

Minutes of the Zoning Board of Appeals
Sheffield Lake, Ohio
July 17, 2013

The regular meeting of the Zoning Board of Appeals was held Wednesday, July 17, 2013. Chairperson Jancura called the meeting to order at 7:20 PM.

ROLL CALL OF MEMBERS:

Present: Jancura, Tatter, Pavkovich, Kovach

Absent: Melbar, Building Inspector Wiblin, Mayor Bring, Law Director
Graves

Attending: Applicants, Concerned Citizens

Minutes: *Motion by Tatter/Second by Pavkovich to approve the minutes of the Zoning Board of Appeals meeting of May 15, 2013 with noted revisions incorporated. Yeas All.

CORRESPONDENCE: None.

PRESENTATIONS:

OLD BUSINESS:

- a.) *Dollar General; Zaremba Group* – conclusions of fact. Chairman Jancura advised when the court remanded the Dollar General decision back to us for another hearing they ordered us to adopt conclusion of fact where we set forth actual facts that we have found basically the grounds for which we were making our decision. Especially important in the light of the fact that our decision is now going to be appealed once again. So what this document is I went through the minutes and wrote down in this document what facts we found which we will start off with. I started with the court's decision and what they ordered us to do, what would be our scope; because of the ordinance that we were dealing with which was ambiguous 1139.06 that says on a corner lot which borders a residential district we approve the size and location of the building which was ambiguous. So basically I set forth in this document how we arrived at our decision to approve the size of the building because the court told us that its decision was location of the building was fine. You are only going to look at the size of the building. Given the fact that Dollar General came back and said well we will even make the building smaller than our original building. This is why we are doing what we are doing.

Sheffield Lake
Board of Zoning Appeals
Conclusions of Fact

Approval of site plan for proposed Dollar General Retail Store at the corner of Harris Road and Lake Road, Sheffield Lake, Ohio.

Applicant: Dearborn Land Investment, LLC c/o Zaremba Group, LLC

After reviewing the application for a permit to build, hearing the evidence and testimony under oath, reviewing all documentary submissions of interested parties, and taking into consideration the personal knowledge of the property in question, the Sheffield Lake Board of Zoning Appeals (hereinafter "SLBZA) finds and concludes that:

1. Applicant applied for a permit to build and was required to obtain approval of the SLBZA pursuant to section 1139.06 (c) of the Sheffield Lake Planning and Zoning Code (hereinafter "PZC") which states, in pertinent part:

On a corner lot which borders on a residential district the application for a permit to build on a lot shall be submitted to the Board of Zoning and Building Appeals for its approval of the size and location of the proposed building (Ord. 54-81. Passed 7-14-81)

2. This matter was originally heard before SLBZA on February 15, 2012 at which time the application was not approved.
3. Consequently, Applicant filed an appeal of the decision of the SLBZA and is known under Lorain County Court of Common Pleas Case No. 12CV175650.
4. In its decision dated January 11, 2013, the Lorain County Court of Common Pleas remanded the matter back to the SLBZA .
5. In its decision, the Court of Common Pleas expressly stated:

Specifically, the BZA is only allowed to consider the **size and location** of the proposed building when determining approval of the permit. This is all the ordinance permits, and therefore the BZA's scope of review is expressly limited thereto. (Pg. 4)

6. In addition to remanding the matter back to SLBZA for a full hearing as to the size and location of the proposed building, the Court further ordered the SLBZA to issue Conclusions of Fact along with its final decision following said hearing.
7. The language of the decision of the Court of Common Pleas is unambiguous in its direction and meaning and directs the SLBZA to conduct a full hearing as to the size and location of the proposed building only.

8. Further, regarding the location of the proposed building, the decision of the Court of Common Pleas states, in pertinent part:

. . . , this Court finds that Appellant's application satisfied the location provisions as set forth in PZC §§ 1141.05(a), (b), and (c).

9. A full hearing took place on May 15, 2013 which was attended by Applicant and its legal representatives and agents.
10. At said May 15, 2013 meeting, the Applicant proposed various modifications to the application for permit to build which included a 15% reduction of the size of the proposed building from the originally proposed 10,640 sq. ft. to 9,100 sq. ft; and from a footprint of 140 x 76 to 130 x 70.
11. Section 1139.06(c) of the PZC contains no language or guidance as to the factors or standard of review for the SLBZA to consider in reviewing size and location of the proposed building.
12. There is nothing in the legislative history, or minutes which provides any guidance as to either the intent or application of Section 1139.06(c).
13. The law in Ohio is clear that zoning laws by their very nature are in derogation of the common law and necessarily deprive a property owner of certain uses of land to which he or she would otherwise be lawfully entitled and that any restrictions in the use of real property by ordinance, resolution or statute must be strictly construed and the scope of the restrictions cannot be extended to include limitations not clearly prescribed.
14. Since the Court specifically found that the application satisfied the location provisions of the PZC, the only issue for the SLBZA to consider is the size of the building.
15. In accordance with the Court's directive and applying the proper scope of review contained within PZC Section 1139.06(c), the proposed application for building permit satisfies the location and size of building requirements of the Sheffield Lake Zoning Ordinances. Therefore, the application for permit to build is approved contingent upon the Applicant incorporating all of the proposed modifications as set forth in the transcript and minutes of the May 15, 2013 SLBZA meeting.

Diana Jancura, Chair
Sheffield Lake Zoning Board of Appeals

Chairperson Jancura advised this will get filed with the court as our official conclusions of fact. *Motion by Pavkovich/Second by Tatter to accept the conclusions of fact as presented. ROLL CALL FOR APPROVAL: Yeas All – Tatter, Pavkovich, Jancura.

Revision of Building Department Application – Chairperson Jancura advised I believe I emailed to everybody with kind of proposed order. It is just an application that has more specific information when someone comes before for an application. This would set forth specific code ordinances that we need to look at for better guidance. I will have Kay email that again and if anyone would like to see something else on there, please feel free.

CITIZENS COMMENTARY: None.

MEETING ADJOURNED: With no further business before this board, *Motion by Pavkovich/Second by Tatter 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

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 Zoning Board of Appeals meeting of July 17, 2013.

CHAIRMAN OF COMMITTEE

Diana Jancura

PRESIDENT OF COUNCIL

Rick Rosso

and/or

COUNCIL PRO TEM

Eric S Elliott