes, Micklas-yes, Schmidt-yes.
The variance request was denied.

MISC.

The Board received their Rules of Procedure as amended at their March 16, 2009 meeting. These would have a final review at the Board's next meeting. Secretary Ferencz stated she would also have the other documents regarding Action of the Board for the Board's next meeting as well.

Secretary Ferencz also read the memo from Trustee Likley dated May 18, 2009 which stated: "No zoning applications are to be taken unless the applications are completed in full and the monies to pay for the applications are received. Once a complete application is received and paid for in full, the application will be processed by the applicable board for review and/or public hearing." (see attached to approved minutes).

Lastly, Secretary Ferencz read a letter from the Pros. Office dated May 11, 2009 which stated: "This letter is to confirm the position of this office in regard to Trustee created, and funded Comprehensive Plan Steering Committees. It is our position that such committees are Township committees, performing a public function at the discretion of the Trustees, which the Trustees could perform themselves, and as a result their meetings must follow the Sunshine Laws. That means in addition to being properly advertised, that there should be minutes taken of such meetings so that the general public, as well as the Trustees themselves if they so desire, can without being present, determine what the Board is doing in regard to their delegated authority." (see attached to approved minutes).

Mr. Oiler stated in the Gazette it had the BZA meeting listed for tomorrow evening. Secretary Ferencz stated she was having numerous problems with the Gazette. The public meeting notices are now going through their Elyria Branch. She had confirmation that the meeting was properly notified to the Gazette. It is the Pros. Office opinion as long as the Township received confirmation that the notification was received it could proceed with meetings.


Chair Schmidt asked how the Township would proceed now to make sure all of T/A signage was in compliance? Ass't ZI Evans stated we had no way of leveling fines. The Township could slap their hands but that would be all that could be done. There is language in the ORC regarding fines, but the Trustees would need to set that fee. Mr. Daugherty stated he did not think a fee would be applicable because it would have to be a health and safety issue and the only remedy seemed to be the courts.


Mr. Kratzer stated this is something that the Trustees could look into. Ass't ZI Evans stated he thought the Zoning Commission was looking into bring this to the Trustees.

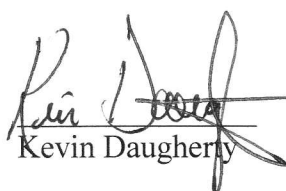
Having no further business before the Board, Mr. Oiler made a motion to adjourn the meeting. It was seconded by Mr. Micklas. All Board members were in favor. The meeting was officially adjourned at 8:46 p.m.


Respectfully Submitted,
Kim Ferencz
Zoning Secretary


Mike Schmidt


Keith Simmerer


Ron Oiler


Kevin Daugherty


Tom Micklas