

THE PLANNING AND ZONING COMMISSION WAS HELD AT BEACHWOOD CITY HALL ON THURSDAYS, SEPTEMBER 30, 2010.

ROLL CALL:	PRESENT:	J. Berns, C. Cohen, M. Gorden, S. Gross R. Hecht, B. Mann
	ABSENT:	J. Kahn, M. Wachter
	ALSO PRESENT:	M.A. Cannon, W. Griswold, T. Kreczko G. Smerigan

Chairperson Hecht welcomed the new Planning and Zoning Commission member, Mr. Sheldon Gross to the meeting along with the alternate Council representative, Justin Berns.

A motion was made by B. Mann and seconded by C. Cohen to approve the minutes of the August 26, 2010 regular meeting.

ROLL CALL:	AYES:	C. Cohen, M. Gorden, R. Hecht, B. Mann
	NAYS:	None
	ABSTAIN:	J. Berns, S. Gross

#### COUNCIL REPORT

Justin Berns, Council Representative stated that Council reviewed and approved P&Z 2010-26A, Trinity Presbyterian Church located at 22111 Chagrin Blvd., for preliminary and final site plan to construct an additional forty (40) parking spaces which required a variance for the front and side setbacks.

P&Z 2010-29                      JOHN FERЕК, MANAGER BEACHWOOD FACILITY OPERATIONS FOR BASF LOCATED AT 23800 MERCANTILE ROAD IS REQUESTING PRELIMINARY AND FINAL SITE PLAN APPROVAL TO REPLACE A NITROGEN SUPPLY SYSTEM TANK.

Mr. John Ferek, Manager Beachwood Facility Operations for BASF, was present to request preliminary and final site plan approval for the replacement of a nitrogen supply system tank. The life of the present tank needs to be upgraded. There will be a fence and a locked gate around the tank.

Mr. Griswold stated that the Building Department, Fire Department and Police Department have no comments at this time. Mr. Griswold reminded the applicant that the City Code does not permit barb wire fencing.

Mr. Kreczko stated that there were no engineering issues with this application.

Mr. Smerigan stated that this request is for site plan approval to locate a 3,000 gallon nitrogen storage tank behind the existing building located on Mercantile Road. The subject site is zoned U-8 Limited Storage and Manufacturing District and such facilities are a permitted use. The proposed tank is eight (8) feet in diameter and extends to just over fifteen (15.3) feet in height. The proposed location for the new storage tank is adjacent to the area of the present 1,500 gallon tank at the rear of the building. The proposed location would comply with the side and rear yard setback requirements in the U-8 District. At the proposed location, the tank would not be visible from Mercantile Road. The applicant proposed to place the tank on a concrete pad which is 12 feet x 62 feet and enclosed within a fenced area of 1,056 square feet. A delivery drive terminates at the gated entry to the fenced enclosure. In addition to the nitrogen tank, the pad would contain pumps, control panels, and a vaporizer. A remote telemetry monitoring system is also proposed. There do not appear to be any zoning issues associated with the proposed tank replacement.





In summary, Mr. Smerigan stated that this proposed day care center very closely matches the previously approved facility on this site, would occupy the same building space, and is prepared to accept the same stipulations with regard to maximum occupancy. Since the parking variance was previously granted based upon that use and occupancy load, approval of this request would not require any additional variances and the Planning and Zoning Commission would have final authority to grant the Conditional Use Permit. The staff has identified no issues resulting from authorization of the earlier Conditional Use Permit with regard to parking or the operation of a day care facility on the subject site. Approval of the Conditional Use Permit for Carnival Child Development Center to operate a child day care center at 25400 Fairmount Blvd. is recommended subject to the following stipulations: 1) approval is for Carnival Child Development Center and is not transferable without the approval of the Planning and Zoning Commission; 2) the applicant shall provide the Building Department with a copy of a valid state license to operate the child day care center; 3) the applicant shall comply with the comments of the Fire Department with regard to safety measures; and 4) the total number of children care for in the facility at one time shall not exceed a maximum of seventy-two (72).

Mr. Mann asked the applicant about the opening date of the day care center, and also if she had a valid state license to operate the day care.

The applicant answered that the day care would like to have opened in November, but it is looking more like January to be opened. Ms. Jamison stated she was licensed to operate a child day care center, but not the Carnival Child Development Day Care. The licenses are for day care centers in other areas.

Chairman Hecht asked how many day cares Ms. Jameson operated. The applicant replied that this would be the first one in this area. The hours of operation will be from 5:00 a.m. to 11:45 p.m. It would accommodate the day and afternoon shifts.

Mr. Smerigan stated that these hours do not violate the City's regulations. Day care for twenty-four (24) hours is not permitted in the City of Beachwood.

Mr. Berns asked the applicant about the occupancy and use of the lower level with regards to children.

Ms. Jameson stated that the lower level will not be occupied for classrooms for children. There are exercises that are required by the state for children to participate in and in case of inclement weather the lower level may be used for these activities for the children.

Mr. Smerigan stated that activities are permitted in the lower level when there is inclement weather and the children need activities. The same arrangement for indoor activities was permitted for the previous day care. In our regulations classrooms in the lower level are not permitted.

Chairman Hecht asked the applicant about advertising. The applicant responded that the day care center will be advertised through newspaper, radio and brochures.

Mr. Gross stated that he was concerned about the age group. Day cares have certain restrictions about exiting facilities based on the State Code by age group.



Mr. Smerigan continued that the letter submitted on behalf of the applicant states that the vacant portion of their property is being used as a cut through to the next street. While the desires to control unauthorized access across the property and to maintain privacy are reasonable, those goals could be accomplished by placing a fence at the code permitted setback. It does not appear that a variance is necessary to alleviate the problem, and there does not appear to be a practical difficulty associated with meeting the code requirement. Furthermore, the applicant does not appear to have a unique circumstance since the area forward of the fence is the same as is experienced by other residents who are not permitted to enclose their front yard area with fencing, regardless of the width of their lot.

Mr. Smerigan stated that in order to grant the requested variance, the Planning and Zoning Commission would need to make a finding that a practical difficulty exists and that relief is warranted based upon the twelve (12) standards set forth in Section 1159.04. There does not appear to be sufficient evidence to make such a determination.

Mr. Smerigan continued that a yard can be completely enclosed with a fence, as long as the fence doesn't come forward of the required front setback of the property, which is 40' from the right-of-way in this instance. The ornamental fence can be forward of that line but cannot be enclosed and no more than 50% of the width of this lot.

Mr. Gross stated that the applicant wanted to surround this property entirely with a board on board fence. Would it be natural wood or painted? The applicant stated it would be natural. Mr. Gross stated that the homes in that area are all beautiful and that a home enclosed with this type of fence would be a detriment to a lovely neighborhood.

Chairperson Hecht stated to the applicant that there were obviously other options. More landscaping could be added to the property. This application may be voted on or deferred to the next meeting of the Planning and Zoning Commission in October. There does not appear to be a hardship shown in this situation.

The applicant stated that he would have to confer with his client regarding any variations. Therefore this application was placed on pending.

P&Z 2010-34

**MR. CARLOS J. SIVIT, OWNER OF THE PROPERTY LOCATED AT 3265 BELVOIR BLVD., IS REQUESTING A VARIANCE TO CONSTRUCT A TWO-STORY ADDITION.**

Mr. Carlos Sivit, owner of the property located at 3265 Belvoir Blvd., was present to request a variance to construct an addition to the residence. The addition consists of two floors; a basement level and first floor level. The purpose of the addition is to add a third bedroom to the house for a growing family. Mr. Sivit stated that the Architectural Review Board has reviewed and approved the addition. After doing a stake survey, the existing house doesn't meet the minimum side yard setback of twelve (12) feet at present. There is only a nine (9) foot side yard setback. The fence doesn't parallel the house but is at an angle. The addition will blend in with the existing structure and will not extend beyond the side of the existing structure. Additionally, there will be a one (1) foot offset in the rear in relation to the existing structure, which is the master bedroom and garage. The addition is not visible from the street.

Mr. Griswold stated that the Building, Police and Fire Departments have reviewed these drawings and have no comments. The addition will stay within the guidelines of the present house and he would recommend approval.

Mr. Kreczko stated that there were no engineering issues and he would defer to the City Planner.

Mr. Smerigan stated that this request is for a side yard setback variance to Section 1113.05 of the Zoning Code for the purpose of constructing an addition to the existing dwelling. The addition would be to the lower level and first floor only, and would not extend to the second floor of the dwelling. The proposed addition would square off a notch in the southeast corner at the rear of the existing dwelling. The proposed addition is almost twenty-two (22) feet in length and just under eight and one-half (8.5) feet in width for a total area of approximately 180 square feet. The width of 8.5 feet matches the size of the existing notch in the house. Based upon the certified survey accompanying the application, the property has frontage of 98.86 feet. Based upon that frontage, Section 1113.05 requires a minimum side yard setback of twelve (12) feet and combined side yard total of twenty-four (24) feet. The existing dwelling has side yards of 14.5 feet and 9.6 feet for a combined total of 24.1 feet. Therefore, the existing dwelling encroaches into the southerly side yard by 2.4 feet, but meets the combined side yard requirement.

Mr. Smerigan continued that as is evidenced by the survey drawing, the house is oriented at a slight skew from the side lot lines. Thus, the side yard setbacks on the front and rear corners vary due to the angle of the house on the lot. The proposed addition is modest in side, hidden from the street, and in alignment with the side lines of the existing dwelling. The resulting room dimensions are narrow. The side line on the side of the proposed addition is protected with an existing wooden fence six (6) feet in height.

Mr. Smerigan stated that the proposed site plan indicates a side yard setback for the addition of 7.67 feet. Approval of the site plan as proposed would require a variance of 4.33 feet (36%) to the southern side yard setback and a variance of 1.83 feet (7.6%) to the total combined side yard setback requirement. The actual amount of the additional encroachment on the southerly property line is only 1.93 feet from 9.6 feet to 7.67 feet or about 16% of the code requirement. There appear to be several factors that may contribute to a finding of practical difficulty in this instance. The first is the existing house location, which is already non-compliant and over which the applicant has no control. The second is the angle of the side lot lines relative to the house, which complicates even matching the existing building line, an approach the Commission has historically permitted, because the exact setback distance is not maintained. The third is the relative size of the addition, and the difficulties associated with attempting to further reduce the room sizes. Finally, the amount of actual change to the side yard setback is relatively modest.

Mr. Smerigan concluded that since these are area variances in a U-1 District, the Planning and Zoning Commission has final authority to grant or deny the requested variances. The Commission must make findings as set forth in Section 1159.04. Should the Commission determine to grant approval, the following findings are recommended: 1) pursuant to Section 1159.04, it is determined that a practical difficulty exists or will result from the literal enforcement of the Zoning Code with regard to the provision for side yard setbacks; 2) a variance of 4.33 feet to Section 1133.05 is granted to permit the addition to the existing dwelling to be located 7.67 feet from the southerly side lot line in lieu of the required 12 feet; and 3) a variance of 1.83 feet to Section 1133.05 is granted to permit the combined side yard setbacks for the dwelling to be 22.17 feet in lieu of the required 24 feet.



Mr. Griswold stated that as a condition in the motion the Fire Department should approve the particular fencing because in previous times when fencing has been required the fencing posts were actually concrete that were 36" down and had the ability to impede traffic so it cannot be just an aluminum fence fixed in the concrete. Construction drawings will need to be submitted showing this recommended fence.

Mr. Kreczko stated that there were no engineering issues with this application.

Mr. Smerigan stated this request is for revised site plan approval to modify the entry canopy and outdoor dining area to accommodate a change in ownership and branding for this restaurant site. The applicant is requesting authorization to replace the existing pagoda style entry feature with a more standard canvas awning with roll down sides for winter use. The new awning would occupy the same area presently occupied by the pagoda feature and would also be unenclosed. There do not appear to be any zoning issues associated with this modification to the approved site plan.

Mr. Smerigan continued that the second change is to construct a covered outdoor dining area with a canvas canopy matching the entry awning. The outdoor dining area would be constructed in the same location authorized by the Planning and Zoning Commission in June 2008. At that time, the Commission authorized the elimination of three (3) parking spaces for construction of the dining patio, noting that the site plan still met the minimum parking requirement for restaurants in U-9 Districts. The current plan would eliminate the same three (3) parking spaces. The principal improvement is the addition of the awning. Again, there is no setback or other zoning issues associated with this modification to the approved site plan and the Commission has final authority to approve the revised site plan.

Mr. Griswold also stated that any signage shown on this submission is not included in the approval. The signage must be submitted, reviewed and approved by the Architectural Review Board. Also, Mr. Burk agreed with the Fire Department recommendation that there would be no sides on the patio awning.

Mr. Mann questioned in previous discussions regarding awnings the fact of suppression being needed or not.

Mr. Griswold stated that it is a building code issue and when attached awnings exceed 700 feet suppression is required, but these awnings do not exceed this measurement.

Mayor Gorden asked a question regarding the proposed removal of the architectural feature on the roof in the spring and if the restaurant is going to be opened.

Mr. Burks replied that he hasn't gotten that far in the planning stage. Things have been held up since the property has been in foreclosure. Mr. Burks stated that he just got the approval to continue with the plans less than six weeks ago.

The Mayor asked the Building Commissioner, Mr. Griswold, if there was a problem with the demolition of this roof structure while the restaurant is open conducting business.





