

Minutes of the Zoning Board of Appeals
Sheffield Lake, Ohio
February 18, 2009

The regular meeting of the Zoning Board of Appeals was held Wednesday, February 18, 2009. Chairperson Jancura called the meeting to order at 7:05 PM.

ROLL CALL OF MEMBERS:

Present: Jancura, Ebenschweller, McClelland, Kovach, Tatter, Building Inspector Wiblin

Attending: Concerned Citizens, Law Director Graves

MINUTES:

*Motion by McClelland to accept the minutes of May 21, 2008 as presented. Yeas All.

CORRESPONDENCE: None.

PRESENTATIONS: *Building Inspector Jon Wiblin presented:*

Chairperson Jancura advised we only have one applicant which is Abbe Road Lumber doing business as Abbe Road Storage. This is for a use variance to continue or to change the use of the currently zoned industrial area into a retail area. Building Inspector Wiblin presented Marlene King is here representing Abbe Road Lumber and Abbe Road Storage, she is seeking to continue operating retail in a showroom as previously done by Abbe Road Lumber. This is to allow the retail use in an industrial zoned area and Marlene will explain what type of business it is. Chairperson Jancura swore in **Marlene King, 33214 Electric Blvd., Avon Lake, Ohio** for testimony. Ms. King explained Abbe Road was operating in the retail area for 62 years and actually I think there was some confusion over what was actually zoned B1 and industrial. I had 3 appraisals done that all listed it as B1 so I didn't know that there was any confusion and I did try to get a variance in the spring to do this before they even rented from me. As far as what they do I think they can better tell you what they are doing than I. Chairperson Jancura asked what is your relation to Abbe Road Lumber? Ms. King answered I am the owner. Mr. Ebenschweller asked it was always my understanding that an industrial area, I am going to clarify this – other uses are allowed in industrial area that are of lesser – like you could have B1, B2 and that. Law Director Graves advised in a classic pyramid zoning that would be the case but our industrial zoning ordinance says very specifically that use is not enumerated would be excluded. So it has a very comprehensive list of uses that are allowed in an industrial zone. Sawmill, lumber yard; those type of uses are listed but general retail is not listed. So if they wanted to operate, what they are operating now is auction/flee market type of an enterprise

– that would require a use variance. Mr. Ebenschweller asked is that considered a retail operation? See I am going after the end of the grandfather thing of it if they were operating that way all along, why wouldn't that just naturally flow into something like this? Law Director Graves advised they were operating as a lumber yard and any retail that was associated with it was an ancillary operation to the primary use. They were not using it as a retail primary use of the property. There was a retail component but it was ancillary to the primary use, you know Abbe Road Lumber did have a store as well but it did specifically say Lumber Yard in the industrial zoning. Ms. King introduced Denise and John Friend and stated it is not a flea market and it is not an auction. Chairperson Jancura swore in **Denise and John Friend, 3190 North Ridge Road, Vermilion, Ohio** in for testimony. Mrs. Friend advised it is a resale shop as you stated, resale would be under retail. We are different in we are not open, we don't plan to be open every day; it will specific days and hours. Typically a Wednesday evening when the weather permits, Thursday and possibly Friday and Saturday. So it is not going to be a 7-day a week operation, it is not going to be actual regular store. Auction is not in our plans, so that is totally out of the question – it will be strictly resale. Everything is in inside, there is not going to be any booths. So the flea market idea is why I disagree with that, it is not even something that is going to be close to that. Chairperson Jancura asked so you will be the only operator so to speak, there will not be people who come in and rent booths from you; you are the only person? Mrs. Friend answered yes, everything in that store belongs to us. I have had people that wanted to show an interest in doing consignments and things like that and we are not going to do that. It is mine and my husbands store, the stuff is ours and that is it. We are not going to do auctions or anything like that. I have had emails because from the time when we were open before, this past weekend for example on a Saturday; I had to answer 67 emails as to why we weren't open and customers wanting to know when we were going to reopen. I have had a lot of support, these are people from other cities that are bringing their money here to spend it in Sheffield Lake. So it is going to bring a lot business more into this. We have people because we didn't have a restroom for example that have asked us where is your restroom, where can we get something to eat and we tell them there is a subway right down the street. It is a big circle that is going to rotate, like I said we don't plan on being open all the time. So the residents in the area shouldn't be affected by that as it being a busy retail store, so we are hoping that this is something that we can get changed so that we can continue. Like I said I get emails all the time and that is just the people that have come because of where we have advertised on line. I get phone calls, so there is a lot of interest in a store like this and they don't care where it is at. But we have chose Sheffield Lake, the arrangement works well with Marlene and ourselves and we hope we can stay there. I would hate to move out of Sheffield Lake but if we have to then we are going to take our business with us. Chairperson Jancura asked does your store emphasize in any certain area; clothing, antiques? Mrs. Friend

answered well no actually it is everything you can think of, it is household is what it could be considered and there is antiques there. Additionally what is unique about it is it is not where you can come in pick out an individual item, everything is hence the name “Bag a Bargain” everything is fill a bag. People walk into the store and you literally whatever you can fit into the 3 bags that we have, you pay 1 price for that particular bag. So people love that idea, it is a lot different then any resale shop in Ohio that I have been at. Mr. Ebenschweller asked did you say anything about consignments? Mrs. Friend answered no, people have asked us and I have told them no. It is not a route that I want to take. Chairperson Jancura asked Law Director Graves to enlighten the Board since we are not use to doing a use variance, the standards for granting – the standards for granting a use variance. Law Director Graves explained most of the time entertains request for area variances and the standard for that would be a practical difficulty standard and applying the factors that the Ohio Supreme Court laid out in Duncan versus Middlefield, what we are looking at tonight is a use variance that requires a higher standard; a higher burden of proof. It requires an undo hardship finding, there is no case that lays those out but through a number of cases but through a number of cases there is a set of factors that I could let the Board be aware of. Whether the variance stems from a condition which is unique to the property, not ordinarily found in the same zone or district. Whether the hardship is not created by the actions of the applicants. Whether the granting of the variance would not adversely affect the rights of adjacent property owners. Whether the granting of the variance would not adversely affect the public health, safety or general welfare. Whether the variance would be consistent with the general spirit and intent of the zoning code. Whether the variance sought is the minimum which will afford relief to the applicants and whether there is no other economically viable use which is permitted in the zoning district. Mr. Kovach clarified we don’t have to comply with each and every one, they can comply to any that would fit there. Law Director Graves answered no, you don’t to find all of those factors but if you find some of those, you could vote for it. Mr. McClelland asked what are you thinking about parking? Mrs. Friend answered well there is parking out in front of the building, I have to admit we haven’t given much thought. We do understand from what we have been told that the center is actually a street, so obviously that is something we would want to look into as far as making parking spaces and things like that. As it is now since we have been open, people have just literally kind of pulled in but we will eventually get something. Mr. McClelland asked where the storage is taking place now, is that going to continue. Mrs. Friend answered in the foreseeable future as I see it now – yes. Chairperson Jancura asked Jon, do you know if they are able to comply with the parking regulations? Building Inspector Wiblin answered I have never been into the business when they have been open, that is why I should come into it when they are open just to see and then we could see how many parking spaces they would have – I could do the distances and

everything on that. But just depending on the number of people, I mean there is another business owner here Mr. Duff also that owns an adjacent property. I didn't know if he might have any enlightenment that might help the Board or not. Mr. Duff advised my only concern was are they going to operate under the present structure of Abbe Road? Ms. King answered probably, it is just the retail that used to be where the lumber is. Actually as far as the parking, that is not where you have an auction where you got this crowd coming in – it is just a steady flow so parking really isn't the issue because you got all that parking on the west side. Mrs. Friend stated I am going to say actually if we were to do this and push the parking just to the front of the building and that way we are totally avoiding anybody parking or feeling tempted to park - I would think that the front would be sufficient. It really would because I mean I didn't measure it but you can get quite a few cars there at one time. So you could probably get 15 or 20 cars and for any one time I believe that is about average. That would help keep that center area completely open so everybody understands that there is no parking in that area and we can obviously put up signs and things of that nature. Chairperson Jancura asked Ms. King, have you tried to rent the building out to another lumber yard or a construction company or a similar situation? Ms. King answered this is not the time economically for the building industry. We are not starting new ones unfortunately. Chairperson Jancura asked so no one has approached you that we would like to take over? Ms. King answered no and advised last year we lost 3 lumber yards in Lorain County and that was Dell Lumber, it is not 84 but it is the one that took over 84 on Abbe Road and Dell Lumber was quite a presence in Lorain County. So nothing is going to be happening in the building market for quite some time. Mrs. Friend advised even if we were there and we weren't the issue here, that showroom is only structured for retail. You can't have even offices in there, you would have to invest so much to redo it. If anybody has ever been inside of there, it is retail; I think that is what it has always been. For us to move in it, it worked well for us. The center counter which is the checkout is perfect, there is a few offices in the back but it screams retail. Mr. Tatter asked Ms. King Abbe Road Lumber you stated was in business for 62 years? Ms. King answered yes. Mr. Tatter stated part of that business then at some time developed into a hardware store business right? Ms. King answered yes. Mr. Tatter continued it was Ace Hardware I think? Ms. King answered that was just an affiliate, it was just a buying group. Mr. Tatter stated okay but it did have the name of Ace Hardware which was definitely a retail operation? Ms. King answered right. Mr. Tatter asked how long was that ancillary use in business of the 62 years, how long had you operated the hardware portion of it? Ms. King answered probably 45 plus years, they just started in a small building and they just kept adding on. I know back in the 60's, it was already in place and I have pictures of that. Mr. Tatter stated the next question is how long has Abbe Road and the hardware store been closed? Ms. King answered February 29, 2008. Mr. Tatter continued and during that year did you attempt besides your current tenant, had

you attempted to rent the property for either retail or commercial use – did you advertise it for sale? Ms. King answered I had it on the internet and posted with some people from my business contacts that I had but with the downturn in the economy and stuff. Mr. Tatter stated I have a question of either the Building Inspector or the Law Director, do you have any idea as to when the zoning may have been established for industrial use on that section of Abbe Road? Law Director Graves answered the current industrial zoning ordinance goes back to the early 60's, as far as when that area was zoned industrial – I don't know. I believe it has been quite a while. Mr. Tatter stated so then there is the possibility then that the based on what Ms. King just told us, there is the possibility that the hardware store retail operation could have pre-existed the change to zoning – can anyone disprove that is what I am asking? Law Director Graves answered I don't have that information tonight. Mr. Tatter stated so there is a chance that it should be grandfathered under a continuous use since it has been closed for less than a year. Law Director Graves answered if they were operating a retail business prior to the industrial zoning ordinance going into affect in the early 60's, if they were 62 years I mean you are going back 45 years. I guess it is possible that they may have operated retail business prior to it becoming industrial. Mr. Tatter stated then the fact that Ms. King did attempt to rent the property as either retail or industrial or anything that she could acquire given the circumstances in our economic situation, that advertising through no fault of her own for not being able to get a tenant would have probably be considered continue the use that she had established. Does that sound like a reasonable line? Law Director Graves answered maybe, maybe not but she would have to discontinue the use for 2 years. Mr. Tatter stated for 2 years then that is a mood point then. Law Director Graves stated if in fact it does have non-conforming use status so that would be grandfathered in, in order to lose that she would to discontinue the business for at least 2 years. Male asked there were rumors that that would be like a Jamie's Flea Market outside – that is not going to occur? Mrs. Friend answered I can see how people would think that because they don't know, but no our intention was always just a retail shop inside. We also have full-time jobs with this on the side. We want it to work, we want it to get going. Ms. King stated actually I have rented out other parts of it for storage to a landscaping company and to a builder who wants to take the cold storage building and actually just store lumber and stuff in there so. Mr. Tatter asked another question of the Law Director or the Building Inspector – is it possible to consider this on a segregated portion for only the retail space within the confines of the existing retail space and not the entire property? Law Director Graves answered yes. Mr. Tatter stated which would prohibit a Jamie's Flea Market type thing from occurring. Law Director Graves stated you could provide a variance for just that portion of the retail space. Mr. Tatter added since that is what was used for retail. Chairperson Jancura asked but what happens if say the construction company that is renting the cold storage turns into another lumber yard and they

want to have the ancillary retail? Ms. King stated that is not going to happen. Law Director Graves answered you are talking about a use that would already be allowed under an industrial zone. The type of storage that you are talking about is permitted, it is listed in the industrial zoning. Mr. Ebenschweller asked this would have to be inspected and we can inspect it as far as the industrial property, much like we would do at the shopping center? So you are qualified to go in there and make sure that everything is? Building Inspector Wiblin answered yes, I have a commercial Building Inspector license and also I would bring the Fire Department with me so that they could also. Mr. Ebenschweller stated so that everything would be brought up to the standards that we would require. Building Inspector Wiblin answered right and the Fire Department will look at it once a year also just like any business. Mrs. Friend stated someone in the city sent Mr. LaHata about 90 days, so he was in there and inspected that it was being used as was set up for it to be used and that was about 3 months ago that he came in and went over everything and found the use as being as what it was set up for. Mr. McClelland stated you said Wednesday evening, Thursday, Friday and Saturday? Mrs. Friend answered Wednesday definitely, Thursday and Friday is being debated on and Saturdays – we would be kind of stupid not to be opened on Saturdays in the summer time or nice weather. Mr. McClelland asked are you talking all day Saturday? Mrs. Friend answered just like probably 8 to 3 or 4, like I said we do this as a part time and people understand that. It has been hard because we haven't been able to set definite hours, our customers do get frustrated with that fact. So if we know we are going to be there and not going anywhere then we can set hours then people know what to expect. Mr. Ebenschweller joked could you stick a coffee and donut shop in there too? Mrs. Friend answered you know what, you laugh but I have been asked that ever since the restaurant on the corner closed – Hardee's. There was a brief discussion. Mr. Duff stated I think Mr. Tatter's comments were wise and I think the Board should adopt this. *Motion by Ebenschweller to close the discussion. Yeas All. Mr. Tatter stated I would like to see a change to the request if it is agreeable with Ms. King and the current tenant Mrs. Friend to limit this to only the retail space as it exists under the possibility of it already having been grandfathered. That would have to be defined then by Ms. King I guess in agreement between Ms. King and the city as to the exact description of the retail space. You said you had a survey that included the retail space, an appraisal that had a survey so that it would set the size of the building. Law Director Graves advised when the Building Inspector issues the occupancy permit, he can just make sure that the portion is what has been used historically for retail. Mr. Tatter added our decision would only cover that portion of the property and no adjoining grounds of the former Abbe Road Lumber. Chairperson Jancura asked now if that is not done, say we would grant a general use variance to retail – that would mean that Ms. King if she wanted to turn it into - say Jamie's wants to buy the property and we want to operate Jamie's II then that could occur without having to re-visit

the use variance again. Law Director Graves answered yes. Mr. Tatter stated if they were to expand, Jamie's for instance would have to request that the adjacent property currently zoned industrial. Chairperson Jancura clarified I am just saying if we grant the use variance without your limitation as proposed, we just change it to retail – Jamie's would not have to do that, they could come in and operate but what we are proposing on the limit is that they could only ever use the building itself. Mr. Tatter stated right, what was used as the hardware store retail space under Abbe Road Lumber be considered by this Board for that change.

Chairperson Jancura stated I am assuming also by granting the use change, if the retail or the resale shop fails but another shop would like to come in/not necessarily resale but any retail shop would like to come in – they could the same terms, they could also operate. So Ms. King would not have to come here once again and say I have another renter or I have someone who wants to buy the property and use the same thing – this will run with the land. Law Director Graves answered that is right, use variance would run with the land. Mr. Ebenschweller stated it is not granted for a particular person, it is granted on the property and it stays on. Chairperson Jancura explained exactly, so if Ms. King decides to sell the land then the next owner will have the same terms, they will be able to operate the business as it is being operated. So that everybody is realizing that, that this will not change unless we go back and change it or they stop operating it as a retail.

Law Director Graves clarified no even if they did stop, the variance would run with the land. It wouldn't be non-conforming, that is allowed there. Chairperson Jancura asked so how is this classified, is this a retail use within an industrial zone. Law Director Graves answered it is just a variance within an industrial zone. *Motion by Jancura to grant the use variance with the condition that the use variance is only granted to the structure previously operated as the retail portion of Abbe Road Lumber Company. **ROLL CALL TO APPROVE THE USE VARIANCE WITH THE CONDITION THAT IS ONLY CONFINED TO THE PRIOR RETAIL STRUCTURE OF ABBE ROAD LUMBER:** Yeas All – Ebenschweller, Tatter,

McClelland, Jancura. Law Director Graves recommended when the Board renders a decision like that that they also express a finding that the applicant met the factors necessary for undo hardship. Mr. Ebenschweller asked are those factors the same for area use as they are for regular use, you know the one under Duncan? Law Director Graves answered as I said the Duncan factors are for an area variance, those are different – those are to meet a practical difficulty standard for area variance, those are the Duncan factors. For use variance, you have to find undo hardship and those are different factors. Mr. Ebenschweller asked you have a list of those factors? Law Director Graves answered I do, those are the ones that I read. Mr. Ebenschweller asked can you get us a copy of that because I have the ones? Law Director Graves answered yes, I can get you a copy. Chairperson Jancura explained in terms of the undo hardship, I believe there was one in that Ms. King has been unable to find a similar use for the land. There are no

construction companies or any other related businesses who wanted to use the land, this has been her only viable option of using the land other than for storage of people's boats and other construction equipment. We do have adjacent property owners here who have not stated for the record that they opposed the use, they seem to be satisfied with the proposal that we made tonight. We don't believe that will adversely affect other land owners or property users regarding Abbe Road and the surrounding areas. So as the Chairman, I believe that there is an undo hardship on the property owner to the land just go to waste would be detrimental to the city as a whole.

OLD BUSINESS: None.

NEW BUSINESS: None.

CITIZENS COMMENTARY: None.

MEETING ADJOURNED: With no further business before this board, *Motion by Ebenschweller to adjourn at 7:35 pm. Yeas All.

CLERK OF COMMITTEE AFFIRMATION: This Meeting Of The City Committee Of The City of Sheffield Lake, Ohio Was Held and Conducted Under All Rules and Regulations Governing The Sunshine Laws Of The State Of Ohio As They May Apply. All meetings are recorded and available in council's office.

CLERK OF COUNCIL

Kay Fantauzzi

CHAIRMAN OF COMMITTEE

Diana Jancura

I, Kay Fantauzzi, duly appointed Clerk of Committee Of Sheffield Lake DO HEREBY CERTIFY that this Is a true and exact copy of the Minutes of the Board Of February 18, 2009.

PRESIDENT OF COUNCIL

Edward R Podmanik