

**BOARD OF ZONING APPEALS**

**Springfield, Ohio**

**Monday, November 19, 2018**

**7:00 P.M.**

**City Forum, City Hall**

**Meeting Minutes**

**(Summary format)**

Chairperson Denise Williams called the meeting to order at 7:00 P.M.

MEMBERS PRESENT: Mr. Mathew Ryan, Mr. Mark Brown, Ms. Jeannette Anderson, Ms. Rhonda Zimmers, Ms. Dori Gaier, and Ms. Denise Williams

MEMBERS ABSENT: Mr. James Burkhardt

OTHERS PRESENT: Stephen Thompson, Planning, Zoning, and Code Administrator  
Cheyenne Pinkerman, Community Development Specialist,

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**SUBJECT: Approval October 15, 2018 meeting minutes.**

Ms. Williams asked if the board had any corrections to add to the minutes.

Ms. Williams asked the board members to voice yes if they were in favor of approving the minutes. Members voiced yes.

Ms. Williams asked if any opposed to voice nay. Hearing none, Ms. Williams stated the minutes stand approved.

**SUBJECT: Case #18-A-18 Request from GPD Group for a conditional use permit for a new wireless communication tower at 635 E Leffel Lane in a Springfield Township, I-1, Light Industrial District.**

Ms. Williams stated that the public hearing was now open and asked for Mr. Thompson to read the staff report.

Mr. Thompson gave the staff report.

The applicant is requesting a conditional use permit to construct a new wireless communication tower. The facility will consist of a 98' x 98' fenced gravel area and a 195' tall antennae pole. There will be associated ground equipment including generators and a walk-in cabinet. The tower will be constructed for AT&T, but will also be capable of co-locating equipment from other carriers.

### **ANALYSIS for Conditional Use:**

In considering an application for a conditional use, the Board shall give due regard to the nature and condition of all adjacent uses and structures, and the consistency therewith of the proposed use and development. Before authorizing a use as a conditional use, the Board shall review the facts and circumstances of each proposed conditional use in terms of the following standards and shall find adequate evidence showing that the proposed conditional use at the proposed location:

- (1) Would not be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of noise, smoke, odor, vibration, dust and dirt, cinders, noxious gases, glare and heat, fire and safety hazards, sewage wastes and pollution, transportation and traffic, aesthetic and psychological effects. The Board shall use and give recognition to those performance standards which are available in model codes or ordinances, or have been developed by planning, manufacturing, health, architectural and engineering organizations, and can be applied to the proposed use, to assist it in reaching a fair and objective decision;

*Staff Comment: It would not.*

- (2) Is in fact a conditional use as established under the provisions of this Springfield Zoning Code as eligible to be permitted in the district involved;

*Staff Comment: Yes.*

- (3) Will be harmonious with and in accordance with the general objectives, or with any specific objective of this Springfield Zoning Code;

*Staff Comment: Yes.*

- (4) Will be designed, constructed, operated and maintained as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that the use will not change the essential character of the same area;

*Staff Comment: Yes.*

- (5) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;

*Staff Comment: Yes.*

- (6) Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;

*Staff Comment: Yes.*

- (7) Will have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares. Upon authorizing a conditional use, the Board shall impose such requirements and conditions with respect to location, construction, maintenance and operation, in addition to those expressly stipulated in this Springfield Zoning Code for the particular conditional use, as the Board may deem necessary for the protection of adjacent properties and the public interest.

*Staff Comment: Yes.*

**STAFF RECOMMENDATION:**

Approval of the conditional use permit.

Ms. Williams asked if the board had any questions for Mr. Thompson.

Ms. Zimmers asked if there had been any complaints.

Mr. Thompson stated there were no complaints, only inquiries.

Ms. Williams asked if the board had any further questions for Mr. Thompson. Hearing none, Ms. Williams asked if the applicant would like to speak.

Mr. Ed Block. 520 South Main Street, Suite 2531 Akron, Ohio, explained that AT&T was trying to improve coverage in the area. Mr. Block explained the more users the weaker the signal would be. Mr. Block explained the tower would be 190-195 feet tall and would not require lights. Mr. Block explained that the tower could accommodate other carriers as well. Mr. Block explained there would be a chain link fence around the compound for safety purposes. Mr. Block stated he would answer questions.

Ms. Anderson asked how far the coverage would reach.

Mr. Block passed out coverage maps and explained the details and coverage capacity.

Ms. Zimmers asked if there were any concerns about right of ways or access roads.

Mr. Block explained they would be using the existing access road and would not be blocking or restricting the use.

Ms. Anderson questioned if there would be access off of interstate 70.

Mr. Blocked stated they would not.

Board members discussed the exact location of the tower.

Ms. Williams asked if there was anyone else that wished to speak at that time. Hearing no further

discussion, Ms. Williams asked if there was a motion to close the public hearing.

**MOTION:** Ms. Gaier made a motion to close the public hearing. Seconded by Ms. Zimmers. Approval by voice vote.

Ms. Williams stated that the public hearing was now closed and asked for a motion to approve Case #18-A-18.

**MOTION:** Motion by Ms. Zimmers to approve Case #18-A-18 request from GPD Group for a conditional use permit for a new wireless communication tower at 635 E Leffel Lane in a Springfield Township, I-1, Light Industrial District. Seconded By Ms. Gaier.

Hearing no further discussion or questions, the Board determined the following findings of facts:

1. There is no opposition.
2. It will improve coverage in the area.
3. It is an acceptable conditional use.

**YAYS:** Mr. Ryan, Mr. Brown, Ms. Anderson, Ms. Zimmers, Ms. Gaier and Ms. Williams.

**NAYS:** None

**Motion Approved 6 to 0**

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**SUBJECT: Case #18-A-19 Request from Thomas Marker for a variance from Chapter 1153.04(b)(15) to allow for fewer trees in parking lot than required at 1100 Reaper Ave in a M-1, General Manufacturing District**

Ms. Williams stated that the public hearing was now open and asked for Mr. Thompson to read the staff report.

Mr. Thompson gave the staff report.

The applicant is requesting variances from Chapter 1153.04 to construct a parking lot which contains parking spaces more than 50' from a tree. The plans for the lot initially showed tree islands, but once it was constructed, it was determined the ground was not suitable for growth. The applicant states the soil under the parking lot contains three feet of gravel. The applicant states the number of trees required to be in the lot will now be planted on the perimeter of the lot.

**ANALYSIS for Variance:**

The Board may grant a variance only where there exists a "practical difficulty" as defined by the courts in Ohio in established case law. The Ohio Supreme Court's decision in Kisil v. City of Sandusky, (1984) 12 Ohio State 3d 30, is a land mark decision in establishing common law governing variances by distinguishing between "use" and "area variances." Area variances

involve an exception from such requirements as yard, lot, and height standards. The Supreme Court established that a practical difficulty must exist before an area variance can be granted.

Then subsequent to this case, in Duncan v. Village of Middlefield, (1986) 23 Ohio 3d 83, the Ohio Supreme Court more fully explained the practical difficulty standards. The factors to be considered and weighed in determining whether a property owner seeking a variance has encountered a practical difficulty in the use of his/her property include, but are not limited to:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

*Staff Comment: Yes.*

2. Whether the variance is substantial;

*Staff Comment: Yes, however, the number of trees required to be in the lot will now be placed on the perimeter of it.*

3. Whether the essential character of the neighborhood will be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

*Staff Comment: No.*

4. Whether the variance would adversely affect the delivery of government services (e.g., water, sewer);

*Staff Comment: No.*

5. Whether the property owner purchased the property with the knowledge of the zoning restrictions;

*Staff Comment: Yes. It was not discovered until construction began the soil would not be suitable for tree growth.*

6. Whether the property owner's predicament can be obviated through some method other than a variance; or

*Staff Comment: No.*

7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

*Staff Comment: Yes.*

**STAFF RECOMMENDATION:**

Approval of a variance from Chapter 1153.04 to allow parking spaces that are more than 50' from a tree.

Ms. Williams asked if the board had any questions for Mr. Thompson.

Ms. Gaier asked if the applicant would still meet the requirement for the number of trees but would be laid out differently.

Mr. Thompson stated that was correct.

Ms. Anderson asked if the trees that were planted would be taken out.

Mr. Thompson explained that the applicant had not planted any trees.

Ms. Williams asked if the board had any further question for Mr. Thompson. Hearing none, Ms. Williams asked if the applicant or applicant's agent would like to speak.

Mr. Joe Wizner. 2084 US 68 South, Bellefontaine, Ohio, explained that most of the sight was bedrock and would not be suitable for trees to grow. Mr. Wizner explained five trees would be obstructing view if they were planted and would like to move them to a different location on the property.

Ms. Williams asked if the board had any further questions. Hearing none, Ms. Williams asked if there was anyone else that wished to speak at that time. Hearing no further discussion, Ms. Williams asked if there was a motion to close the public hearing.

**MOTION:** Mr. Brown made a motion to close the public hearing. Seconded by Ms. Anderson. Approval by voice vote.

Ms. Williams stated that the public hearing was now closed and asked for a motion to approve Case #18-A-19.

**MOTION:** Motion by Ms. Gaier to approve Case #18-A-19 request from Thomas Marker for a variance from Chapter 1153.04(b)(15) to allow for fewer trees in parking lot than required at 1100 Reaper Ave in a M-1, General Manufacturing District. Seconded by Ms. Zimmers

Hearing no further discussion or questions, the Board determined the following findings of facts:

1. There is no opposition.
2. The same amount of trees will still be used at the site.
3. It will be an improvement to the area.

**VOTE:**

**YAYS:** Mr. Ryan, Mr. Brown, Ms. Anderson, Ms. Zimmers, Ms. Gaier and Ms. Williams

NAYS: None.

**Motion Approved 6 to 0**

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**SUBJECT: Case #18-A-20 Request from Texas Roadhouse Holdings LLC for a variance from Chapter 1153.04(b)(22) to not retain the first ¼” of storm water permanently on-site at 1750 Bechtle Ave in a CC-2, Community Commercial District**

Ms. Williams stated that the public hearing was now open and asked for Mr. Thompson to read the staff report.

Mr. Thompson gave the staff report.

The applicant is requesting variances from Chapter 1153.04 to install a new parking area and not permanently retain the first ¼” of stormwater on site. Texas Roadhouse is adding an additional 50 parking spots. The site frequently is full during peak hours. The restaurant experienced a fire during dinner hours and the Fire trucks were not able to quickly enter the site because of the traffic. This new parking lot will allow for additional means of egress.

**ANALYSIS for Variance:**

The Board may grant a variance only where there exists a “practical difficulty” as defined by the courts in Ohio in established case law. The Ohio Supreme Court’s decision in Kisil v. City of Sandusky, (1984) 12 Ohio State 3d 30, is a land mark decision in establishing common law governing variances by distinguishing between “use” and “area variances.” Area variances involve an exception from such requirements as yard, lot, and height standards. The Supreme Court established that a practical difficulty must exist before an area variance can be granted.

Then subsequent to this case, in Duncan v. Village of Middlefield, (1986) 23 Ohio 3d 83, the Ohio Supreme Court more fully explained the practical difficulty standards. The factors to be considered and weighed in determining whether a property owner seeking a variance has encountered a practical difficulty in the use of his/her property include, but are not limited to:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

*Staff Comment: No. The size of the lot does not allow for enough room for a retention area.*

2. Whether the variance is substantial;

*Staff Comment: Yes, however, there is adequate capacity to handle the stormwater.*

3. Whether the essential character of the neighborhood will be substantially altered or

whether adjoining properties would suffer a substantial detriment as a result of the variance;

*Staff Comment: No.*

4. Whether the variance would adversely affect the delivery of government services (e.g., water, sewer);

*Staff Comment: No.*

5. Whether the property owner purchased the property with the knowledge of the zoning restrictions;

*Staff Comment: Yes.*

6. Whether the property owner's predicament can be obviated through some method other than a variance; or

*Staff Comment: No.*

7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

*Staff Comment: Yes.*

**STAFF RECOMMENDATION:**

Approval of a variance from Chapter 1153.04(b)(22) for expanded parking and not retaining the first ¼" of storm water on-site.

Ms. Williams asked if the board had any questions for Mr. Thompson.

Ms. Anderson questioned if the additional parking would help emergency vehicles get through.

Mr. Thompson explained the additional parking would help.

Mr. Ryan asked where the storm water retention was located.

Mr. Thompson showed board members on the map.

Mr. Brown asked what the percentage of the capacity the retention was at.

Mr. Thompson stated he was unsure.

Mr. Brown questioned if Engineering said there was plenty of capacity for the parking lot.



Mr. Thompson stated that was correct and explained that engineering recommended approval.

Ms. Zimmers asked if Home Depot planned to sell off more lots for further development. Mr. Thompson explained that he was not aware of Home Depot selling off lots or any further development of the area.

Ms. Williams asked if there was any opposition.

Mr. Thompson stated there was no opposition and that he did not receive any phone calls.

Ms. Williams asked if the board had any further questions. Hearing none, Ms. Williams asked if there was anyone else that wished to speak at that time. Hearing no further discussion, Ms. Williams asked if there was a motion to close the public hearing.

**MOTION:** Ms. Gaier made a motion to close the public hearing. Seconded by Mr. Brown. Approval by voice vote.

Ms. Williams stated that the public hearing was now closed and asked for a motion to approve Case #18-A-20.

**MOTION:** Motion by Ms. Anderson to approve Case #18-A-20 request from Texas Roadhouse Holdings LLC for a variance from Chapter 1153.04(b)(22) to not retain the first ¼" of storm water permanently on-site at 1750 Bechtle Ave in a CC-2, Community Commercial District. Seconded by Ms. Gaier.

Hearing no further discussion or questions, the Board determined the following findings of facts:

1. There is no opposition.
2. The expansion is needed in the area for customer safety and customer service.
3. It is a hardship.

**VOTE:**

**YAYS:** Mr. Ryan, Mr. Brown, Ms. Anderson, Ms. Zimmers, Ms. Gaier and Ms. Williams

**NAYS:** None.

**Motion Approved 6 to 0**

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**Discussion:** Ms. Dorwilda Willis 111 West Auburn Avenue. Springfield, Ohio. Ms. Willis approached the board looking for recommendations regarding a zoning violation she received from Code Enforcement. Ms. Williams recommended that she work with staff and go through the proper so the board could hear her case.

**Board Comments:** None.

**Staff Comments:** Mr. Thompson explained that the board members would need to decide who would be acting vice chair and chair for 2019.

**Subject: Adjournment**

Ms. Anderson made a motion to adjourn the meeting. Seconded by Mr. Ryan.

Ms. Williams adjourned the meeting at 7:45 pm.

A handwritten signature in cursive script, appearing to read "Denise Williams", written over a horizontal line.

Ms. Denise Williams, Chairperson

Ms. Dori Gaier, Vice-Chairperson