

## **BEREA MUNICIPAL PLANNING COMMISSION**

**July 6, 2023 – 7:00p.m.**

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The Berea Municipal Planning Commission met in the Council Chamber at Berea City Hall on July 6, 2023 and was called to order by Chairman Matt Madzy at 7:00p.m. Present: Anthony Alexander, Chris Arnold, Bob Colvin, Nick Haschka, Dan Smith and Paula Wancata. Also present: Mike McCourt.

This meeting was held in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code and Chapter 109 of the Codified Ordinances of the City of Berea.

Moved by Mr. Haschka, seconded by Mrs. Wancata, that the June 15, 2023 Planning Commission meeting minutes be approved. Vote on the motion was all ayes and no nays. Mr. Arnold and Mr. Smith abstained from the vote. The motion carried.

Mr. Madzy swore in those wishing to speak before the Commission.

### **REQUESTS FOR VARIANCES/APPEALS:**

#### **Application #23-07-01**

#### **Administrative Appeal**

#### **421 Front Street, P.P. #362-13-047**

Mr. Madzy explained that this is an Administrative Appeal that challenges an order from Mr. McCourt, the City's Zoning Administrator, and Planning Commission Members received the letter requesting appeal, relevant sections of the City's Zoning Code, a letter from the Zoning Administrator and a Zoning Review memo completed by the City's Zoning Consultant, Jay Stewart. He continued by explaining the process that will be followed at this meeting. Due notification was made on this application pursuant to Section 102.04 of the City of Berea Zoning Code.

The Appellant, James Colabianchi, was present this evening. He thanked Mr. Madzy and Mr. McCourt for taking time to discuss this issue on several occasions, and provided a brief overview of the situation, noting that he had intended to operate his small business out of this property until home circumstances mandated he be there instead. Therefore, in November of 2021, Mr. Colabianchi rented the property to the Sanchez family, as they were looking to rent a house in the City so that their daughter could attend the Berea City School District. The family fits in well with the community and loves making their home in Berea, and Mr. Sanchez operates a small internet business out of the house. Mr. Colabianchi continued that he filled out the leasing permit, received the permit, and then got a letter of violation from Mr. McCourt stating that he was in violation of the occupancy of the property.

Mr. Colabianchi continued that, after meeting with Mr. McCourt and discussing the meaning of "home occupancy", he felt that Mr. Sanchez's small business qualified, and thus submitted an application for a conditional use at the property, only to receive another letter from Mr. McCourt that denied the application.

Mr. Colabianchi concluded by stating that the Sanchez Family is hoping to remain at the property until their daughter graduates from high school, and while he is not a lawyer, he felt he owed it to them to file to this appeal and make his case.

Danielle Swisher, the Assistant Law Director and City Prosecutor, was present this evening to inform the Commission why home occupancy should not be allowed at this property, noting that the Zoning Code does not even permit the Commission from ruling on such a matter. She first questioned

Mr. McCourt, who explained that he is the Building Official and Zoning Administrator for the City and, as part of his job, he accepts zoning applications and variance requests and reviews them for compliance to City Code. His first correspondence with Mr. Colabianchi was with regard to the rental license for 421 Front Street, adding that the property is in the Commercial Center Zoning District. This District is intended for commercial-based enterprises, although there do exist some non-conforming residences that are permitted to remain so long as they are not abandoned or altered. In response to a question from Mrs. Swisher, Mr. McCourt added that once a property loses its non-conforming status, it can not go back to its former use.

Mrs. Swisher handed out a timeline of events to the Commission Members, which Mr. McCourt reviewed, noting that the property was Single-Family Residential, then changed to Commercial Business, then to Commercial Center, and has remained as such since 2012.

In response to a question from Mrs. Swisher, Mr. McCourt stated that he denied Mr. Colabianchi's application for conditional use as a home occupation because home occupation is a conditional use in an existing single-family residence. It is not permitted in a commercial zoning district, such as this. This property, therefore, is not permitted to be used as a residence and, therefore, can not request conditional use for a home occupancy.

Mrs. Swisher asked Mr. McCourt to read the Zoning Code's definitions of "home occupation" and "dwelling unit", establishing that a dwelling unit is an independent housing establishment for occupancy by one family, and the home occupation must be incidental to the use of the property and conducted by those residing at the property. Mr. McCourt confirmed that 421 Front Street is not permitted for residential use and, therefore, home occupation as a conditional use is not permitted either. He added that a non-conforming residence within the District would be permitted to apply for a conditional use as a home occupancy.

Mrs. Swisher asked if there is anything in the Zoning Code that would permit the Commission to support the appeal in question, and Mr. McCourt responded in the negative, adding that he did consult Jay Stewart, the City's Zoning Consultant, who concluded that Mr. Colabianchi has no standing on this matter.

Mrs. Swisher concluded her comments by stating that the Commission can not allow the conditional use and, while there is typically a lot of gray area in the law, in this case there is none. If the Commission allows this, they will be rewriting the Zoning Code themselves.

Mr. Colabianchi respectfully noted that the property has not been a business for 2 years, and Mr. Madzy clarified that abandonment comes in to play with a non-conforming use, not a conforming use. The property is being used as an illegal dwelling unit, because its non-conforming use designation expired in 1999.

Mr. Colabianchi asked if any consideration could be made for the family.

Mr. Smith questioned why no action was taken by the City sooner, and Mrs. Swisher explained that action was taken, but Mr. McCourt told the family they are permitted to remain until November of 2023.

General discussion commenced concerning how this situation has gotten this far, and Mr. Colabianchi stated that he did know the property was zoned commercial when he purchased it, but did not know he was doing anything wrong by leasing it, and filled out the leasing application truthfully.

He inquired as to why the prior owner's request to alter the zoning of the property was recommended for approval by the Commission, and Mr. McCourt stated that the Commission recommended approval but City Council denied the rezone because it would be considered spot zoning, which is illegal.

Mr. Madzy cautioned the Commission that while he wishes there was a way to help the family, the decision needs to be technically reviewed or else a policy decision could be made that could adversely impact every Zoning District in the City. He added that the Commission may either sustain, dismiss or modify the order from the Zoning Administrator.

Moved by Mr. Haschka, seconded by Mr. Alexander, that the order of the Zoning Administrator be sustained. Vote on the motion was ayes: Alexander, Arnold, Colvin, Haschka, Madzy, Smith and Wancata. Nays: None. The motion carried.

Mr. Madzy noted that, according to Mr. McCourt, the family may remain until November 1, 2023.

### **NEW BUSINESS-GENERAL PLANNING MATTERS:**

#### **Application #23-07-02**

#### **Application for Signage**

#### **1433 West Bagley Road, P.P. #361-32-022**

Mr. Madzy read the Administrative Review.

The agent, Randy Kish, was present this evening. Mr. Kish explained that the current base will remain, and inserts will be added to reflect the new tenants. He noted that some bushes and landscaping will be incorporated soon, in conjunction with a lot of exterior renovations that are being made to the property.

Moved by Mr. Haschka, seconded by Mr. Colvin, that the sign be approved. Vote on the motion was ayes: Alexander, Arnold, Colvin, Haschka, Madzy, Smith and Wancata. Nays: None. The motion carried.

Mr. Madzy informed Mr. Kish that the sign permit can now be picked up in the Building Department, adding that if the style remains the same, there is no need for him to return as tenants change and the sign is appropriately modified.

#### **Application #23-07-03**

#### **Application for Lot Consolidation**

#### **Vacant lots on corner of Savage Street & Cross Street, P.P. #361-07-061 & 062**

Mr. Madzy read the Administrative Review.

The owner, Kevin Rex, was present this evening. He stated that he intends to construct a 2,400 square foot ranch-style house that will not look out of place in the neighborhood. Mr. Madzy noted that this consolidation, if approved, will mean that proper setbacks can be achieved with regard to the new house.

Moved by Mr. Haschka, seconded by Mrs. Wancata, that the lot consolidation be approved. Vote on the motion was ayes: Alexander, Arnold, Colvin, Haschka, Madzy, Smith and Wancata. Nays: None. The motion carried.

**OLD BUSINESS:**                    **NONE**

**OTHER BUSINESS**                    **NONE**

Having no further business before the Commission, adjournment was moved by Mr. Haschka, and seconded by Mr. Smith. With no opposition, the meeting adjourned at 7:46p.m.

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Matt Madzy, Chairman

Attest: \_\_\_\_\_  
Alycia Esson, Secretary

**CERTIFICATE OF COMPLIANCE**

The meeting of the Municipal Planning Commission held this 6<sup>th</sup> day of July, 2023, has been conducted in compliance with all legal requirements, including C.O. Chapter 109 and Section 121.22 of the Ohio Revised Code.

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Alycia Esson, Secretary