

Amherst Zoning Board of Appeals
206 South Main Street
Amherst, Ohio 44001

November 30, 2022

7:00pm

Present:

Bob Valenti
Don Anderson
Al Berezney
Terry Tomaszewski
John Jeffreys

Excused:

Other City Officials:
Atty. Patrick Ward
David Macartney
Tammy Paterson

Mr. Tomaszewski opened the meeting at 7:00pm.

Mr. Tomaszewski swears in everyone that will be speaking before the board.

Mr. Tomaszewski explained to the applicants the procedure and how they will be notified of the decision for their variance request.

1. Ms. Ashley Newnam, OLIO Development Group representing Raising Cain's. Ms. Newnam stated they are looking for variances based on the surrounding commercial properties and the layout of their property. Ms. Newnam stated they are looking to build a 3,331 square foot Raising Cain's restaurant to be located at 938 North Leavitt. Ms. Newnam stated they are very excited to come into the City of Amherst and be a part of the community. Ms. Newnam stated this new store will have dual lanes since most of their business is drive through. Ms. Newnam stated with their site they are requesting the following variances:
 - A. Chapter 1139.05: A 32.2' front setback reduction. Ms. Newnam stated this variance would allow them to line up with the Taco Bell and keep the aesthetics matching. Ms. Newnam stated this would also allow them to optimize the drive through stacking. Mr. Macartney stated Taco Bell was also given a front setback reduction. Attorney Ward had no comments.
 - B. Chapter 1139.02(a): Outdoor seating. Ms. Newnam stated with the C-3 ordinance, outside seating is prohibited. Ms. Newnam stated they would have 49 exterior

seating on a patio. Ms. Newnam stated they believe this outside seating area adds a great addition to their property. Attorney Ward had no comments.

- C. Chapter 1139.06: Reduce the parking spaces from the 54 required to 53 spaces. Ms. Newnam stated they will have 12 employees per shift, calculate the required spaces per interior seating they are required to have 54 spaces. Attorney Ward had no comments.
- D. Chapter 1139.06: Reduce the parking stall to 9x20, 180 sq. ft. Me. Grant Weircih, PE from NEFF & Associated stated they reviewed other local municipalities and the 9x20 is standard for parking spaces. Mr. Jeffreys questioned the size of the parking lots and the worry that larger cars will have a difficult time. Mr. Jeffreys stated on the site plan it shows some parking spots at 9x18. Mr. Weircih stated that was incorrect and they have revised the site plan to show all parking spaces to be 9x20. Attorney Ward had no comments.

Ms. Newnam also acknowledge a variance for side yard building setback and a side yard parking setback. Mr. Macartney stated these two items were not on the variance request, they are not needed so he did not put them on the request.

Ms. Newnam reviewed the hardship statement with the Zoning Board members:

1. Ms. Newnam stated the property will not yield a reasonable return without the required variances due to the site constraints of the irregular lot shape and restaurant operations.
2. Ms. Newnam stated this request is not substantial since they must conform to pre-existing non-conformities.
3. Ms. Newnam stated the variance would not adversely affect delivery of government services.
4. Ms. Newnam stated the site's irregular shape is likely to warrant variance requests for any redevelopment of this property.
5. Ms. Newnam stated the predicament cannot be obviated through another method other than variance approval.
6. Ms. Newnam stated the spirit and intent of the zoning requirements are observed, and substantial just be done, as no nuisance will be introduced by grating the variances. Ms. Neman stated they would not have any live music on the patio, but all music is piped

from the inside and would stay at an approved level not to disturb other commercial properties and be a nuisance.

After deliberations, the Board made the following findings:

VARIANCE REQUEST NO. 1 - ACO § 1139.05

OLIO Development Group ("**OLIO**") requested a variance to allow a front setback of 67.8", 32.2" less than required by Section 1139.05 of the Amherst Codified Ordinances ("**ACO**"). After deliberations, the Board made the following findings regarding OLIO's first request for a variance:

- The requested variance is not substantial given that the Board previously granted a similar variance to a neighboring property owner. While this determination alone is not sufficient to justify the variance, it is important, especially in the context of other factors.
- The essential character of the neighborhood would not be substantially altered, and the adjoining properties would not suffer substantial detriment, as a result of the requested variance.
- The requested variance would not adversely affect the delivery of governmental services.
- The spirit and intent behind the zoning requirements would be observed and substantial justice would be done by granting the requested variance.
- Granting the requested variance would promote fairness and consistency.

It is the decision of the Board to reverse the decision of the Building Official and grant OLIO's request for a variance to allow a front setback of 67.8", 32.2" less than required by ACO § 1139.05.

VARIANCE REQUEST NO. 2 - ACO § 1139.02(a)(3)

OLIO also requested a variance to allow outdoor patio dining, which is prohibited by ACO § 1139.02(a)(3). After deliberations, the Board made the following findings regarding OLIO's second request for a variance:

- The requested variance is not substantial given that there are multiple other restaurants in the city which offer outdoor patio dining.
- The essential character of the neighborhood would not be substantially altered, and the adjoining properties would not suffer substantial detriment, as a result of the requested variance. Per the applicant, there will not be any outdoor live musical performances on-property. While the proposed outdoor patio dining area will include "piped-in" music, such music will not pose a nuisance to abutting property owners.
- The requested variance would not adversely affect the delivery of governmental services.
- The spirit and intent behind the zoning requirements would be observed and substantial justice would be done by granting the requested variance.

It is the decision of the Board to reverse the decision of the Building Official and grant OLIO's request for a variance to allow outdoor patio dining.

VARIANCE REQUEST NO. 3 - ACO § 1139.06(a)

OLIO also requested a variance to allow fifty-three (53) off-street parking spaces, one space less than the fifty-four (54) spaces required by ACO § 1139.06(a). After deliberations, the Board made the following findings regarding OLIO's third request for a variance:

- The requested variance involves only one parking space and thus is not substantial.
- The essential character of the neighborhood would not be substantially altered, and the adjoining properties would not suffer substantial detriment, as a result of the requested variance.
- The requested variance would not adversely affect the delivery of governmental services.
- The spirit and intent behind the zoning requirements would be observed and substantial justice would be done by granting the requested variance.
- The requested variance will allow more room for drive-through traffic and "stacking" of vehicles.

It is the decision of the Board to reverse the decision of the Building Official and grant OLIO's request for a variance to allow fifty-three off-street parking spaces, one space less than the fifty-four spaces required by ACO § 1139.06(a).

VARIANCE REQUEST NO. 4 - ACO § 1139.06(a)

OLIO also requested a variance to allow 9 ft. by 20 ft. (180 sq. ft.) parking stalls, 20 square feet less than the 200 square feet required by ACO § 1139.06(a). After deliberations, the Board made the following findings regarding OLIO's fourth request for a variance:

- The requested variance is not substantial, especially since the proposed size of the parking spaces is consistent with industry standards and parking spaces in other communities.
- The essential character of the neighborhood would not be substantially altered, and the adjoining properties would not suffer substantial detriment, as a result of the requested variance.
- The requested variance would not adversely affect the delivery of governmental services.
- The spirit and intent behind the zoning requirements would be observed and substantial justice would be done by granting the requested variance.

It is the decision of the Board to reverse the decision of the Building Official and grant OLIO's request for a variance to allow 9 ft. by 20 ft. (180 sq. ft.) parking stalls, 20 square feet less than the 200 square feet required by ACO § 1139.06(a).

2. Ms. Tiara Marcus representing Tyson Foods. Tyson foods is requesting a variance to install an 8 ft high fence. Chapter 1151.03 requires fences to be no taller than 6 ft. Mr. Macartney stated he shows Ms. Marcus on the Zoom meeting but not sure she can hear or use the video. Mr. Macartney stated Tyson foods came before the Planning Commission for a parking lot expansion, which was approved. Mr. Macartney stated the fence would be installed around the east and north parking area and would like to install barbed wiring at the top of the fence for safety reasons. Mr. Macartney stated this new parking lot abuts up to RT. 2 and there are three shifts working at Tyson. Mr. Macartney stated there is a security shed on the property, but they would like to increase security for the employees and the parking lot itself.

After deliberations, the Board made the following findings:

- The requested variance is not substantial. While this determination alone is not sufficient to justify the variance, it is important, especially in the context of other factors.
- The essential character of the neighborhood would not be substantially altered, and the adjoining properties would not suffer substantial detriment, as a result of the requested variance.
- *The requested variance would not adversely affect the delivery of governmental services.*
- The spirit and intent behind the zoning requirements would be observed and substantial justice would be done by granting the requested variance.
- The proposed addition to the fence would facilitate improved security in the parking lot for employees of Tyson Foods. Employee safety is important, especially here where there have been various safety issues in the surrounding area.

It is the decision of the Board to reverse the decision of the Building Official and approve Tyson Foods' request for a variance to increase the height of existing fencing to eight (8) feet, two feet taller than permitted by Sections 1151.01 and 1151.03 of the Amherst Codified Ordinances.

3. Mr. Anderson motions to move into deliberative session, seconded by Mr. Jeffreys.

Approved 5-0

4. Mr. Valenti motions to move back into regular session, seconded by Mr. Jeffreys. Approved

5-0

5. Approval of minutes from September 28, 2022: Mr. Anderson motions to approve the minutes, seconded by Mr. Valenti. Approved 5-0

7. Next scheduled meeting December 28, 2022. Approved 5-0

8. Adjourn: Motion made to adjourn at 7:53pm by Mr. Jeffreys, seconded by Mr. Valenti.

Approved 5-0

Terry Tomaszewski 12/12/22
Terry Tomaszewski, Chairman Date

Tammy Paterson 12/12/2022
Tammy Paterson, Secretary Date