

Minutes of the Zoning Board of Appeals
Sheffield Lake, Ohio
October 21, 2009

The regular meeting of the Zoning Board of Appeals was held Wednesday, October 21, 2009. Chairperson Jancura called the meeting to order at 7:05 PM.

ROLL CALL OF MEMBERS:

Present: Jancura, Ebenschweller, McClelland, Kovach
Absent: Tatter, Building Inspector Wiblin (excused)
Attending: Applicants, Law Director Graves

MINUTES:

*Motion by Ebenschweller/Second by McClelland to accept the minutes of the September 16, 2009 meeting as presented. Yeas All.

CORRESPONDENCE: None.

PRESENTATIONS:

Jim Kolleda and Dan Smith (TABLED) – Chairperson Jancura advised if there is anyone who up representing Mr. Kolleda and Mr. Smith if you could please stand to the podium. Mr. Kolleda asked if we could have the audio turned up a little bit I am a little hard of hearing. Chairperson Jancura asked sir, if you could please state your name? Attorney William Wesley introduced himself and advised I represent Mr. Kolleda and Mr. Smith on the variance application. Chairperson Jancura swore in Mr. Wesley for presentation. Chairperson Jancura advised when we last left the variance was for non-conforming building that was needed for a variance because the new building was more then 20% larger then the existing building. Is that correct? Law Director Graves advised the code is 10%. Attorney Wesley advised it is 10%, the way it was presented the last time we were under the assumption based on comments by the applicants that this would constitute a non-conforming use. That is a structure which pre-existed the zoning code and therefore would have been grandfathered in. It is a non-complying structure, you are allowed to continue a non-conforming use. You are allowed to repair it and even reconstruct it up to a 10% increase in cubic footage for an accessory building. In discussion with the Building Department I believe that is no longer the approach the city should take on this but we will listen to what the applicant has to say. He continued Mr. Kolleda, age 83 has been a resident of this city for 59 years and Mr. Smith has been a resident for 51 year – they are long time Sheffield Lake residents. When Mr. Kolleda began this project there were 2 tea houses on the property. Chairperson Jancura advised sir I don't mean to interrupt but we know all these facts, this has actually been the 3rd time we have discussed the matter including the

special meeting that was called to which no one showed up at and the last regular meeting which we also discussed all of these factors. So that being said we actually have a lot of questions for you that have not been answered that I would like to if you wouldn't mind, I would like to take the time to ask you our questions. Mr. Ebenschweller stated in looking at some old pictures the questions of the tea houses, they were completely removed from both properties and the pictures show that they were not in the area where this new building is built. So this building in my opinion I would assume is a new building and has to be addressed as such and I don't know whether or not ODNR was contacted about this shoreline structure permit? Attorney Wesley answered I don't think that that is the issue before this Board today, I think the issue is a variance for a building – am I correct?

Chairperson Jancura answered it is actually a request for a variance for a non-conforming building and the problem is the structure that was created does not follow the non-conforming anymore. Non-conforming means remodeling or improvement of an existing structure. Attorney Wesley stated maybe I misunderstood Mr. Ebenschweller but he was talking about a shore controlled device and not the building. Chairperson Jancura answered correct but in terms of what we have to determine when you grant a variance is what kind of variances do you need because not everybody that comes to us – well you think you need just a 10% variance but you might need a side yard variance, you might need a backyard variance. So we are looking at exactly what kind of variances are going to be needed to try and sustain this building. So I think that is what Mr. Ebenschweller was going to. Mr. Ebenschweller stated if I may continue, I bring that up only to suggest that if this Board has to not only make decisions based on our laws but if we make a decision that goes against Ohio law we have to consider all other issues in this building in the placement of it along with the non-compliance if it is on the bluff. I am wondering whether there isn't another permit necessary and if we need to look at possibly getting another permit from ODNR for this building? Attorney Wesley answered not to my knowledge, there is no permit necessary. If it is in a shoreline erosion area then you may be correct, you would have to get a permit from the State of Ohio but there is a breakwall in place there – it is not an erosion area. Chairperson Jancura advised we also have an issue with the lay of the building in relationship to the 2 parcels. We have a building that straddles 2 parcels of land that basically makes both of them un-conveyable without granting of an easement and we had a problem with granting this variance knowing that it is going to create a problem on 2 parcels of land. Attorney Wesley advised that is a good question and it probably wasn't the most intelligent thing to do. The building itself is mostly air, the roof straddles both parcels but the structure that has a foundation is very, very small. On Mr. Kolleda's side the structure is 47.36 square feet. Mr. Kolleda corrected no, it is half of that. Attorney Wesley continued on the other side it is 27.79 feet. That is the only structure there, it is a pavilion it is mostly roof. Chairperson Jancura answered correct but they intentionally created a

structure that lays on 2 parcels of land. Attorney Wesley stated well it doesn't encroach on either one. Chairperson Jancura asked how so? Attorney Wesley explained well encroachment would be either Mr. Kolleda's building is on Mr. Smith's property and vice versa and it doesn't. You have got a common roof but not an encroachment situation. Chairperson Jancura asked do you have a survey, you had said that you were going to have that property surveyed? Attorney Wesley answered yes and submitted documentation. There was a review of survey including question and answer period. Upon review it was confirmed that the property line runs through the middle of the building. Attorney Wesley advised the application for the variance on the basis of expansion of a non-conforming usage, I am not quite sure that that is correct today? Chairperson Jancura answered actually it is not correct. Attorney Wesley stated it may or may not be but I am not quite sure that it is. Chairperson Jancura answered we have already discussed this, this building is no longer falls within non-conforming. Law Director Graves advised it was represented to the Building Inspector and others that were out there that this new structure was built on the same footprint as the old. At some point it became unclear where the old buildings were, aerial photographs have clearly shown that this is not where the old tea houses were. The City of Sheffield Lake has never recognized a non-conforming use which has been totally torn down and reconstructed in another location. To maintain non-conforming status it has to be built on the same footprint, if you move it then it is new construction. That is the way the city has always interpreted it. Attorney Wesley advised I downloaded the ordinances and I tried to find that in the city ordinances and couldn't find it. Chairperson Jancura stated it is there. Law Director Graves stated it is the word reconstruct and the Building Inspector has never allowed a non-conforming use built in another area of the property. Attorney Wesley stated but that is not what the ordinance says. Chairperson Jancura advised I am sorry sir but we are familiar with what the ordinance and we know what it says. Attorney Wesley asked what ordinance would that be so I could look it up? Chairperson Jancura stated I don't the ordinances. Law Director Graves answered 1153. Attorney Wesley advised I have read that thoroughly and I don't see it there it either. Law Director Graves advised .04. Chairperson Jancura advised the second part of our discussion is to grant a variance you have to show this Board that you have a substantial hardship, while we completely empathize with Mr. Kolleda and Mr. Smith and we recognize that they are long standing citizens of the community and have helped the community out in its development, they created their own problem. They intentionally put this building between 2 parcels without a permit, without consulting the Building Department for which they have already been penalized. They ran plumbing back there, they have electrical. It is not this is a little shed to put some boat paraphernalia in. This is substantial structure, I have a very hard time understanding their hardship when they created it themselves. It is not like they hired somebody to create the structure and the builder put it in the wrong spot,

these 2 men admitted they put it where they put it. How can we possibly have hardship there? Attorney Wesley answered well I think you are going to have to look at it in another manner. You have 2 neighbors that certainly get along very well, they wanted to build a pavilion and the pavilion roof extends over 2 properties. It may or may not be a non-conforming use, don't exactly know the answer there but certainly what they put up is substantially less square footage than what was there. It is certainly less obtrusive than the old 2 tea houses that were on the property and the neighbors have no objections to it, they are happy with the way it sits. If there is deed problem later on a subsequent sell or whatever, they are going to have to go work that out it is not going to affect the city at all. Law Director Graves advised I think what the Commission is trying to determine is assuming or lets just for argument sake pretend that the structure has not yet been built, there is no structure there and they are coming in for a variance like they should have done prior to construction. In order to get a variance they have to show practical difficulties, what are the practical difficulties that they have that require the structure to be built in the manner that it is currently built. Attorney Wesley answered undo hardship, the ordinance reads that it has a number of things there. Chairperson Jancura asked why couldn't they put the building on one persons land, either Mr. Kolleda or Mr. Smith's? Why did they have to straddle the building, why did they have to straddle the building maybe you gentlemen can explain to us? Mr. Smith explained it is a 40 foot lot so if you put it in the middle you create a view on both sides. Chairperson Jancura asked why couldn't have created a smaller structure? A resident answered because we didn't want to. Mr. McClelland stated so what happens when one of you passes away and the property goes up for sale? We are all going to pass away here and when that happens there is going to be a problem for the people who inherit? Attorney Wesley advised you know I think it would be a legal problem as such because there is not an encroachment, it really isn't a legal problem between the 2 property owners. Should one sell their property, there is a definite property line there and a survey is done you know from this part of the roof over goes with this lot and then the other. I think that in anyway involves the city should later one or the other sells, the city is not going to become a party to anything. I mean you have 2 cooperative neighbors that want to build a common pavilion so they can go out and relax and enjoy the view on the lake. Certainly what they have built is a lot better than what was there, absolutely they took the wrong approach to this – absolutely did everything wrong to start with. I mean that is admitted. Law Director Graves stated I can suggest how the appropriate way to do this and the appropriate way to do this is what has been done elsewhere in the city where 2 neighbors wanted to build a common structure on the lake, they create a separate parcel for it. They do a lot split, they create a separate parcel for the structure and they own it jointly with the right of survivorship and the last one living inherits the structure. But it would be, you start out by creating a separate parcel where this structure wouldn't have any

zoning issues. The current structure is fraught with issues. Attorney Wesley advised first of all the City of Sheffield Lake would never do a lot split on a 40-foot wide lot, I mean they wouldn't do that. Chairperson Jancura answered sir you could create a lot, it is not impossible to create a lot. Attorney Wesley stated I think we would be spending more time down here trying to create a lot out of 2 40-foot parcels. Could we just create a lot here and we will just leave there? Chairperson Jancura stated that actually was a very viable option because this Committee was very hard pressed especially as the facts were presented in terms of practical difficulty – sorry we didn't really see it. But now the additional non-conforming use problem, this is not non-conforming use anymore. Attorney Wesley advised what we are really talking, I have read the ordinances here and it looks like an accessory building to me. I have read through the entire code and try to figure out what a pavilion is and it appears to me that it falls under the definition of an accessory building. Chairperson Jancura answered correct, I would agree. Attorney Wesley continued and if that were the case then we probably shouldn't be here today. We probably should file a variance for an accessory building or in the alternative if this Board of Zoning Appeals is receptive to the idea, we will get the surveyor back out and carve a separate lot of that and do it in that manner. Chairperson Jancura advised because that way you would be dealing with Planning, get your lot split and you would create a parcel that doesn't need any variances and you wouldn't have to come before us again. Law Director Graves advised the other misrepresentation or misunderstanding was that one of the priority houses also stay on the property line. Attorney Wesley stated I don't think that was. Law Director Graves advised oh yes it was. Chairperson Jancura concurred it was, it was represented. Law Director Graves continued that the old one stay on the property line, in looking at aerial photographs it absolutely does. Attorney Wesley stated I don't think it did, no. Law Director Graves advised that is one the reasons why we were looking at it as a non-conforming use, you can't a structure that spans the property line so we said well wait a minute the old did then maybe this would be a non-conforming use but the old one did not. Attorney Wesley stated I think I agree with that. That is certainly something we would pursue if that true and I admit Mr. Kolleda and Mr. Smith absolutely took the wrong approach to this and if given the opportunity I think Mr. Kolleda would apologize to this Board. Since the filing of this application there has just been too fingers in the pudding, it has been a hot potato that has been passed from city official to city official. There is a lot of money in that structure down there, it has been very well built and it certainly compliments the properties, it doesn't obstruct anybody's view. It is mostly air as I pointed out to you on the square footage and it would certainly be a welcome addition to these 2 families to be able to sit on their deck with a roof over their head and stay out of the rain and enjoy the lake. If this Board is receptive to later doing a lot split, absolutely we would be receptive to that. Chairperson Jancura stated I don't think anybody on the Board is denying the

fact that is a very nice building that it does improve not only the parcels but the area and that is a good thing on the whole. However we still have to be objective in meeting the standard of hardship. Attorney Wesley stated well in that event we are pursue something like that maybe we should just table this application based on non-conforming and come back at a later date with something else? Chairperson Jancura asked do we have a time limit on tabling? Law Director Graves answered no but there is no reason why the Board couldn't vote on the application as presented and if they wanted to discuss a subsequent application that was different then this one I don't think that would be barred. Attorney Wesley stated or in alternative maybe withdraw it because I didn't do the application, I wasn't party to it and I don't think it is the appropriate application before this Board. I really don't. Chairperson Jancura advised I would like to recommend that because the problem is if we deny it, your remedy to appeal is to go to down into Lorain and appeal it. You can't come here again. So if you withdraw your application, redo it correctly the way it should be whether you are going to be doing a parcel split or whatever, do it correctly you can come back to us and do a new application. Law Director Graves advised the problem is the structure as it currently sits is in violation of our code. They are not going to be able to just sit on this structure, it is either going to have to have a variance, a lot split or it is going to have to be modified or torn down – those are the 4 options. Chairperson Jancura advised I think a lot split is going to be honestly the easiest way to go. Law Director Graves advised it is not like this gets withdrawn and then they have until next year to file that, at some point they are going to start getting citations because as it currently sits it is in violation of our existing building code. Attorney Wesley advised there is a stop work order which Mr. Kolleda and Mr. Smith have adhered to. Chairperson Jancura advised yes but the citations are still going to come because the structure is there. Attorney Wesley stated I understand that that stop order probably wasn't exactly correct because it didn't define exactly what you were doing wrong but Mr. Kolleda asked me and I said stop working. But yes I think we will withdraw this request and then come back and perhaps we are going to pursue the lot split. Chairperson Jancura advised I don't want them to have to take the building down, it is a lot of money and time. That would be the worst situation. Attorney Wesley thanked the Board for their time. Mr. Ebenschweller clarified it stands now that they are withdrawing the request. Law Director Graves advised my recommendation would be to if you are going to make an application for a lot split to do it as soon as possible because without any application the Building Department will probably start issuing citations. Attorney Wesley advised we have to get the surveyor back to do a legal description of a lot split before we can file application. Law Director Graves stated well you might get a citation, you can talk to the Magistrate about a continuance. Chairperson Jancura advised our understanding is as it stands, the application submitted by Mr. Kolleda and Mr. Smith for the non-conforming use is hereby withdrawn. Do you agree Mr. Kolleda,

you are going to withdraw your application? Mr. Kolleda answered yes. Chairperson Jancura asked and Mr. Smith, you both consent to that? Mr. Smith answered yes. Chairperson Jancura advised Mr. Kolleda it is a gorgeous building and I completely empathize and I don't want you to have to take it down. Mr. Kolleda advised there was a lot of confusion on my part on where our property lines were, I thought we were building this on the city property. That is why we didn't come for a building permit but we had a \$1600.00 lot survey and he showed we have a 30-foot right of way in the street and then our lot starts 170 feet which gives us 30-feet more. He explained the confusion.

Today's Contractors – Chairperson Jancura swore in Mr. Steve Smouzer, 31904 Starboard Cove, Avon Lake. Chairperson Jancura confirmed relationship to Today's Contractors as partner. Law Director Graves presented the business exist on parcels which are currently industrial on Pleasantview, the business wishes to expand onto to parcels which they have already purchased but are currently zoned residential. So they would require a use variance rather than an area variance. A use variance requires a higher standard showing undo hardship but I will point out that that area of Pleasantview has already been recommended by the Planning Commission to be rezoned completely industrial and I think Council has already been sent that and the next step would be to set that for a public hearing so from the city's perspective I think the intent of that area is to rezone the whole area industrial. Mr. Ebenschweller stated the application says you paid \$450.00 for a zoning change. Mr. Smouzer answered yes sir. Mr. Ebenschweller stated that is what I questioned, why is it coming before us because this is something for Council. Chairperson Jancura explained no that is a use variance even though Council is in the process of having the use changed, he is still applying while that hasn't been approved yet. Mr. Ebenschweller asked what if Council decides not to? Law Director Graves answered that is why you are giving him a variance. He is applying for a use variance, now maybe he paid the wrong fee but that is a question for the Building Department as to why they characterize this as a rezoning when it is really a use variance and that is why it is here. It is properly here, properly questioned for a use variance currently even though Council is currently setting this for public hearing. Mr. McClelland stated if I recall there is like one house on the whole street and that was for sale or something? Mr. Smouzer answered I haven't seen the sign for a while but it was for sale for a while. That is north of these properties. Chairperson Jancura stated it seems that you already your business operating out of some of the parcels, you bought additional parcels so you could obviously expand your business, more equipment, good for the city. Mr. Smouze stated well we are hoping to have another building but Mr. Wiblin said it starts here. Chairperson Jancura answered yes and once again to grant your variance we have to establish practical difficulty. Law Director Graves amended this is actually undo hardship, it is a higher standard. You do currently own the parcels? Mr. Smouze answered yes. Chairperson Jancura explained the use of the

land, it goes with the parcels. There was a brief discussion on the process of rezoning and use variances. Mr. Bring explained there was actually another parcel before they bought theirs that was actually a spot zoned parcel which is almost adjacent to their property. So it was actually already done on a spot zone that they awarded probably 5 years before they bought theirs too. So half of the street on the other side was a limited use/light industrial and then the other side of the street which was the same street was residential. Then there were sections where Mr. Kolleda is actually down at the other end where that parcel is actually industrial. So there were actually parts of it all the way around that were like that and that is why they okayed it and because that street. The people that live there now that had their house up for sale but they were actually going to stay there but if it was all zoned industrial they have no problem. I actually talked to them about it. Mr. McClelland asked the people that actually own the house have no problem with the zoning change? Mr. Bring answered they said they have no problem with that, we talked about it a couple of years ago I think it was. Mr. McClelland stated I can tell you that the Planning Commission worked for over a year, probably a year and a half to two years looking at every part of the city to try to conform, to not have things like this and that is why it was recommended to Council that that whole area be zoned industrial. Chairperson Jancura advised because I was actually on Planning at the time when it started, I started the process and Miles and Debbie are finishing it up. The city is definitely aware of the spot zoning problems, so that is what we are looking to remedy. Mr. Ebenschweller asked would you be installing drains, storm sewers and water lines and what not to your thing or is it going to be all storage thing? Mr. Smouze advised our intent is basically get the stuff outside inside of a building very similar to the one we have now and that is our basic intent. Mr. Ebenschweller asked you are going to build more building? Mr. Smouze answered a building but similar to the one we have now, that is where we started this project at the Building Department and that is how we ended up here. Mr. McClelland asked that is your current building? Owner answered yes sir.

ROLL CALL TO APPROVE THE USE VARIANCE FROM RESIDENTIAL TO INDUSTRIAL: Yeas All – McClelland, Ebenschweller, Jancura. Chairperson Jancura advised to have Kay investigate this as I believe this should have just been a variance request and not a zoning change and you may very well be due a refund – a partial refund because zoning change is \$450.00 and you went for a variance so you will be getting \$350.00 back. Mr. Ebenschweller advised the zoning change will be free if Council votes it.

OLD BUSINESS: Councilman Kovach advised on the issue of the legislation before Council, Councilman Rosso is very adamant that he was opposed to approving that \$100.00 fee and felt that it was in the hands of the Chairman and that if he or she wanted to call a meeting so be it. I tried to explain it, we were trying to cover expenses. So if you are interested in retaining that ordinance in favor of that I would suggest that you attend the Council meeting on Tuesday for

the third reading. Chairperson Jancura stated I didn't think that we had to do that because we are self-governing and we didn't have to ask anybody about it. Law Director Graves advised the fee is actually set by ordinance. Councilman Kovach advised I would strongly suggest that all 3 of you. Chairperson Jancura stated honestly it is to cover the administrative costs; you still have service on abetting/abutting, you have Mr. Graves, you have Mr. Wiblin attending and we need to make these people aware that this is a serious thing. There was a brief discussion. Councilman Bring stated here is the thing there was a suggestion made that you actually put a retainer in there for the amount of money and if they show up then they get their money back but if they don't show up then you keep the money is what it would be. So that way if there was a special meeting called and they put the money and they didn't show up they get charged. Chairperson Jancura explained the administrative costs if I say we are going to have a special meeting then Kay has to serve notice on everybody and right there is the administrative costs. We all have to parcel out days and time to show up for this special meeting so it is inconveniencing all of us and if the person doesn't show or at the last minute cancels. Councilman Bring advised that is when they don't get their money back but like Mr. Rosso said if you are the Chairman and you don't feel that you want to call the meeting you don't have to and he said if you do call the meeting and they don't show up then you keep their money. But if you feel like it is inconveniencing you and you don't want to call the meeting then you don't have to call the meeting. Just a suggestion. Councilman Kovach advised I would still say that you come and argue the case during that particular because like I say I explained that it was for costs incurred, it didn't set in I don't think. Law Director Graves stated I think that one of the misunderstanding is that they are thinking that this would just be the regular meeting and you would just call it sooner then later. But calling special meetings of this Board differs from some of the other Boards. There are certified mail notices that have to go out for special meetings, there is a monetary clause and you would still have your regular meetings. Chairperson Jancura proposed a revision which she will bring to Council and explain for true costs.

NEW BUSINESS: None.

CITIZENS COMMENTARY:

Debbie Belaska, 4014 East Lake Road advised I am in support of you, I am on the Planning Commission and I have recommended this to the Planning Commission. When we go back into session again, when we have a quorum and I am going to make sure that we follow behind you on this. I really like how this presentation is and I want to present it to the Chairman and the other members on the Planning Commission so that we can adopt this too.

Pete Ross, Walker Road asked how much of this road are you going to rezone industrial exactly? I have a house on the south side of Walker Road. Chairperson Jancura advised we are actually not rezoning that would be you would need to

attend the next city Council meeting where they have the next reading. Councilman Kovach asked are you referring to the spot issues? Mr. Rosso stated the gentleman that is going to be building like just adjacent to me and see there is an open field between and my neighbor who is across the street from me. Then I am just going to be surrounded by industry. Mr. Ebenschweller advised you may be already, that part of Walker Road south is pretty much industrial already and you may be already in the middle of and industrial area with your residence. Mr. Ross explained when I bought this property about 30 years ago, back then it was still residential land. There was a brief discussion.

Tim Coon, 4309 Knickerbocker advised I had a variance that was just denied. Chairperson Jancura advised yes you did not show up for your meetings or your hearings. Mr. Coon stated I missed it by like one day. Chairperson Jancura explained you were served with official notice twice of your hearings and you did not show to either one of them and so we were forced to vote on your variance based on the information. Mr. Coon stated the first one I was told that I didn't even need to be at, that was the confusion in July and then you guys didn't have one in August. Chairperson Jancura advised I am sorry but we have already voted on your variance. If you would like to appeal the denial of it then you will need to take that up with the City of Lorain. I am sorry but based on what was presented we did not feel that you had an undo hardship.

MEETING ADJOURNED: With no further business before this board, *Motion by McClelland/Second by Ebenschweller to adjourn at 7:55 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 October 21, 2009.

PRESIDENT OF COUNCIL
Edward R Podmanik