

BOARD OF APPEALS PUBLIC HEARING – FEBRUARY 15, 2018

PUBLIC HEARING  
**BOARD OF ZONING APPEALS**  
February 15, 2018

The Austintown Township Board of Appeals held a Public Hearing on Thursday, February 15, 2018, at the Township Building, 82 Ohltown Road, Austintown, Ohio, for consideration of the following case:

APPEAL CASE 2018-02-A-Barry Dyngle’s Restaurant.

The following Board members were in attendance:

Mr. Joe Koch - Chairman  
Mr. Robert Satterlee - Vice-Chairman  
Mr. Michael Beaudis  
Mr. William Glaros  
Mr. James Mahoney  
Mr. Dale Basista

Chairman Satterlee opened the public hearing at 7:00 P.M. The following testimony was given under oath or affirmation. Court reporter in attendance, complete transcript taken of the hearing.

Motion by Mr. Satterlee to approve the minutes of the public hearing held on February 8, 2018.

Seconded by Mr. Glaros.

Roll call vote: Mr. Glaros - Yes; Mr. Mahoney – Yes; Mr. Beaudis – Yes; Mr. Satterlee – Yes; and Yes; Mr. Koch – Yes.

**APPEAL CASE 2018-02-A**

Sipe + Tepe Architects, LLC, 11524 Market Street, P.O. Box 332, North Lima, Ohio, 44452, on behalf of the Hannon Holdings, LLC, 1601 South Raccoon Road, Austintown, Ohio, 44515, and Milton Lakeview, Inc., 17629 Mahoning Avenue, Lake Milton, Ohio, 44429, appeals from the decision of the Austintown Township Zoning Inspector and requests variances from the terms of Article XI-Business B-2 District, Section 1105-General Requirements of Business B-2: “Parking”; Article XI-Business B-2 District, Section 1106-Buffering; and Article XVII-Supplementary District Regulations, Section 1713-Minimum Off-Street Parking Requirements, Paragraph 11-Restaurants, Bars and Night Clubs, of the Austintown Township Zoning Ordinance, as amended through November 25, 2014, to allow for a structural addition and open porch to the existing Barry Dyngle’s Restaurant located at 1601 South Raccoon Road for a total building area of 9,592 square feet and the construction of a proposed banquet hall measuring 6,000 square feet to be located at 1643 South Raccoon Road. The site development plan

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proposes 152 parking stalls with each stall measuring 9' x 18' and five (5) feet of green space abutting the westerly front property line and no buffering at the east property lines. The restaurant parking requirement is 192 parking stalls (9,600 sq. ft./50 sq. ft.) and the banquet hall parking requirement is 120 parking stalls (6,000 sq.ft./50 sq. ft.). The minimum parking stall requirement is 200 square feet (10' x 20'). The minimum front green space buffer requirement is ten (10) feet. The minimum rear (easterly property lines) green space buffer requirement is ten (10) feet with an acceptably designed wall, fence, or evergreen plantings. Parcels 48-080-0-081 and 48-080-0-082, Lot Nos. 1 and 2, Mellott & Cox Plat No. 1, 1601 South Raccoon Road, are located at the southeast corner of the South Raccoon Road-Pembrook Road intersection. Parcel 48-080-0-083, Great Lot 13, 1643 South Raccoon Road, is located on the east side of South Raccoon Road, approximately 225 feet south of the of the South Raccoon Road-Pembrook Road intersection. Said properties are zoned as Business B-2 Districts in Austintown Township, Mahoning County, State of Ohio.

Zoning Inspector Crivelli read the applicant's letter of request dated January 16, 2018 into the case record, referenced four pages of color photographs, 10 pages of architectural drawings, the case mailing list prepared by the zoning office, and four plat maps of the property. He also advised he had approved a proposed re-plat consolidating the three lots into one lot and the replat was awaiting final approval with the Mahoning County Planning Commission. Mr. Koch asked if the Business B-2 District extended to the entire property. Mr. Crivelli answered in the affirmative.

Mr. Koch stated the mailing list for case 2018-02-A will be incorporated into the case record.

Doug Sipp, 11524 Market Street, North Lima, Ohio, introduced project civil engineer Carmen Congolise and property and business owner Shawn Hannon. Mr. Sipp stated the owner wants to expand the restaurant with added seating and relocate the bar to the new area at the southside of the building along with a new quiet open outdoor seating area where the Smoker Friendly is currently located. There will not be any out-door music in the open area. The owner understands he has neighbors and the importance of quiet. There will be no stages. There will be a new entrance at the front of the building. The building front will have a new image. New LED lighting is being proposed. The restaurant will become a destination location with people coming as far as Cleveland and Pittsburgh. The exterior of the building will be brightly lit. They wish to maintain the front row of parking, however, the stalls will be removed from within the Raccoon Road right-of-way. Access will be limited to one curb cut only by removing two existing curb cuts on South Raccoon Road. By reducing to one entrance there will be adequate green space along the front of the property. The two existing curb cuts will remain on Pembrook Avenue to allow for deliveries.

Mr. Koch inquired about the jog in the right-of-way. Zoning Inspector Crivelli advised the front property lines on the east side of Raccoon Road are uneven and referenced the Italino property wherein the front property line is about even with the leading edge of the pylon sign with the green space on front of the sign being within the right-of-way.

Mr. Sipp stated the Smoker Friendly building will be razed and the parking depicted on the plan will be adequate based on the proposed seating. Eight-six parking spaces are being proposed. They currently have 35 parking stalls.

Shawn Hannon, 1601 Herons Circle, Austintown, Ohio, 44515, stated the northerly property on Pembroke Road is in arrears on property taxes and there will be a hearing in May to see if it can be acquired. Mr. Hannon stated he is now paying the property taxes on that parcel. He speculated it could be used for employee property. They maintain the property and employees park there now but they do not have a current lease to use the property. The spaces on Pembroke Avenue are not being counted for the new project. The banquet facility will have added parking.

There was discussion of the northerly Pembroke road property. Zoning Inspector Crivelli advised Mr. Hannon that as a future owner of the property on the north side of Pembroke Avenue he could apply for a conditional use permit to use the residentially zoned portion of the lot for employee parking. Mr. Koch observed that property is not part of the case. Mr. Sipp speculated that the plan before the Board would provide adequate parking and there would be no need to establish parking beyond the approximate 200 feet already zoned commercial on the north side of the Pembroke Avenue lot.

Mr. Sipp stated the easterly rear property will contain a retention pond that will accommodate the required storm water management for the new project and they will amend the site plan to show the easterly buffer of trees behind the pond. He referenced the line of trees behind the residential properties.

Mr. Beaudis suggested 9' x 18' stalls are outdated considering the current sizes of SUV's and pick-up trucks and creates the potential for damage to customer vehicles. Mr. Carmen Congeese, 2929 Bernadette Avenue, Youngstown, Ohio, 44509, stated the task was to optimize the conditions to meet as many zoning standards as possible. It is a balancing act. The 9' x 18' stalls meet the Institute of Transportation Engineer's and the American Association of State Highway Transportation Officials who have both adopted the same standard of 9' x 18' parking stalls. They do not foresee any problems with the parking design. It will be safe and useful while maximizing the number of parking stalls. There will be 86 spaces for the first phase and 151 stalls for the entire facility when the banquet hall is constructed. Mr. Congeese estimated 20 parking stalls were added by designing at nine feet wide. Mr. Congeese also described the replat which allows the entire facility to be placed on one lot. The current parking on Pembroke Road will be moved back to allow for a five-foot green space buffer off of the south side of the street side property line.

Mr. Sipp emphasized approximately 30 feet of green space from the edge of South Raccoon Road to the edge of the parking lot. There will be new shrubbery along the front. The new design will allow parking and ingress/egress to be better controlled. The 86 spaces define the elevation as to where the property drops off and impacts the storm water management drawings. The banquet hall will be sized with 65 spaces to include

parking for employees. There was discussion of the parking ratio calculation based on gross square footage. Mr. Sipp advised he netted the square footage to remove the kitchens. The operator will need a separate kitchen for the banquet hall and finger foods for the bar. The restaurant will be supported by the current kitchen.

Mr. Hannon described the new entrance and how customers will be seated after the removal of the current bar. The menu will be the same for the restaurant and bar. The patio/court yard will be for drinks. The new kitchen will also be utilized for take-out which he describes as an expanding segment of the business. He speculated the proposed plan allows for a gain of 52 parking spaces. The restaurant is viewed as a destination and the Smoker Friendly property was purchased at a premium to allow for additional parking. He speculated the total project could stretch over three years and the banquet can be adjusted downward in terms of square footage. Mr. Sipp stated they wanted to submit the master plan with all the future goals via this process.

Mr. Koch asked if he has purchased the Smoker Friendly property. Mr. Hannon answered in the affirmative. He speculated the tenant vacating by March 31<sup>st</sup>. Zoning Inspector Crivelli advised at the time the case was processed the owners of the abutting property were copied on the applicant's letter of notice as the auditor's website did not yet show a transfer of title, thus their inclusion in the legal notice as a property owner.

Mr. Satterlee inquired about the buffer. Mr. Sipp stated that section of the buffer meets the code and Zoning Inspector Crivelli requested a natural buffer. Zoning Inspector Crivelli advised that could change based on the wishes of the residents if the project is approved. He described the wind load problems on fences above six feet in height and referenced the pine tree buffer at the condos across from the library. He explained the buffering process if a permit is issued without a hearing and the residents decide they want a different buffer than what zoning required. Mr. Sipp explained the shifting of the parking to the south to accommodate the buffer.

Mr. Satterlee inquired about the plant material. Mr. Sipp advised the buffer will be arborvitae planted in a ten-foot wide area of green space. The same buffer will also be added into the east rear property that abuts an undeveloped Residence R-2 District lot.

Mr. Koch suggested inquiring with abutting property owners regarding the buffer. Mr. Hannon stated they had no discussions and speculated it would only affect the property directly behind the restaurant as there are vacant abutting lots on Pembroke. Mr. Koch advised a reciprocal agreement could benefit the abutting property owners as they have 200 feet of residential depth and they can still own the property with a buffering easement. He speculated that although he meets the requirements it appears a challenge.

There was discussion of storm drainage and Mr. Sipp observed the line drawn for the first phase parking is at the slope where the property begins to drop off to the east. It was estimated the drop off is approximately 16 feet.

Mr. Beaudis inquired about lighting. Mr. Sipp stated LED's allow for controlled lighting and they are working with Phoenix Engineering who has worked with the Carfaro Company on their projects. The rendering is over-exposed but with current technology they can adjust the multi-color lighting in both the interior and exterior. Mr. Beaudis asked if the lighting will be limited to the westerly elevation of the building and if anything will be seen over the top. Mr. Sipp stated everything will be ground level or internally illuminated. The court area be down lighted. The court was designed to face south and west. The placement of the kitchen will be both an acoustic and blockage for the neighbors and will enhance the buffer. Mr. Sipp advised they would submit a photometric drawing for township review. There will be lights on 20 to 25 foot poles in the islands within the parking lot with low profile cut off fixtures allowing for precise control of the LED lighting. Zoning Inspector Crivelli advised zero-foot candles are required at the property line.

Mr. Koch inquired about a start date. Mr. Hannon stated they have to select a general contractor and want to demo Smoker Friendly early April. The bar addition can be fenced off to allow the restaurant to remain open. Mr. Sipp stated they will wait until the ground firms up. There was discussion of the construction sequence. The construction drawings are about 70% completed. The new bar will be built than the current entrance area will be closed so as not to lose seating. They might have to close a few days depending on the construction requirements. Mr. Sipp speculated having the new bar and outdoor area available for business by July 4<sup>th</sup>. They hope to have the project completed by October.

Mr. Koch inquired about the "jog" at the front property line. Mr. Congeese stated the seven foot area was dedicated back to the county. There was a discussion of the public right-of-way dimensions.

Kathy Mellott, 4331 Pembroke Road, spoke against the request. This is not Las Vegas. It is a nice residential neighborhood. No trouble. Traxs, the Eagles, and Dyngles cause commotion in the summer from the music and things and we don't want this. We want the woods back there left alone. She has lived there 70 years. She referenced Falcon gas station once being there. She stated the back is all swamp with natural springs and they get water like crazy. We like our neighborhood. We don't want this. We don't need no more shootings or anything like that. It is all going to be congested. There is enough congestion of Raccoon with the school and everything. This is totally out of place. She suggested going to Big Lots. She wants to keep the strip of woods. She stated she was never notified about the zone change to commercial and became argumentative that she was not notified. Zoning Inspector Crivelli advised the process stipulated by the Ohio Revised Code for notice of zone change hearings. He advised he confirmed the zoning with the applicant about a year ago and this hearing is not to debate the current zoning designation of the property which is in fact a Business B-2 District. Mrs. Mellott expressed concerns for all the animals back there including the deer. She complained about parking behind her property and all the commotion.

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Eric Ackerman, 4355 Pembroke Road, spoke in opposition of the request. He stated when he purchased his house the woods were there. He would not have purchased the home without the woods. He has put \$35,000.00 into his home over the past six years and now he will have to sell it as his whole backyard will be a spot light and will lower his property value. Mr. Satterlee advised he should have done his research prior to purchasing his home. Mr. Ackerman stated the previous owner had tried to parcel out the property but he wanted a lot of money and people declined it. If the property would have gone up for sale he would have purchased it. He stated his property value will decrease and Mrs. Mellott stated she wanted a stone wall to go up. Mrs. Mellott said the greasy will gets the grease.

Jana Ackerman, 4355 Pembroke Road, stated she likes Barry D yngles food and great service. She agreed they need more parking as cars park on the street and block her driveway. She is currently surrounded on three side and if you remove the woods she is staring at two parking lots with lights shining in her living room. She moved there for privacy. She has two dogs who will constantly be going crazy with that. She pleaded with the Board for this not to happen.

Robert Winters, 4375 Pembroke Road, stated he lives right beside the restaurant. He had a good time with the 1.8 million people during the Queen of Hearts. He commended the owner on running a good business and succeeding and he would rather see something that is stable rather than a Chinese restaurant one week and a car lot the next week. He stated there are issues and referenced the east buffer zone and asked that that be defined. Zoning Inspector Crivelli reviewed the drawing in relation to his property and referenced the fence. He explained after issuing a zoning permit to Mr. Winters no call was made for an inspection and pointed out the fact that Mr. Winter's fence cannot be higher than three feet from the front property line to the front setback of his dwelling and technically Mr. Winters is in violation of the permit and code.

Zoning Inspector Crivelli advised he did not give Mr. Hannon credit for the fence as a buffer because Mr. Winters secured the permit, thus the determination that he needs to buffer behind the building. Mr. Winters advised during the discussion that Mr. Hannon contributed to the cost of installing the fence. Zoning Inspector Crivelli stated the fence is a good enough buffer but he would still have to rip up ten feet of pavement and plant grass so it is green. Mr. Winters stated the fence is split right down the middle and the situation is a little murky. Zoning Inspector Crivelli stipulated that Mr. Winters secured the zoning permit for the fence, the fence was placed in violation of the code, and he can be cited, however, it still serves as a buffer and this is a public hearing and Mr. Hannon needs relief from this code requirement. The Board will have to take all of this into account and the fence is there regardless of who owns it.

Mr. Winter asked if the area between the building and fence will be blacktopped. Mr. Sipp stated it would but if they have to they will plant grass. Mr. Winters expressed concerns about storm water. Mr. Sipp stated the roof will be guttered. Zoning Inspector Crivelli advised the new construction area will be subject to storm water management and drawings have been submitted and are currently being reviewed.

Mr. Winters inquired about elevation and paving. Zoning Inspector Crivelli reviewed the drawing with Mr. Winters pointing out the buffer area with ten feet of green space with plant material, specifically, arborvitae. Mr. Winter expressed concerns regarding security and people cutting thru his property and “Leprechaun’s” from St. Patrick’s Day urinating in the back corner of his lot. Zoning Inspector Crivelli suggested he can extend his stockade fencing. Mr. Winters expressed further concern with people urinating in the parking lot. Mr. Hannon stated they are adding more restrooms.

Mr. Winters inquired about storm water drainage. Zoning Inspector Crivelli reviewed the inspection process and the requirement for a letter of certification from the project engineer.

Mr. Winters expressed concern about light pollution. Zoning Inspector Crivelli stated he will require zero candle lumens at the property lines. Mr. Winters asked that the lights be placed on the northside of the lot facing south. Zoning Inspector Crivelli advised a photometric drawing will be required. Mr. Winters expressed concern about a rear light. Mr. Satterlee advised he has to address the Board of Appeals. There was discussion of the lighting at the back of the building and Mr. Winters stated a new light was installed that is lighting his backyard. Mr. Sipp stated the total building lighting will be reviewed and speculated the light recently placed was not done correctly. The new lights will have LED cutoff fixtures and will direct the light down and not out. Mr. Sipp stated under oath that on the continuous eastern side of the property there will be no light passing thru into Mr. Winters’ property. Zoning Inspector Crivelli advised abutting property owners can file a complaint with zoning regarding commercial lighting issues. Mr. Koch explained the concept of a photometric drawing to Mr. Winters.

Mr. Winters inquired about a storm sewer. Zoning Inspector Crivelli once again explained the process for storm water management.

Mr. Satterlee asked Mr. Sipp if he knew where the lights will be located along the lot that abuts the residential properties. Mr. Sipp stated he discussed the project with Phoenix Engineering and there may be two 25’ poles in the islands and will spread the light out evenly. Mostly likely they will have two heads and the distribution will be to the east and west of the parking areas. There will be some reflection off the cars but that cannot be controlled.

Mr. Winters inquired about rezoning his property commercial. Zoning Inspector Crivelli reviewed the procedures for rezoning.

Mr. Hannon stated he has had several opportunities to go elsewhere but wants to stay here. He wants to better the property. He appreciates the neighbor’s concerns especially about natural beauty. He will add something that is enjoyable for everyone. As far as sound concerns he stated there will be no live music. The court yard area will have some trees with low lighting and background music.

Mr. Koch advised he has nothing to feel bad about as neighbors often want to control commercial property as well as their own property. He referenced the property being zoned as a Business B-2 District and is confident proper notice was given during the zone change hearings and he applauded Mr. Hannon's spirit and suggested this new investment will be great for Austintown. He also suggested the residential properties on Pembroke hold value with Business B-2 zoning and the right commercial developer. He stated the Board wants to mitigate any potential future problems for the residential properties and to continue to allow for quiet enjoyment with the least bit of intrusion with Mr. Hannon's cooperation. He suggested Mr. Hannon should not become discouraged by some of the comments presented tonight.

The site plans referenced by the applicants were marked as Exhibit "A" and "B".

Zoning Inspector Crivelli advised he wants the property buffered as it is cleared and suggested this is something worked out with the developer as the process unfolds. Mr. Sipp stated whatever is developed will be buffered. There was discussion of the placement of the retention pond. Mr. Sipp stated Zoning Inspector Crivelli requested the entire project be presented to the township rather than Mr. Hannon breaking this into separate phases to be developed over the next couple years.

Mr. Mahoney inquired about the number of employees. Mr. Hannon speculated that during the Summer he could have as many as 75 employees.

Mr. Koch observed there are commercial opportunities for the Pembroke property owners as Mr. Hannon's property has set the B-2 District depth. Mr. Satterlee commented on the other new restaurant investments on South Raccoon Road.

No one else in attendance to speak for the request.

No one else in attendance to speak against the request.

The Board adjourned into executive session at 8:51 P.M.

The Board reconvened from executive session at 9:02 P.M.

**2018-02-A-Barry Dvngle's Restaurant:** Motion by Mr. Satterlee to approve the variance request including all testimony presented by the applicants.

Seconded by Mr. Mahoney.

Roll call vote: Mr. Glaros - Yes; Mr. Mahoney – Yes; Mr. Beaudis – Yes; Mr. Satterlee – Yes; and Yes; Mr. Koch – Yes.

Zoning Inspector Crivelli advised Mr. Sipp that zoning and building permits will be required prior to the start of construction. He also advised the opponents of the request that they have 30 days to file an appeal of the decision in Mahoning County Common

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Pleas Court. He also stated that if an appeal is filed the zoning office must be served notice.

Motion by Mr. Koch to adjourn the public hearing.

Seconded by Mr. Satterlee.

Roll call vote: Mr. Glaros - Yes; Mr. Mahoney – Yes; Mr. Beaudis – Yes; Mr. Satterlee – Yes; and Yes; Mr. Koch – Yes.

There being nothing further to come before the Board, the hearing was adjourned at 9:05 P.M.

AUSTINTOWN BOARD OF ZONING APPEALS

Darren L. Crivelli, Zoning Inspector, Austintown Township

APPROVED: \_\_\_\_\_  
Joe Koch – Chairman

DATE: \_\_\_\_\_