

CITY OF KIRTLAND
PLANNING AND ZONING COMMISSION

MINUTES OF THE MEETING
SEPTEMBER 11, 2023

The meeting was called to order by Chairman Denk at 7:04 p.m. Present were Commission members Richard DeMarco, Michael Denk, Daniel Laux and Joseph Vinciguerra. Absent: Lita Laven.

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

MINUTES OF THE AUGUST 14, 2023 WORK SESSION

Mr. DeMarco moved to approve the minutes as presented, with the second by Mr. Vinciguerra. Upon roll call vote, the motion passed 4-0 (Ayes – DeMarco, Laux, Vinciguerra and Denk; Nays – None).

MINUTES OF THE AUGUST 14, 2023 MEETING

Mr. Laux moved to approve the minutes as presented, with the second by Mr. DeMarco. Upon roll call vote, the motion passed 4-0 (Ayes – DeMarco, Laux, Vinciguerra and Denk; Nays – None).

PUBLIC SESSION:

PUBLIC REQUESTS

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 4-0 (Ayes – DeMarco, Laux, Vinciguerra and Denk; Nays – None). Fred Ahrens and Jen Freeman of Richards Maple were present in this regard.

Chairman Denk noted that the Commission began discussion at last month's meeting and heard from a resident on an adjoining property, and reviewed a document presented to the Commission that evening. Mr. Denk noted that Richards Maple Products first appeared before the Commission on August 9, 2021 for conceptual review, including the retail use. They appeared before the Commission again on September 13, 2021 with an application for conditional use permit and the preliminary development plan. They appeared for a third time in November of 2021 with an application for a sign permit. Their fourth appearance before the Commission was in May of 2022; they updated the Commission on the status of the development plan. They appeared again at last month's meeting on August 14, 2023 with the final development plan. Mr. Denk noted that last month the Commission did not get into much content of the development plan itself but did hear from the adjoining neighbor.

In looking at the plan, Mr. Denk noted there is some concern about the trespass of light, and possibly sound, onto the adjoining property to the north. He noted that the Richards Maple property is located in the Limited Industrial District. The parcels to the west are also in the Limited Industrial District,

and it is the last parcel in that district to the east. He noted there is a small strip of vacant property along Gildersleeve Drive.

Mr. Denk said he observed that there is a large light over the existing dock, noting that the light should be kept on the property where it is being used. Mr. Ahrens said that light does not work and it will be taken down; there is already a small light at the dock facing west. Mr. Denk noted there is lighting on the existing light pole toward the rear of the large building and the west property line. He said one appears to be a flood light projecting outward and another one is a downlight. Mr. Ahrens said it is a standard mercury light; he noted that the mercury light does work, but the sodium light shining to the back does not work. Mr. Ahrens said the light is owned and was installed by the utility company. He said both of those lights will be coming down. Mr. Ahrens said there is existing lighting on the west side of the building shining toward the parking lot; those currently do not work but will be fixed. They will be directional to the parking lot and will be to code. He said the utility pole will be removed.

Mr. Denk noted that four lights on the west are flood lights. Mr. Ahrens said they will be directional. Mr. Denk referred to lights at Village Outdoors that are directed downward; Mr. Ahrens said that is essentially what they will be putting in those four locations. He said they are existing lights; they will be replacing and modernizing them and they will be directional toward the ground, not toward the neighboring property.

Mr. Denk said there is a dim light above a man door on the east side. Mr. Ahrens said that light will also be updated; it is for safety since there are steps.

Mr. Denk said another concern the Commission heard was the light pollution that comes from the back of the property. He noted there is vegetation in the summer, but it will disappear as the weather changes. To try to soften the impact on the neighboring property, Mr. Denk said that vegetation is suggested; another suggestion would be a board-on-board fence. He noted that the Ordinance allows the Commission to permit an 8 ft. fence, which is not typically allowed. Mr. Vinciguerra suggested that it be placed close to the activity in the auxiliary building. Mr. DeMarco noted it would help contain the lights from vehicles; there was discussion regarding the best location for a fence. Mr. Ahrens noted it would be another expense for them, but it could be done. An 8 ft. solid fence was suggested.

Referring to the auxiliary building that the landscaping company is utilizing, Mr. Vinciguerra inquired if that building has been modified or altered. Mr. Ahrens said nothing new has been built on that building.

Mr. Denk noted that the Commission is in receipt of the applicant's landscape plan. Mr. Ahrens said some of the work has already been started.

Answering Mr. Denk, Mr. Lallo said the Commission would have to specifically authorize the 8 ft. fence pursuant to Section 1290.03(g). Mr. Lallo said if the applicant is not modifying the lights, then a lighting plan is not necessary; however, they will be removing lights and installing lights, so the applicant should submit a lighting plan for staff review and approval. He noted that if the Commission were to consider approval, it should be contingent on a lighting plan being approved by the staff.

Mr. Laux inquired about adding a fence to the plan. Mr. Courtney suggested that a modified landscaping plan be submitted showing the fence.

Mr. Vinciguerra requested clarity regarding the small building that is being used in the back of the property on the residential portion. Mr. Lallo said the applicant noted that those buildings were constructed years ago. He noted that a portion of the old building encroaches on the residential district, but it is a legal non-conforming use; the building was traditionally used in a Limited Industrial setting, even though it encroaches on the residential area. Mr. Lallo said he believes the parking in that area also encroaches in the residential area, which is a legal non-conforming parking lot because it was in existence. He said if it is being altered or changed, it would have to come before the Commission; if the parking lot has not been enlarged and the structure has not been enlarged or changed to a specific threshold in the code, then it maintains its legal non-conforming status.

Mr. Lallo said the scope of this review is the final development plan submitted by the applicant, and whether it meets the guidelines in the Planning and Zoning Code. Noting that Mr. and Mrs. Knaak raised concerns about A Plus Landscaping and whether they are in conformance with the Zoning Code, Mr. Lallo said that after reviewing the Code, it is his interpretation that they are a permitted use under this section of the Zoning Code and they are permitted to be there. Since there was no change of that structure, it is a permitted use in the Limited Industrial area.

In summary, Mr. Denk said the Commission has discussed an 8 ft. fence that roughly follows the ravine, and removal of three lights in the back and replacement of four light fixtures along the west side.

Chairman Denk opened the meeting to public comment.

Matt and Cathleen Knaak of 7771 Gildersleeve were present. Ms. Knaak addressed the Commission, saying they have lived next to this property for over 22 years, and with the business in that location prior to Richards Maple they did not have to deal with the dust, noise, debris, unpleasantness and constant disruption to their lives. She said in the fall of 2022, they reached out to Richards Maple regarding another business operating on that property, and they were told by Richards Maple that they were asked by the city to do a favor for the son of the superintendent of the Kirtland Local Schools and to allow them to work out of their parking lot. They were told it was a temporary situation and that he would be out by spring of 2023. Now Richards Maple told them it is permanent. Ms. Knaak said they have reached out to city officials expressing their concerns, but they have not received a satisfactory response.

Ms. Knaak said there are many ordinances being violated, noting they have written letters, submitted documents and attended meetings. She said they have questioned the city's failure to enforce the ordinances but have received no response. She said they have also made public records requests, and they feel that their concerns have been dismissed.

Mr. Knaak thanked the Commission for reviewing the 44-page document they submitted last month. He noted that the requested changes to the lighting and the fencing is a fantastic start to addressing their concerns. He said the accessory building that the city claims is a non-conforming legal use has been modified several times; it was never enclosed, and now that Richards Maple has moved in, it is

enclosed. Ms. Knaak said the use was discontinued for over a year, and if it is an accessory building it has to be within the same business line as the primary business. She said just because the building was there and they put salt in it does not make it an accessory building. Mr. Knaak said it is in a residential area and being used for commercial use.

Ms. Knaak said she has documents indicating that the prior business was dissolved in 2018, so the business operating as Endura was closed for well over a year and it must now be brought into conformity. She said the loading docks, which are within five feet of the front of the building, need to go. Mr. Knaak said the conditional use permit should be revoked, and any permits issued for this building should be revoked. He said the building is a non-conforming structure that has been vacant for two plus years and needs to be brought into compliance before any conditional use permit is granted.

Mr. Knaak said they have heard promises from Richards Maple since 2021, but nothing has been done to upgrade that property.

Mr. Ahrens said several of the statements made are not true. He said that Endura Plastics was not closed and rented from them for an additional nine months after they moved in.

Ms. Knaak said that according to the Ohio Secretary of State's office, there was no business operating out of there. She said they live next to the building, and there were no cars in the parking lot for two years.

Mr. Denk said that the Commission does not have jurisdiction for enforcement of the ordinances. The Commission is reviewing the plan that was put before them with the application from Richards Maple Products. He noted they want to make it as harmonious as possible for the neighboring residents.

Mr. Vinciguerra said that he would like to discuss the building that formerly had no walls and now has walls, noting it might indicate that the building was altered and that a permit is needed. He questioned whether the main structure needs to be brought up to code with the loading docks. Mr. Vinciguerra said it needs to be determined when the prior business was in there.

Mr. Knaak said that in addition to modifying the non-conforming structure, they also extended the adjacent parking lot, and no permits were pulled. Ms. Knaak also stated concerns about the business permit for A Plus Landscaping.

Mr. Knaak said another concern is the non-conforming use of the building and the location of the two loading zones on the main building. He noted that the code says they must be 55 feet from the front of the building. He said the building has been unoccupied for two years, and there is a change of use.

Ms. Knaak said the city ordinances do not allow a landscaping business operating on Limited Industrial property. She said the Limited Industrial ordinance states that all operations are to occur within a structure, and looking at the superintendent's son's business, they are not. She said the use needs to be manufacturing or other industrial use which are controlled operations and relatively clean, quiet and free of objectionable elements such as smoke, noise, odor or dust, with storage in an enclosed structure. She said landscaping is not listed. Ms. Knaak said there is nothing in the application about

having other businesses run on that property. She said Richards Maple is declared a nuisance because of that information not being contained on their preliminary and final development plan.

Ms. Knaak said there is a change of use for the accessory building and that it is not allowed to be used for what it is currently being used for. She said the garbage cans are supposed to be enclosed. Ms. Knaak asked if they have to submit new plans to take into account the other businesses.

Mr. Ahrens said he would like to clarify that the reason this has been dragged out is because they have not yet bought the property; it is still in process and will hopefully be completed in the next couple months.

Mr. Ahrens said that Endura Plastics had employees there, and the city would be able to see that they paid taxes from their employees during that time. He said they had several employees there every day during the week, well after Richards Maple moved into the building.

Mr. Ahrens said he never told Ms. Knaak that the city came to him and asked for a favor or asked in any way that either of these landscape companies come to their property. He said they were kicked out of their own place and were looking for an industrial area. Answering Mr. Lallo, Mr. Ahrens said the companies themselves came to them asking for a place to stay.

Mr. Lallo inquired of Mr. Ahrens if the Mayor, Zoning Inspector, any Council member or any member from the City of Kirtland ever approach him about opening his property to host A Plus Landscaping. Mr. Ahrens responded they never did. Mr. Lallo inquired if any of those same persons or anyone from the City of Kirtland ever asked him to host any other businesses on the property. Mr. Ahrens responded no one ever did.

Mr. Lallo asked Mr. Ahrens to elaborate on whether the building was in use. Mr. Ahrens said when they moved in everything in the large building was still being used, and they were utilizing the docks. Mr. Ahrens said the outbuilding in question has a temporary fabric wall with cement blocks, which are also temporary. He said there are no 2 x 4's or siding; it is simply a guard to keep water out. Ms. Freeman said the parking lot was not added. She said it is shown on aerial photos from years ago, and it has just been cleaned up. Mr. Lallo asked if they repaved or added any sections of the parking lot or regraded any portion of the property. Mr. Ahrens responded that they did not; they removed the grass from the existing parking area. He said the old pavement can be seen, and that nothing has been altered or added.

Mr. Lallo asked Mr. Ahrens if he ever said he was doing a favor for the city or was asked to do a favor for the city. Mr. Ahrens replied that he was never asked to do a favor for the city. He said he allowed the landscaper on his property; there has been no exchange of money and no contract. Ms. Freeman questioned the relevance of him being the superintendent's son. She said they have no history here at all, and no children in the school district.

Mr. Lallo asked Ms. Freeman if the Mayor, Zoning Inspector or anyone from the Zoning Department, any Council member, himself, or anyone from the City approached her about doing a favor for either Mr. VanArnhem or A Plus Landscaping or the City, to have them on their property. Ms. Freeman

responded no. Mr. Lallo asked her the same question relating to any other businesses, and she again answered no.

Mr. Knaak said that Mr. Ahrens has told him differently face to face.

Mr. Denk asked the Law Director if this is a matter that needs to be handled in a civil court. Mr. Lallo said there is an allegation of wrongdoing on behalf of the city, and that is why he asked those pointed questions. Mr. Lallo said if there is uncontroverted evidence that the legal non-conforming use was, in fact, discontinued, the permit can be pulled or the building would need to be modified. Mr. Lallo said he will look into the evidence that has been put forth, but that does not mean this process stops. He advised that the city will look into whether the use of the building was continuously discontinued for a year.

Ms. Knaak asked how the landscaper can be allowed on the property. Mr. Lallo advised it is a shop and office of a contractor, which conforms to the zoning code. Mr. Lallo said it has nothing to do with the final development plan.

Answering Mr. Vinciguerra regarding what would require a non-conforming building to be made conforming, Mr. Lallo advised that if the use is discontinued continuously for at least one year. Mr. Vinciguerra asked about the change of use. Mr. Lallo read Section 1282.03(a) relating to change of use.

Answering Mr. Denk, Mr. Lallo said he will investigate whether there is a discontinuation of the use of the building for at least one year. He advised that this can proceed, and if a discontinuation of at least one year is discovered, then the building will need to comply with the zoning code. Mr. Lallo stated at this point the city does not have enough evidence to show that.

Further discussion ensued regarding the use of the property. Mr. Vinciguerra inquired about tabling the matter for a determination of whether the use was discontinued for more than one year, and to determine if the accessory building was altered. He asked if Mr. Lallo could provide an opinion by next month regarding whether what was done is a structural alteration. Mr. Ahrens said the State of Ohio considers concrete blocks as temporary and do not require a zoning permit. He said they are not attached to the building.

Mr. Vinciguerra also inquired about the garbage can issue. Mr. Ahrens said the dumpster in the back is for cardboard recycling for the community. He said there is one in front of the building that Endura Plastics had for their trash, and they continue to use that. Mr. Vinciguerra asked if there will be food products going into that dumpster. Mr. Ahrens responded that the dumpster will not be used for food products; that is handled separately.

Mr. DeMarco moved to table the final development plan for Richards Maple Products at 7955 Euclid Chardon Road until the next meeting. Mr. Laux provided the second. Upon roll call vote, the motion passed 4-0 (Ayes – DeMarco, Laux, Vinciguerra and Denk; Nays – None).

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

None.

WORK SESSION:

Communications and Bills:

1. City Council Meeting Minutes – July 5, 2023 Work Session and Council Meeting; July 10, 2023 Finance Committee and Council Meeting; August 2, 2023 Special Council Meeting; and August 21, 2023 Work Session and Council Meeting.
2. Board of Zoning Appeals Meeting Minutes – July 17, 2023.
3. Board of Zoning Appeals Notices of Decision – Nos. 23-9 and 23-10.
4. Zoning Permits Report – August 1, 2023 to August 31, 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. Vinciguerra provided the second, and the motion passed upon unanimous vote. The meeting adjourned at 8:28 p.m.

CHAIRMAN

SECRETARY