

A G E N D A

MASSILLON PLANNING COMMISSION

Meeting, April 8, 1981

City Council Chambers - 7:30 P.M.

1. Approval of Minutes for the March 11, 1981 meeting.
2. Old Business

Request for Special Land Use

To permit the operation of an auto engine and body repair shop at 246½ Lincoln Way, West, subject to Paragraph 1, Section 170.112 "Principal Uses Permitted Subject to Special Conditions" in an I-1 Light Industrial District. The City Law Director has issued a legal opinion that the property in question, although presently zoned B-2, Central Business District, is a legal non-conforming use as light industrial. Requested by Virgil L. Musser for Joe T. Ress. The request was tabled at the March 11, 1981 Planning Commission Meeting to enable city inspectors to inspect the building on this site for compliance with all applicable codes and regulations.

3. New Business

Alley Vacation

To vacate an 11.70 foot alley lying between Ohio Avenue, N.E. and State Avenue, N.E., and running in an east/west direction between Custer Place, N.E. and an unnamed 10 foot alley; specifically, to vacate that portion from the west right-of-way line of Custer Place, N.E., westerly 100 feet to the east right-of-way line of the unnamed 10 foot alley. Requested by Mr. and Mrs. Joseph L. McCabe, Jr.

Request for Group Home License Renewal

Siffrin First Street Home, located at 1630 First Street, N.E., has applied to the State of Ohio for renewal of its license to operate a family home residential care facility for mentally retarded or otherwise developmentally disabled persons. The State has given the Planning Commission the opportunity to comment on the request by the Siffrin First Street Home for renewal of its group home license.

4. Progress Reports

Thomas V. Ferrero Director of Law

Municipal Government Center
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Massillon, Ohio 44646
(216) 837-4278

Prosecutors:
MICHAEL F. CUSH, Chief
MICHAEL J. STEFANKO
EDWARD J. ELUM

February 23, 1981

Mr. Edgar L. Lash, Jr.
Building Superintendent
City Hall
Massillon, Ohio 44646

Legal Opinion No. 9 - 1981
Non Conforming Usage Capital Plastics

Dear Mr. Lash;

I am in receipt of your letter dated February 17, 1981 regarding certain property located at 246½ Lincoln Way West in Massillon.

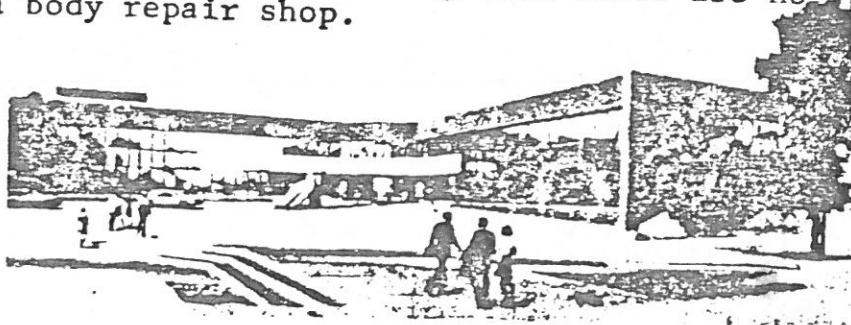
This property is presently zoned B-2 Central Business District. However, this property has been used for I-1 Light Industrial over the years. Apparently the new owner now wants to utilize this property for a vehicular body shop. A body repair shop is premitted under I-1 Light Industrial, subject to special conditions. I direct your attention to page 42 of our Zoning Code, which states as follows:

Section 170.112 Principal Uses Permitted Subject to Special Conditions:

The following uses shall be permitted, subject to the conditions hereinafter imposed for each use and subject further to the review and approval of the Planning Commission. (underlining added)

1. Auto engine and body repair, and undercoating shops when completely enclosed.....

Since a body repair use is classified under I-1 Light Industrial and I-1 Light Industrial is the classification under which the property in question has been used, it would be my opinion that such a use shall now be permitted subject to any special conditions imposed by our Zoning Code. It is my understanding that there are no special conditions imposed for a body repair shop.



You have asked whether the Planning Commission must have a request submitted to them by the parties. I don't really feel that this is necessary. The Code states that the following uses "shall" be permitted. It is not a discretionary permission to be granted by the Commission. However, the Commission is to "review and approve" said use. They are not to "permit or deny" said use. When the Planning Commission must approve a certain use they "may impose such conditions or limitations in granting approval as may, in its judgment, be necessary to fulfill the spirit and purpose of the Ordinance". (See p. 86 of Zoning Code under Section 170.208).

The Planning Commission will have to review and approve the use. I suggest that you check with its clerk to see how the members want to handle the approval in case they feel they must impose any conditions or restrictions.

In your letter you also alluded to Section 170.152 (5)(C) of the Zoning Code, which pertains to approval from the Board of Appeals in situations such as these. It is my understanding that in cases such as these that the policy of the Board of Appeals has been such that a use classified the same as the existing use is equally appropriate. However, you may want to check with them to see if they want to make a specific finding. I see no reason why they should want to make a specific finding because of the area in question and the uses that exist within said general area.

I hope I have answered the questions you presented to me. However, if you feel that there is need for any clarification, please advise.

Very truly yours,

TVF:skc

THOMAS V. FERRERO
CITY LAW DIRECTOR

The Massillon Planning Commission met in regular session on April 8, 1981, at 7:30 P.M., in Massillon City Council Chambers.

Members Present

Fred Wilson, Chairman
Rudy Turkal, Vice-Chairman
Mayor Delbert A. Dermer
Rev. David Dodson
Henry Joiner

Department Staff

Robert F. Wagoner, Planning Director
Aane Aaby, Assistant Planning Director
Ed Lash, Building Inspector
Jack Darnell, Fire Prevention Bureau

Chairman Fred Wilson called the meeting to order at 7:50 P.M. The first order of business was approval of the Minutes for the Planning Commission Meeting of March 11, 1981. Rev. Dodson made a motion to approve the Minutes as mailed. Seconded by Rudy Turkal, the motion carried.

Under Old Business, the Commission considered a request to permit the operation of an auto engine and body repair shop at 246½ Lincoln Way West, subject to the provisions of Paragraph 1, Section 170.112 "Principal Uses Permitted Subject to Special Conditions" in an I-1 Light Industrial District. The City Law Director has issued a legal opinion that the property in question, although presently zoned B-2 Central Business District, is a legal non-conforming light industrial use. The request was submitted by Virgil L. Musser, Attorney for Joe T. Rees. This matter was tabled at the March 11, 1981 Planning Commission Meeting so that the structure on this site could be inspected by the City to determine compliance with all applicable codes and regulations.

To initiate discussion on this request, Mayor Dermer made a motion that this item be lifted from the table. Seconded by Rev. Dodson, the motion carried. Ed Lash, City Building Inspector, reported that he, along with Captain Jack Darnell, Chief of the Fire Prevention Bureau, as well as the City Plumbing and Heating Inspectors, inspected this building for code compliance. Mr. Lash stated that his concern was with the safety of the upper floors and the protection of adjoining buildings from any potential hazards caused by the proposed use. He reported that the structure is of masonry construction, with a wood frame and brick veneer. As a result of his inspection, he recommended that the ceiling be upgraded to a two hour fire rating to protect the upper floors and that a second means of egress be provided. No outside storage or outdoor vehicle repair should be permitted to protect the downtown area, including Towne Plaza.

Captain Darnell reported that the wiring and exhaust systems should be brought up to code standards and that all storage areas have sprinkling systems installed. While the Building Department is concerned about the outdoor storage of materials, the Fire Department is worried about the fire hazards resulting from inside storage. In addition, he reported that the City has received complaints concerning this business at its previous location, especially regarding outside storage.

Fred Wilson stated that even though the Law Director has ruled the property to be a legal non-conforming light industrial use, the Zoning Code requirement that a body shop obtain the conditional approval from the Planning Commission could mean that the proposed use would increase the non-conformity of this property. Ed Lash recommended that the matter

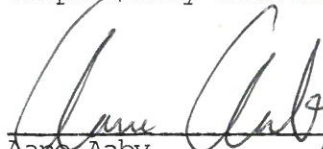
be referred to the Zoning Board of Appeals for a ruling on the non-conformity question. He further stated that he requested both the property owner and the business operator to attend the Commission meeting to answer any questions. At present, the operator is only working on his personal vehicles and is not yet open for business. Fred Wilson commented that the Law Director's opinion, in effect, creates an island of I-1 in a B-2 District. Robert Wagoner felt that the business would be more non-conforming because of the substantial alterations required to meet building and fire codes. Bob Hill, an area businessman, stated his concern that the proposed use would not be good for the area. Mayor Demmer made a motion that the Planning Commission request the Zoning Board of Appeals to issue a ruling whether or not the proposed use of this property represents an increase in its present non-conforming status and that in addition, the Commission take no further on this request until it receives such a determination. Seconded by Henry Joiner, the motion carried.

Under New Business, the next item on the Agende was a request to vacate an 11.70 foot alley lying between Ohio Avenue NE, and State Avenue, NE, and running in an east/west direction between Custer Place and an unnamed 10 foot alley. The request, as submitted by Mr. and Mrs. Joseph L. McCabe, Jr., would vacate that protion from the west right-of-way line of Custer Place, westerly 100 feet to the east right-of-way line of the unnamed 10 foot alley. Robert Wagoner reported that this alley is presently unopened and grass covered. The alley is not being used and there are no utilities located in the right-of-way. The petition accompanying the request contains the signatures of all four of the abutting property owners. Rudy Turkal made a motion to recommend approval of this alley vacation. Seconded by Rev. Dodson, the motion carried.

Next on the Agenda was a notice from the State of Ohio that the Siffrin Fi st Street Home, located at 1630 First Street, NE, has applied for renewal of its license to operate a family home residential care facility for mentally retarded or otherwise developmentally disabled persons. Aane Aaby reported that this notice has been referred to the Health and Welfare Committee of City Council. Discussion followed regarding the recent state court decision requiring the proper zoning for group homes.

There being business to come before the Planning Commission, the meeting was adjourned at 8:40 P.M.

Respectfully submitted,


Aane Aaby
Assistant Planning Director

Approved,

Fred Wilson, Chairman
City Planning Commission