

THE PLANNING AND ZONING COMMISSION MEETING WAS HELD AT BEACHWOOD CITY HALL ON THURSDAY, JUNE 27, 2013.

ROLL CALL: PRESENT: C. Cohen, M. Gorden, R. Hecht, O. Jacobs
 B. Mann, M. Wachter, B. Zabell
 ABSENT: J. Ciuni
ALSO PRESENT: M.A. Cannon, Wm. Griswold, G. Smerigan

A motion was made by C. Cohen and seconded by B. Mann to approve the minutes of the April 25, 2013, regular meeting.

ROLL CALL: AYES: C. Cohen, M. Gorden, R. Hecht, O. Jacobs,
B. Mann, M. Wachter, B. Zabell
NAYS: None
MOTION APPROVED – MINUTES APPROVED

COUNCIL REPORT

Mr. Mark Wachter, Council Representative, stated that Council approved the following item from the May Planning and Zoning meeting: P&Z 2013-26 - The Austin Company, representing BASF, located at 23800 Mercantile Road, preliminary and final site plan approval for a 7200 sq. ft. warehouse addition with the following stipulations: 1) pursuant to Section 1159.04, it is determined that a practical difficulty exists or will result from the literal enforcement of the Zoning Code with regard to the provisions of Section 1129.05(b)(2)(H) relating to minimum required off-street parking; and 2) granting a land banked variance of 94 parking spaces to Section 1129.05(b)(2)(H) to permit a total of 110 parking spaces in lieu of the 204 parking spaces required by Code; and 3) compliance with the comments of the Fire Department and the City Engineer.

P&Z 2013-28 Don Geitz, representing PearlWind, LLC, located at 24800 Chagrin Blvd., is requesting preliminary and final site plan approval to construct a fenced enclosure.

A letter was received from the applicant requesting to be removed from the agenda.

A motion was made by B. Mann and seconded by O. Jacobs to remove P&Z 2013-28 from the Planning and Zoning Commission agenda.

ROLL CALL: AYES: C. Cohen, M. Gorden, R. Hecht, O. Jacobs,
B. Mann, M. Wachter, B. Zabell
NAYS: None
MOTION APPROVED – AGENDA ITEM REMOVED

P&Z 2013-29 Life Time Fitness located at 3850 Richmond Road is requesting preliminary and final approval for a similar and harmonious use permit to establish a Childcare with youth programs and camps.

Mr. Gary Stevens, Vice President of Real Estate with Life Time Fitness, was present to request a similar and harmonious use permit to establish a childcare center with youth programs and camp at the Life Time Fitness location at 3850 Richmond Road. The Ohio Department of Family and Job Services has requested that Life Time have a Childcare License from the State of Ohio. Life Time is requesting a similar, harmonious and compatible use permit to operate a Childcare facility.

Mr. Griswold stated that the Fire Department stated that during the initial planning and development of Life Time Fitness, the current childcare area was designed to meet all fire and life safety requirements for day care licensure. The Building Department and Police Department have no comments regarding this application.

Mr. Griswold also stated that there were no engineering issues with this application.

Mr. Smerigan stated that this request is for approval to operate a child day care center in the existing Life Time Fitness facility. Life Time Fitness is located in the U-10 Planned Mixed-Use Development District. As indicated in the application letter, parents would drop-off their children, ages 4 through 12 for 10 hours. The parents would not remain on the site. This is different than merely providing programs for kids while parents are on-site working out. This activity is certainly consistent with the definition and operation of child day care centers. The applicant contends that such youth programs and camps are consistent and compatible with their overall operation.

Mr. Smerigan continued that child day care centers are authorized as a special and conditional use under the provisions of Chapter 1155. Unfortunately Section 1155.02(a) does not list the U-10 Planned Mixed-Use Development District as one of the districts in which child day care centers may be permitted as a special or conditional use. Similarly, the list of permitted uses in the U-10 Planned Mixed-Use Development District does not specifically include child day care centers. The U-10 Planned Mixed-Use Development District does incorporate uses from other districts, and Section 1132.02(a) does authorize the Planning and Zoning Commission to permit other uses determined to be "similar, harmonious, and compatible" provided that City Council concurs in such determination. In this instance, the Planning and Zoning Commission is being asked to determine that a child day care center is similar, harmonious and compatible as an accessory use to a fitness center in the U-10 Planned Mixed-Use Development District.

Mr. Smerigan stated that should the Commission determine to make such a recommendation to City Council, it is suggested that such recommendation be conditioned on the operation of the accessory day care center being conducted in conformance with all of the standards and provisions of Section 1155.02 of the Zoning Code.

Chairperson Hecht asked if there were other Life Time Fitness facilities that also had Child Care Centers in them and how many additional employees were hired to staff the child care area.

Mr. Stevens stated that there were other facilities that had this type of childcare programs and meet the requirements for staffing. This program is different from the program where the parents leave the children for just a two hour period of time. These youth programs that are held for a longer period of time are at a separate cost to members only.

Mr. Orry Jacobs asked for a clarification as to when this program started and if it has been in effect at Life Time Fitness, or is this new and different youth programs during the summer. Also, does one have to be a member of Life Time Fitness in order to participate?

Mr. Stevens stated that this is the program in process currently. It started as a day care center for just a couple of hours and now there is an extended program for all day participants. This is open to members only.

The Law Director, Margaret Cannon stated that it was the understanding that Life Time Fitness has been operating this child care center and this was not a new program. Life Time Fitness was not aware that it was to be within the parameters of the State of Ohio licensure.

Mr. Wachter stated that presently there is no Day Care in the U-10 Zoning District. Consequently, is the Planning Commission to make a determination that this use would be similar, harmonious and compatible to a Fitness Center?

Mr. Smerigan stated that it should be declared a similar, harmonious and compatible use as an accessory use to a Fitness Center. The Commission does not want to declare day care centers as a principle use in a U-10 District or any other district.

A motion was made by B. Mann and seconded by B. Zabell to approve Life Time Fitness, located at 3850 Richmond Road, and recommend to Council the request for determination that a similar, harmonious, and compatible use permit be granted for an accessory use to a Fitness Center to establish a Child-care with youth programs and camps conditional upon being conducted in conformance with the provisions in Section 1155.02 of the Zoning Code.

ROLL CALL:	AYES:	C. Cohen, M. Gorden, R. Hecht, O. Jacobs B. Mann, M. Wachter, B. Zabell
	NAYS:	None
	MOTION APPROVED – RECOMMENDATION TO COUNCIL – July 1, 2013 – 7:00 p.m.	

Chairperson Hecht asked for a motion to place P&Z 2013-31 (lot consolidation) before P&Z 2013-30 (new car dealership) on the agenda.

A motion was made B. Mann and seconded by C. Cohen to hear P&Z 2013-31 first and P&Z 2013-30 second on the agenda.

ROLL CALL:	AYES:	C. Cohen, M. Gorden, R. Hecht, O. Jacobs B. Mann, M. Wachter, B. Zabell
	NAYS:	None
	MOTION APPROVED	

P&Z 2013-31	Vocon Designers, representing the proposed Infiniti of Beachwood Dealership is requesting preliminary and final approval of the lot consolidation of two undeveloped parcels, Sublot 1B-1, PPN 742-20-038, and Sublot 1B-2, PPN 742-20-040.
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Mr. Denver Brooker, from Vocon Designers, representing the Collection Auto Group is requesting preliminary and final approval for a consolidation of two parcels which are currently adjacent to the Collection Auto Dealership.

Mr. Griswold stated that the Building Department, Fire Department and Police Department have no questions or comments at this time. The City Engineer and reviewed the plat and he would recommend approval.

Mr. Smerigan stated that this request is for approval of a lot consolidation plat to combine the two existing vacant parcels located on the south side of Central Parkway into a single parcel containing 4.87 acres. The intent of the consolidation is for the future construction of a new automobile dealership. The subject properties are located in a U-9 Motor Service District. The new parcel will conform to the minimum lot area and frontage requirements for parcels located in U-9 Motor Service District.

Mr. Smerigan stated that since this approval is for a lot consolidation plat, the Planning and Zoning Commission will make a commendation to City Council.

The Law Director, Ms. Cannon, stated that Life Time Fitness, P&Z 2013-29, and this consolidation plat P&Z 2013-31, are on the Council agenda for July 1, 2013. Also, the following applies to the next three items on the Commission's agenda. Mrs. Cannon stated that the Commission may remember when the then Hummer Dealership was constructed, there were a series of deed restrictions placed on these parcels of land, which provided, among other things, that only subplot 2, could be used for automotive use. Sublot 2 was the original Hummer Dealership which is now the GMC Dealership parcel. If the Commission moves ahead with this consolidation the deed restrictions have to be modified. The applicant is aware of this situation. Sublot 2 can be used as the GMC Dealership. Lots PP#742-20-038 & 742-20-040, without Council action and the change in the deed restrictions, cannot be used for automotive use. If the Commission makes any or all recommendations on these three items, it must be contingent upon Council action regarding the deed restrictions and other additional restrictions that may apply.

Mr. Wachter asked Mrs. Cannon that when the deed restrictions were placed on this property, were there some requirements as to the types of cars, new, used, service department, etc. Council may want to make some different restrictions on new the piece of property.

Mrs. Cannon stated that there were those restrictions along with the brands of automobiles. That has been revised and amended at least two times and there were restrictions regarding the test track. There have been some changes regarding the test track.

Mr. Smerigan stated that the deed restrictions will not affect the lot consolidation plat. It will affect the approval of the development plan because there will be modifications needed with the deed restrictions.

A motion was made by B. Mann and seconded by O. Jacobs to grant and recommend to Council the request of Vocon Designers, representing the proposed Infiniti of Beachwood Dealership, for preliminary and final approval of the lot consolidation plat for two undeveloped parcels, Sublot 1B-1, PPN 742-20-038, and Sublot 1B-2, PPN 742-20-040, contingent upon Council action regarding the deed restrictions.

ROLL CALL:

AYES: C. Cohen, M. Gorden, R. Hecht, O. Jacobs
B. Mann, M. Wachter, B. Zabell

NAYS: None

MOTION APPROVED – RECOMMENDATION TO
COUNCIL -- July 1, 2013

P&Z 2013-30 Vocon Designers, representing The Collection Auto Group, is requesting preliminary approval for the proposal of the new construction of an Infiniti of Beachwood Dealership to be located on Central Parkway.

Mr. Dennis Brooker, from Vocon Designers, representing The Collection Auto Group, is requesting preliminary approval for the proposed new development plan of a new Infiniti of Beachwood dealership utilizing the two undeveloped parcels of land south of the Buick GMC Dealership on Central Parkway. The new building will be approximately 35,000 square feet located at the southern portion of the property. There are designated wetlands just to the north of the entry drive. There will be customer parking and displays in the front and inventory to the west. There is a 10' variance to the side yard setback to allow some display parking for cars. There will be landscaping developed for the entire site.

Mr. Griswold stated that the Fire Department indicated that access around the structure was of concern and the City would request that the applicant model the site around the dimensions of the Fire Department apparatus. Also, the hydrant and Fire Department connection locations will need to be determined by the Fire Prevention Bureau. Mr. Griswold also stated that the Police Department and the Building Department had no comments regarding this application.

Mr. Griswold reported for the City Engineer the following comments: first that storm water management will be handled through the regional detention basin on the adjacent Collection Auto Group Buick GMC of Beachwood, and that basin will be undergoing modifications. The pond modifications calculations will need to be submitted to the engineer. Secondly, water quality will need to be addressed, as it disturbs more than one acre; and thirdly, the applicant must submit plans to Cleveland Water Department and the County Sanitary Engineer for review. The Engineer recommends preliminary approval.

Mr. Smerigan stated that this request is for preliminary site plan approval to construct a new automobile dealership on 4.87 acres of land located on the south side of Central Parkway. The subject site is located in the U-9 Motor Service District. Mr. Brooker has done an excellent job in terms of the design of the building. The site plan indicates a total of 339 parking spaces, which exceeds the Code requirement. There are 86 spaces that are double-stacked spaces, vehicles parked nose to tail, which do not meet Code requirements for parking spaces, but which the Commission has permitted for storage of vehicle inventory. Even discounting those spaces, there is more than sufficient parking to comply with the Code requirement of 87 parking spaces. The parking is met for employee and customer needs.

Mr. Smerigan stated the applicant originally was requesting two setback variances. The side yard setback variance is adjacent to the GMC Dealership. There is common ownership of the dealerships and a driveway connection between the properties so the approval of the 10 foot setback variance would be appropriate. It is recommended that the Commission grant this variance. The front setback variance has been eliminated by the applicant.

As indicated in Section 1111.02(n)(4), all of the properties located on Central Parkway, including the GMC Dealership, are subject to deed restrictions. The GMC Dealership was approved by Council when the subdivision was created. All of the remaining parcels are subject to deed restrictions. Before the additional dealership can proceed, Council will need to modify the existing deed restrictions. The deed restrictions have been modified twice. It has been modified to allow the GMC Dealership in lieu of the

Hummer Dealership, and modified to allow some site changes that were different than what were included in the original deed restriction.

Mr. Smerigan continued that it appears that this use of the property with the common ownership of the dealerships at the end of the cul-de-sac along the frontage of I-271 makes sense. It would appear to make sense to forward to Council, as part of the site plan, the recommendation to modify the deed restriction to permit the use of 4.87 acres for another dealership.

Since both a variance and a modification to the deed restriction are required, the Planning and Zoning Commission needs to act in the form of a recommendation to City Council. There are five stipulations that are necessary to accompany the recommendation to Council as follows: 1) Recommendation for approval is subject to City Council approval of an amendment to the Declaration of Restrictions by The Main Trust of Frank H. Porter dated July 10, 2003, to permit the subject site to be used for an automobile dealership; 2) granting of a variance of 10 feet to Section 1131.05(a) to permit parking and drives to be located on the northern side lot line in lieu of the required 10 feet setback; 3) a total of 86 parking spaces may be constructed as double-stacked provided that said spaces shall only be used for storage of vehicles held in inventory for sale; 4) is subject to the deed restrictions being modified by Council; and 5) compliance with the comments of the City Engineer.

Mr. Mann asked the question that if some time in the future the properties were not owned by the same party, what would happen.

Mr. Smerigan stated that there will still be the situation in all probability with the investments being made, this will remain a car dealership regardless of the ownership. The parking at this location, where the encroachment is, is near the freeway way, and it has very little impact.

Mr. O. Jacobs asked why there were deed restrictions.

Mr. Smerigan stated that automobile dealerships are permitted in the U-9 Zoning District. There was a prohibition that only allowed car dealerships on Chagrin Blvd. When this property was developed there was some concern that the dealerships would come all the way out to Enterprise Parkway and that wasn't desired. It was determined by Council that parcel, Sublot #2, adjacent to the freeway, made sense as an automobile dealership, but the other parcels would have other types of development. That is why the deed restrictions were imposed. This parcel is similarly situated to the present dealership in that it abuts the freeway and it is at the end of the cul-de-sac. It has not developed for another use so it might be time to reconsider this parcel.

Mr. Wachter stated there was some history as there was common ownership at the time, and in order to properly be able to develop the parcels, the owner wanted Sublot #2 to be able to be a car dealership.

Chairperson Hecht asked if there was a current dealership that would be moving to the Beachwood location. There evidently isn't a large inventory at the present location, so will there be a large inventory at the Beachwood location?

Mr. Brooker stated that there is a current dealership temporarily operating on Mayfield Road in Lyndhurst, Ohio.

Mr. Bernie Mareno stated that the inventory at the Lyndhurst location is approximately 200 cars. There are also service cars, lease/loaner cars and employee cars on approximately 4 acres.

Mr. Zabell asked if there had been any discussion about the overall parking and if cross parking between the dealership and the restaurant would be permitted.

Mr. Mareno stated absolutely not.

A motion was made by B. Zabell and seconded by O. Jacobs to grant and recommend to Council the request of Vocon Designers, representing The Collection Auto Group, preliminary approval for a proposed Infiniti of Beachwood Dealership, with the following stipulations: 1) recommendation for approval is subject to City Council approval of an amendment to the Declaration of Restrictions by The Main Trust of Frank H. Porter dated July 10, 2003, to permit the subject site to be used for an automobile dealership; 2) granting of a variance of 10 feet to Section 1131.05(a) to permit parking and drives to be located on the northern side lot line in lieu of the required 10 feet setback; 3) a total of 86 parking spaces may be constructed as double-stacked provided that said spaces shall only be used for storage of vehicles held in inventory for sale; and 4) compliance with the comments of the City Engineer.

ROLL CALL:	AYES:	C. Cohen, M. Gorden, R. Hecht, O. Jacobs B. Mann, M. Wachter, B. Zabell
	NAYS:	None
	MOTION APPROVED – RECOMMENDATION TO COUNCIL -	

P&Z 2013-32	Vocon Designers, representing Collection Buick GMC of Beachwood, is requesting preliminary and final approval for a parking expansion and a new pole sign to be located at 25975 Central Parkway which requires variances.
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Mr. Denver Brooker stated that the primary objection for this project is to provide additional parking for inventory for the GMC Dealership. This work would occur with the site work being done for the new dealership. There is a request for a second pole sign for the Infiniti Dealership. ODOT will not approve signs within 200 feet of one another and that will be resubmitted at a later date.

Mr. Griswold stated that the Fire Department indicated that the relocated, expanded retention basin should have a fence to enclose it. The Police Department has no comments. The Engineering Department requested that the applicant submit proposed storm water management pond modifications with the final plans, along with record calculations for the pond. This detention pond is a “regional” detention pond that provides storm water management for all the properties on Central Parkway. Secondly the proposed plans must be submitted to the Ohio EPA for review due to the fact that the overall site is greater than 5 acres and modifications are being made to the storm water management system. The Engineering Department would recommend preliminary site plan approval.

Mr. Smerigan stated that this request is for preliminary site plan approval. It would be noted that the last time the deed restrictions were amended, one of the stipulations in the amendment was that the test track be removed and create a natural green area. This application is pursuant to and consistent with that provision. The plan would provide for additional vehicle inventory, and the remainder will be part of the storm water retention areas. The proposed plan would accommodate storage of an additional 52 vehicles on the site. Currently there are 191 parking spaces. A total of 67 parking spaces are required by Code for this facility. The additional existing parking spaces are used for storage of vehicle inventory. The proposal would bring the total available parking on the subject site to 243 spaces. The applicant is requesting that a total of 69 of the 243 spaces be permitted to be 9 ft. x 18 ft. in lieu of the required size of 9 ft. x 20 ft. Those reduced size spaces would only be used for vehicle inventory storage. The Commission has authorized similar arrangements in the past where it has permitted alternative arrangements, such as double stacking, for spaces intended solely for inventory vehicle storage and not customer or employee parking. In those instances, the Commission determined that the spaces were for product storage and were not technically parking spaces intended for general use as set forth in the Zoning Code, and therefore a parking variance was not required.

Mr. Smerigan continued that the final item requested is a second free-standing pole sign for display along the interstate highway. The applicant is requesting a sign for the proposed Infiniti dealership that would be under common ownership but on a separate parcel. This request creates several issues. First, Section 1141.17(c)(5) limits the number of freeway pole signs to one per property. Second, the Zoning Code requires that there be a minimum of a 200 foot separation between such signs. Third, the City and ODOT have never permitted the erection of an off-premises sign for any business.

Mr. Smerigan stated that approval of this request would not only require multiple variances, but it would require the City abandon some long established policies with regard to signage. The fact that the proposed Infiniti site has limited exposure or sight lines is not sufficient justification to warrant such a major departure from established policy or to justify the granting of the requested variances. This is not the first request of this nature received by the City.

In summary, it is recommended that the Planning and Zoning Commission grant preliminary site plan approval to remove the existing vehicle test track, relocated the existing storm water detention basin, and expand the parking lot with the following stipulations: 1) the Planning Commission may make a determination that a total of 69 parking spaces may be constructed with dimensions of 9 ft. x 18 ft., to be used for storage of vehicles held in inventory for sale; and 2) the request for a second pole sign be denied.

A motion was made by C. Cohen and seconded by B. Mann to grant preliminary approval to Vocon Designers, representing Collection Buick GMC of Beachwood, for a parking expansion and a new pole sign to be located at 259975 Central Parkway with the following stipulations: 1) the Planning Commission makes a determination that a total of 69 parking spaces may be constructed with dimensions of 9 ft. x 18 ft., to be used for storage of vehicles held in inventory for sale; and 2) the request for a second pole sign be denied.

ROLL CALL:

AYES: C. Cohen, M. Gorden, R. Hecht, O. Jacobs,
B. Mann, M. Wachter, B. Zabell

NAYS: None

MOTION APPROVED – PRELIMINARY APPROVAL
GRANTED

Mr. Mareno stated that he would request that the deed restrictions regarding these parcels of land be heard at the next Council meeting, July 1, 2013, due to the costs for the engineering site work and the time line of the entire project. We would ask that the deed restrictions removal be contingent upon the proposed site plan approval. These parcels are under contract with the contingency that until all the approvals have to be received from the City of Beachwood.

Mrs. Cannon stated that the Council agenda for July 1, 2013 has already been set. The next Council meeting is August 19, 2013. It is anticipated that Council may not just lift the deed restriction regarding the automotive use. It was a restriction imposed as a condition of the rezoning of this entire track of land. There may be some additional conditions added to replace the first restrictions.

Mrs. Cannon stated that the Mayor was distributing a copy of what is called a petition registration for a proposed amendment to the Beachwood Charter. Under our Charter if someone is proposing an amendment to the Charter it has to be registered with the Clerk of Council. The registration for an amendment was delivered to the Clerk of Council on Tuesday, June 25, 2013. It is the understanding of the City that this amendment will be circulated throughout the City. The description of the proposed amendment is that it would amend our Charter to require what is known as "referendum zoning". Any rezoning from single family to any use other than single family, except institutional use, would have to be approved by both the majority of the City as a whole and a majority of the area where the property is to be rezoned.

Chairperson Hecht stated to Mr. Jacobs that he was absent at the May Planning and Zoning meeting at which time there were residents of the City present regarding the Beachwood Place rezoning issue. The Planning and Zoning meeting does not hear comments from the public. It was stated that there would possibly be a Community meeting held on Thursday, July 11, 2013 to discuss the process of rezoning property. The City notice has not been posted yet. The meeting may be held in the Community Center since there will be more room.

Mr. Wachter stated that there were some residents who did not understand the complete process of the City with regards to rezoning property.

Mr. Zabell asked about the referendum, the process of getting it on the ballot, the community voting and how long until it goes into effect. What period of time would there be until a rezoning application could be voted upon to approve or deny?

Mrs. Cannon, the Law Director, stated that there are two different issues. It is the intent of the circulators that this proposed Charter amendment be on this November ballot. If this referendum is adopted, and goes into effect, and there was a rezoning application, the referendum on that specific rezoning would be at the next regularly scheduled election. That is usually at least sixty (60) days after the rezoning. May and November are the only regularly scheduled elections.

Mr. Zabell questioned that if there was a rezoning issue pending, and there is an issue that could be affected by this referendum such as the one proposed, would the Planning Commission hear the application?

Mrs. Cannon stated that the Planning and Zoning Commission would go through the regular process. Council would get the application for the rezoning and refer it to the Planning and Zoning Commission for review and comment. It would then be referred back to Council and Council would have to have a total of three readings and a public hearing with a notice of thirty (30) days to the public. Once the zoning was adopted, it could not go into effect until the issue was voted on by both the City and the specific ward.

Mr. Smerigan stated that there is no guarantee that this proposal will pass on the ballot. For applications that have already been filed, the Planning Commission needs to proceed and go forward as normal. This type of referendum could have a substantial effect on economic development within the City. Sometimes even minor pieces of property that would benefit the community by rezoning cannot get it changed in order to accommodate a business.

Mr. Griswold stated that if you look at the history of Beachwood over the last thirty years, and were to see what was zoned U-1 A-1. Science Park and Beachwood Place would not exist. The City has taken opportunities to make good economic decisions.

Adjournment

Rochelle Hecht, Chairman

Sue Ley, Secretary

Karen Navolanic, Clerk of Council