

CITY OF KIRTLAND
PLANNING AND ZONING COMMISSION

MINUTES OF THE MEETING
OCTOBER 9, 2023

The meeting was called to order by Chairman Denk at 7:07 p.m. Present were Commission members Richard DeMarco, Michael Denk, Daniel Laux, Lita Laven and Joseph Vinciguerra.

Also present were Mayor Kevin Potter, Law Director Matthew Lallo, City Engineer Douglas Courtney and Councilman Joseph Smolic.

MINUTES OF THE SEPTEMBER 11, 2023 WORK SESSION

Mr. DeMarco moved to approve the minutes as presented, with the second by Mr. Laux. Upon roll call vote, the motion passed 5-0 (Ayes – DeMarco, Laux, Laven, Vinciguerra and Denk; Nays – None).

MINUTES OF THE SEPTEMBER 11, 2023 MEETING

Mr. DeMarco moved to approve the minutes as presented, with the second by Ms. Laven. Upon roll call vote, the motion passed 5-0 (Ayes – DeMarco, Laux, Laven, Vinciguerra and Denk; Nays – None).

PUBLIC SESSION:

PUBLIC REQUESTS

Angelo DiPietro – Proposed New Residence at 10515 Gaitside Trail – Located in Environmental Overlay District

Property owner Angelo DiPietro was present in this regard. The Commission acknowledged receipt of City Engineer Douglas Courtney's site plan review dated 9/15/23.

Mr. Courtney advised that Chapter 1222 addresses Environmental Quality Overlay Districts and establishes procedures and regulations for natural environmental features and man-made features which the City has deemed worthy of protection and preservation. In this instance, the property is in the Forest Cover Overlay District. He noted that if an application for zoning permit proposes development in any one of these overlay districts, the Planning and Zoning Commission has an opportunity to review the application and determine if any additional restrictions or conditions should be placed on the zoning permit. In this case, it is a single-family home in a platted subdivision. Mr. Courtney advised that the Forest Overlay District covers the entire parcel. He noted that the home is being sited on the right-hand side (facing the lot), and clearing for the house appears to be only for the driveway and house itself; there is no excessive clearing proposed. Mr. Courtney said he does not recommend additional restrictions on the site plan.

Chairman Denk noted there is a revised site plan dated 10/3/23. Mr. Courtney said he will approve the site plan contingent upon the applicant getting a new wetland delineation done, which was requested by Lake County Soil & Water. Mr. Courtney noted that the Lake County Health Department has approved the septic plan and layout.

Ms. Laven inquired if there was an existing wetland delineation. Mr. Courtney said he believes it was done with the subdivision, and Lake County Soil & Water requested a new one for this site in case things have changed. Mr. Courtney noted that the applicant's consultant will need to prepare it.

There were no public comments in this regard. Mr. DeMarco moved to approve the zoning permit for the new residence at 10515 Gaitside Trail with the condition that a new wetland delineation be completed by the applicant and reviewed and approved by the City Engineer. Mr. Vinciguerra provided the second. Upon roll call vote, the motion passed 5-0 (Ayes – DeMarco, Laux, Laven, Vinciguerra and Denk; Nays – None).

Ray Tintor – Proposed New Residence at 10067 Parks Farm Road – Located in Environmental Overlay District

Property owner Ray Tintor was present in this regard. The Commission acknowledged receipt of City Engineer Douglas Courtney's site plan review dated 9/18/23.

Mr. Courtney advised that this property is also in the Forest Cover Overlay District. He noted that this particular site has some wetlands on it, but they were approved for filling as part of the subdivision plan. They have specified orange construction fence and silt fence to protect the wetlands that remain on the site. He noted that the clearing limits are what are required to construct the building and septic system. He said there are no additional restrictions. Mr. Courtney said he approved the plan with a couple notes; it is documented as approved as noted and he will keep track of those notes as construction progresses.

There were no public comments in this regard. Mr. Laux moved to approve the zoning permit for the proposed new residence at 10067 Parks Farm Road located in the Environmental Overlay District. Mr. DeMarco provided the second. Upon roll call vote, the motion passed 5-0 (Ayes – DeMarco, Laux, Laven, Vinciguerra and Denk; Nays – None).

Robert Rahz – Proposed New Accessory Building at 10885 Tibbetts Road

Shane Rahz of 10885 Tibbetts Road was present in this regard. The Commission acknowledged receipt of City Engineer Douglas Courtney's site plan review dated 9/28/23. Answering Mr. Denk, Mr. Rahz said the building would be approximately 400 feet off the street. Mr. Denk acknowledged receipt of the revised site plan, noting that Commission review is required because the building exceeds 1,000 sq. ft.; the proposed building is 28' x 36' (1,008 sq. ft.). Mr. Rahz noted they are replacing a building that burned down.

Mr. Courtney said that his first review generated some comments; there was a lack of topographic information on the first site plan. He noted that was the main issue and it has been addressed in the revised site plan; he is recommending approval with no contingencies.

Mr. Denk inquired about water runoff from the building. Mr. Rahz said the entire property is sloped to the south to a creek.

There were no public comments in this regard. Mr. DeMarco moved to approve the proposed accessory building at 10885 Tibbetts Road, with the second by Ms. Laven. Upon roll call vote, the motion passed 5-0 (Ayes – DeMarco, Laux, Laven, Vinciguerra and Denk; Nays – None).

Rick Pugh – Proposed New Accessory Building at 8638 Euclid Chardon Rd.

Property owner Rick Pugh was present in this regard. The Commission acknowledged receipt of City Engineer Douglas Courtney's site plan review dated 9/27/23. Chairman Denk noted that the application is for a proposed 1800 sq. ft. accessory building; a variance was required because of the placement of the accessory building in the front yard. He noted there was a hearing before the Board of Zoning Appeals on 9/25/23, and a variance was granted.

Mr. Courtney reviewed his comments that went out in late September, noting that he is still waiting to receive a revised site plan. He said that these comments will not require a significant change to the site plan, noting that if the Commission chooses to approve the application tonight, it should be contingent upon these comments being addressed in the next submittal.

Mr. Pugh advised that he is still waiting to hear back from his engineer. Answering Chairman Denk, Mr. Courtney said he is comfortable with the Commission granting conditional approval, with the zoning permit being held until these comments are addressed.

Answering Mr. Laux, Mr. Pugh said the building is for residential use. Mr. Lallo noted this property has split zoning, with Limited Industrial in the front and the remaining property is residential. He noted that the existing house is on the residential property, very close to that zoning line. He noted the grade goes down significantly in their rear yard, which was an issue they brought to the attention of the Board of Zoning Appeals for the building placement on the side and a bit in front of the house. Mr. Lallo noted it is technically in the front yard, and it is before the Commission because it exceeds 1,000 sq. ft.

Answering Mr. Denk, Mr. Pugh confirmed it is a one-story 30' x 60' structure, with a 14 ft. wall to achieve a 12 ft. door.

There were no public comments in this regard. Mr. DeMarco moved to approve the proposed accessory building at 8638 Euclid Chardon Road, contingent upon satisfaction of the City Engineer's review comments in his plan review dated 9/27/23: (1) indicate the FFE and footer/foundation elevations on the site plan; (2) show downspout discharge locations on the site plan; (3) show spot elevations at all building corners and show proposed grading around the new building; (4) delineate earth disturbed area and show silt fence/filter sock on the site plan; (5) delete the clearing limits and grading limits callout on the site plan – these were from the site plan for the new home construction; and (6) show bearing and distance information on all property lines. Mr. Laux provided the second. Upon roll call vote, the motion passed 5-0 (Ayes – DeMarco, Laux, Laven, Vinciguerra and Denk; Nays – None).

TABLED REQUESTS

Richards Maple Products – Final Development Plan for 7955 Euclid Chardon Rd.

Mr. DeMarco moved to remove the matter from the table, with the second by Mr. Laux. Upon roll call vote, the motion passed 5-0 (Ayes – DeMarco, Laux, Laven, Vinciguerra and Denk; Nays – None). Fred Ahrens and Jen Freeman of Richards Maple were present in this regard.

Mr. Lallo noted that there was a question regarding whether this was a legal non-conforming use. If it was not a legal non-conforming use or if the non-conforming use lapsed, then the use of the structure and the building itself would need to come into conformance with the zoning code. Mr. Lallo advised that the City is in receipt of a letter from Jim Stewart, President of Endura Plastics, dated 9/28/23, indicating that they remained in production at the facility at 7955 Euclid Chardon Road through October of 2022; the building never sat vacant and they had employees in the building and parts being produced all throughout the transition. With that being the case, Mr. Lallo said this is a legal non-conforming use that did not lapse, and the structure itself is permitted as is.

Noting that a resident submitted a number of questions to the Planning and Zoning Commission, Mr. Lallo said what he just covered addressed their question No. 1. Chairman Denk requested that the Law Director continue addressing the questions from the resident. Mr. Lallo noted that the questions were sent in an email dated 10/2/23 from Ms. Knaak to him, Mr. Courtney, the Planning and Zoning Commission, and copied to Council, Mr. Loconti, Ms. Roelle and Mr. Knaak. In that correspondence there were 12 questions; the first question was whether this was a legal non-conforming use, and as he stated earlier, this is a legal non-conforming use.

Mr. Lallo said that question No. 2 stated by Ms. Knaak indicated that landscaping businesses are not permitted to work out of Limited Industrial areas. Mr. Lallo stated that this is a shop and office of a contractor under Section 1279.03(d)(4) relating to permitted uses. Noting this has been discussed, Mr. Lallo said they are a contractor; he referred to Black's Law Dictionary and said his opinion is it is a shop and office of a contractor.

Mr. Lallo said that question No. 3 states that Richards Maple Products' conditional use permit should be revoked as it does not include any other uses outside of the actual structure nor does it mention other businesses being operated out of the same address. Mr. Lallo said it is his understanding that the other business is not operating out of the parking lot; it is operating out of a separate structure within the complex. Since that other business falls under a permitted use, especially under the same subsection, they are permitted. He noted that the conditional use permit was requesting the use of retail sales, which requires a conditional use permit. Mr. Lallo said if there is a lease that prohibits Richards Maple from subletting, it has nothing to do with the City's perspective or from a conditional use permit revocation perspective. He noted it is purely a civil issue that Richards Maple would have to take up with their landlord. Mr. Lallo said it is his opinion that the conditional use permit was for a main use, not for all uses of the property; A Plus Landscaping is a permitted use. Mr. Lallo said the sole purpose of tonight's meeting is to approve the final development plan. He noted that Richards Maple is not changing the structure, and what has already been in place is a legal non-conforming use.

With regard to question No. 4, Mr. Lallo deferred to Mr. Courtney, noting there is a statement that Richards Maple's preliminary and final development plans are erroneous, incomplete and deceitful, and that it is a nuisance per se. Mr. Courtney said that when Richards Maple made their application for conditional use and preliminary plan approval in 2021, A Plus Landscaping was not on the site at that point. He noted that the final development plan was submitted earlier this year; A Plus Landscaping was on site but he had no knowledge of that. Mr. Courtney said he issued his final development plan review letter on August 1 and only found out about A Plus Landscaping on the site on August 14, which was the date of the initial meeting the final development plan was reviewed. He said if the zoning department wanted him to review an A Plus Landscaping application, he would have

been forwarded that information and asked to review it. That information was not forwarded, so it was not reviewed by him and his focus was on the Richards Maple application and he stands by his review of that application.

Mr. Lallo advised that with regard to the 45-day period, it tolled when it was tabled.

With regard to question No. 5 stating there is no zoning permit application or permit issued for A Plus Landscaping, Mr. Lallo advised they did receive a business permit and did not need the review of a zoning permit because it falls in line with the same permitted uses.

Referring to question No. 6, Mr. Lallo said he addressed this with Ms. Knaak already. He appreciates her bringing it to the City's attention that the ordinance states that business permits should be issued or signed by the Director of Public Service, and they were signed by the zoning inspector. After review and investigation, Mr. Lallo said it appears this is how it has been done since 2000, as far as the records go back. Mr. Lallo said he will mention this at the next Council meeting to determine how to move forward.

Answering Ms. Knaak, Mr. Lallo said he had mentioned there are other landscaping businesses operating nearby in the same Limited Industrial area. Mr. Lallo said the only time he heard about multiple businesses operating on that property was at the first meeting, when there was a statement about A Plus Landscaping and one other business operating out of the parking lot, and Mr. Ahrens clarified that it was in the back area and A Plus is operating out of one of those buildings and not out of the parking lot. Mr. Lallo said he is not aware of any other business operating there.

Regarding question No. 7, off-street parking in residential districts, Mr. Lallo stated this is a legal non-conforming use; that parking lot was there previously and there have been no additions to that parking surface. It is a legal non-conforming lot that encroaches in the residential district; this is a split zoned property with the same owner. Mr. Lallo stated that gratuitously, they can avoid parking in the last six or eight feet of the lot to keep it in the Limited Industrial area, but there is no legal requirement for that to take place because it is a legal non-conforming parking lot.

With regard to question No. 8, relating to adjacent off-street parking and loading areas, Mr. Lallo noted the Commission had suggested they erect a fence in the back of the property along the tree line. In reviewing the minutes, Mr. Lallo said this was during a discussion relating to the light in the parking lot and preventing light pollution in the winter months. Referring to Section 1284.04, Mr. Lallo said that ordinance only applies to screening parking lots, and if a wall or fence will be used to screen a parking lot, then plants are required on the other side for the public view. Mr. Lallo said this is not screening for parking; in reviewing the minutes it was purely for screening that light pollution from that legal non-conforming light, so this provision does not apply.

With regard to question No. 9, Mr. Lallo said this addresses the parking spaces and he will defer to Mr. Courtney. Mr. Courtney said this deals with the number of parking spaces with the concern that the required number of parking spaces were not met with A Plus Landscaping being on site. Referring to Section 1288.05(c)(1), Mr. Courtney said as part of the preliminary plan review, he calculated the required spaces for Richards Maple and their operation. They are required to have 56 spaces for their operation; the parking lot currently has 62 spaces as shown on their plan.

With A Plus Landscaping on site, the requirement from Section 1288.05(d) is 1 space per 1.5 employees on the two largest successive shifts, or 1 space for every 350 sq. ft. of building area, whichever is greater. The office building where A Plus is operating is 1300 sq. ft., which would require 4 spaces. If calculating by number of employees, there are 5 employees per their business license, which also would require 4 spaces. Mr. Courtney said the total parking spaces required with both businesses operating on the site is 60 spaces, and they are providing 62.

Answering Mr. Lallo, Mr. Courtney advised that he made several site visits; he made one initially with the preliminary development plan before he issued that review letter. Since August 14, Mr. Courtney said he has been out there several times, beginning on August 15 to see if any grading or paving work had been done. He noted that no grading or paving work had been done on the site. He said he has been to the site several times since then, and nothing has changed; there has been no grading or filling work on the site. He said it looked like they cleaned up the back parking lot area, which was overgrown with vegetation.

Mr. Lallo stated that question No. 10 addresses the lighting plans; as discussed at the last meeting, if they are going to change the lights then they will require a lighting plan. It is a legal non-conforming use, but if they are going to modify it, then it must be done in conformance with the ordinances and they should submit a lighting plan.

With regard to question No. 11, relating to the site plan development standards, Mr. Lallo said the only thing that should be addressed is the dumpster, which should be in accordance with Section 1284.02(h), screened with a 6-foot-high masonry enclosure on 3 sides and a solid gate on the front. He said that the applicant mentioned earlier they would have no problem doing this, and he recommended that the Commission enforce it.

Mr. Lallo said that question No. 12 referenced landscaping requirements. He noted that the landscaping is technically not required since they are not changing the outside of the building; it is more gratuitous. Mr. Lallo said it is his opinion that the septic tank in the back does not need to be screened since it is not being touched or modified. He noted that if the septic system is being replaced, it would be addressed at that point. He noted that as it relates to the other requirements of the landscaping, it is his opinion that everything else has been addressed.

Mr. Vinciguerra commented that he appreciates the technical review, he feels that something is wrong in the code that allows a situation where a new company comes in, and while in the process of completing city required paperwork, a third business ends up on the property that is bothering people. He said he has an issue with this being able to happen. Mr. Lallo noted that all last year the zoning codes were reviewed, and potential rewrites of the code sections were presented for review. Mr. Lallo noted this is a good issue to address when redoing and reorganizing the Limited Industrial chapter. Mr. Vinciguerra said he hopes the Commission can review some of the issues that are annoying at least one resident. He said he is hopeful that the Commission can look at the fence as not just to address light, but also some noise issues. Mr. Vinciguerra said he would love to see the Commission review the City's noise ordinance, noting that he believes it is woefully inadequate to allow mowers and other such equipment to be running from 7:00 a.m. until 9:00 p.m. in the City. Mr. Denk noted that the noise ordinance is not under the Planning and Zoning Commission's purview.

Mr. Lallo said it may be prudent to require that any new business in the Limited Industrial District must come before the Planning and Zoning Commission. He noted, however, that in some of the strip centers, contractors are in and out quickly and may be there for only a few months. Mr. Vinciguerra noted he would like to have something in place that would prevent the same scenario from happening again.

Mr. Denk asked to hear from Mr. Ahrens. Mr. Denk noted that an existing pole on the west side of the property is being eliminated, along with a 360-degree high pressure sodium light that is inoperable. Mr. Ahrens said the only working light is a mercury lamp pointing straight down; the electric company is removing that. Mr. Ahrens said he does not believe they need to do anything with the lighting because bulbs are just being replaced on existing lights. He said the pole in question that was shining in the neighbors' windows is coming down along with the lights as soon as the electric company gets to it on their schedule. Answering Mr. Denk, Mr. Ahrens said that the old mercury lights on the back of the building are coming down, as well as the ones by the shipping doors. Mr. Denk inquired about a free-standing pole; Mr. Ahrens said that will be removed by the electric company. Mr. Denk said there are four wall packs facing toward the parking area; they have an element of light trespass. Mr. Ahrens said they are going to replace the bulbs in those existing lights.

With regard to the fence that was previously discussed, Mr. Ahrens said that because of the height, and the requirement was for the light, which is being removed, he questions if they need to put that fence up. He said a 7 ft. fence was requested, but it would take a 10 ft. fence to eliminate the light going across to their house. Therefore, if the light is removed, he questioned the need for a fence. Mr. Denk noted he recalled discussion about vehicle lights in the mornings. Mr. Vinciguerra asked about the fence being needed because of vehicle noise. Mr. Vinciguerra noted that when snow plowing begins, the trucks will be going out all hours of the day and night. Mr. Vinciguerra said there seems to be a sound issue that the right kind of fence would help address.

With regard to the fence, Mr. Lallo advised that the Commission has the authority to increase the height allowed for the fence from 6 ft. to 8 ft., as discussed. Mr. Ahrens noted that making the fence higher would greatly increase the cost of the fence. He said he was given an estimate of \$7,000 for the fence.

Mr. Ahrens said there is a dumpster being used for cardboard recycling; he noted it is available to the public. With regard to the garbage dumpster, Mr. Ahrens said it is up against the building near the docks. Mr. Lallo noted that the ordinance requires the dumpster must be screened by masonry walls. It was noted in discussion that the dumpster is not part of the building and does not fall under the legal non-conforming status. Mr. Denk noted on a copy of the plan where the dumpster will be moved and enclosed by masonry walls with a solid gate. The drawing was marked as Exhibit A, and will become part of any approval that the Commission may grant.

Mr. Denk marked on Exhibit A the location of the 8 ft. high fence. Mr. Ahrens said the fence seems excessive, and noted that per the Ohio Revised Code, if a fence is requested by another resident, they have to pay 50 percent. Mr. Lallo said that would be a civil issue.

Mr. Ahrens said that A Plus Landscaping is there temporarily; as soon as he finds another property he will be gone. Mr. Ahrens noted there is no money being exchanged; he is mowing the grass for them.

Cathy Knaak of 7771 Gildersleeve said the issue is the lights and beeping from A Plus, and she said it will be worse in the winter when he is plowing; his website says he is open 24/7. She said they put up with this all last year because they were told it was temporary, and they do not want it to continue.

Mr. Lallo said his concern with the plowing is the loading of the salt into the trucks during the nighttime hours, because the noise ordinance prohibits loading or unloading during specified hours.

Mr. Denk inquired if the Planning and Zoning Commission is in any position to mandate that a business move out. Mr. Lallo responded they are not. Mr. Ahrens requested that if there is a problem in the future, that A Plus Landscaping be required to address it with the Commission rather than him.

Upon discussion with the applicant and neighboring property owner, it was agreed that an 8 ft. fence will be required if A Plus Landscaping, or any other sublettor, is still there after December 31, 2023.

With regard to the lighting, Mr. Lallo said if the applicant is simply replacing some bulbs, a lighting plan would not be needed. Mr. Ahrens confirmed the lights will be directional toward the parking lot.

Mr. Ahrens noted there is a tree service that is currently parking one truck in his lot, in the loading area. Mr. Courtney noted that the loading area was not included in the count of the parking spaces.

There was discussion regarding the container being used for cardboard recycling; the applicant agreed to remove it.

Mr. Denk noted that the neighboring residents' concern if there is still activity on the property from a sublettor after December 31, 2023, and the fence is not put up. Mr. Lallo advised that it would be a violation of the conditions of approval and subject to penalty.

Mr. Knaak asked that the record reflect that they strongly disagree with Mr. Lallo's interpretation of the questions that he presented in the event that this goes to appeal.

Ms. Knaak asked about landscaping on a strip of property along Gildersleeve. Mr. Lallo advised that there is a buffer strip under separate ownership, and that a survey would be needed to determine the property lines; he noted there is already a paved surface there. Answering Ms. Knaak, Mr. Lallo said it is his opinion that the Commission cannot put a condition on the landscaping since it is a legal non-conforming use and they are not changing the exterior of the building. Ms. Knaak said they will talk to the neighbor that owns the strip of property.

Upon completion of review and discussion, Chairman Denk said he would entertain a motion to approve the final development plan as requested, with the following conditions/contingencies:

- (1) The dumpster shall be moved as noted on the plan (Exhibit A) and enclosed by one new masonry wall, two existing walls and a solid gate by June 30, 2024;
- (2) A fence shall be erected, 8 ft. in height, as noted on the plan (Exhibit A) if a sublettor occupies the property on or after December 31, 2023;
- (3) Outdoor lights – as noted on the plan (Exhibit A) – (a) one light shall be removed above a dock door on the northwest corner; (b) lights on a pole on the west side of the parking lot shall be

removed, and two poles shall be removed; and (c) existing light on the northwest corner of the building shall be removed;

- (4) If a fence is installed in accordance with Condition No. 2 above, then the septic shall also be screened by the fence; and
- (5) Recycling container shall be removed.

Mr. Vinciguerra so moved, and Mr. Laux provided the second. Upon roll call vote, the motion passed 5-0 (Ayes – DeMarco, Laux, Laven, Vinciguerra and Denk; Nays – None).

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Cathy Knaak of 7771 Gildersleeve asked about having someone come out and look at her neighbor's house, noting that a new house was built next to him and now he gets flooding every time it rains. Mr. Laux suggested that she submit a service report on the City website.

WORK SESSION:

Communications and Bills:

- 1. City Council Meeting Minutes – September 6, 2023 Work Session and Council Meeting; September 18, 2023 Work Session and Council Meeting.
- 2. Board of Zoning Appeals Meeting Minutes – August 23, 2023.
- 3. Board of Zoning Appeals Notice of Decision – No. 23-11.
- 4. Zoning Permits Report – September 1, 2023 to September 30, 2023.

Old Business:

Review of Zoning Ordinances – Chapter 1275 (HTC District)

No discussion at this time.

New Business:

None.

Adjournment

There was no further business before the Commission, and Mr. DeMarco moved to adjourn. Mr. Laux provided the second, and the motion passed upon unanimous vote. The meeting adjourned at 9:30 p.m.

CHAIRMAN

SECRETARY