

CONCORD TOWNSHIP BOARD OF ZONING APPEALS  
LAKE COUNTY, OHIO  
REGULAR MEETING

Held via YouTube Live Streaming

Concord Town Hall  
7229 Ravenna Road  
Concord, Ohio 44077

November 10, 2021  
7:00 p.m.

TRANSCRIPT OF PROCEEDINGS

Board of Zoning Appeals members present:

Francis Sweeney, Vice Chair  
Chris Jarrell, Member  
Brandon Dynes, Member  
Todd Golling, Member  
James Rowe, Alternate Member

Also Present:

Heather Freeman, Planning & Zoning Director/Zoning  
Inspector  
Marty Pitkin, Assistant Zoning Inspector  
Michael Lucas, Esq., Legal Counsel

**Melton Reporting**  
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7:01 p.m.

1  
2 VICE CHAIR SWEENEY: Good evening. This is the  
3 Board of Zoning Appeals meeting, dated November 10th of 2021.  
4 We are now in session. I would like to introduce the Board.  
5 I am substitute chair for this evening. My name is Francis  
6 Sweeney and to my far right is Todd Golling, to my immediate  
7 right is Chris Jarrell, to my immediate left is Brandon Dynes,  
8 and to my far left is Jim Lowe -- Jim Rowe. Excuse me.

9 Under advice of our legal counsel, we ask that  
10 anyone speaking tonight must be sworn in. So if you plan on  
11 speaking, please stand and raise your right hand.

12 (Whereupon, the speakers were sworn en masse.)

13 VICE CHAIR SWEENEY: All right. Please be seated.  
14 All right. When presenting your case or commenting, please  
15 come up to the microphone stand, state your name and address  
16 for the record.

17 Heather, were all legal notices published in a  
18 timely manner?

19 MS. FREEMAN: Yes, they were.

20 VICE CHAIR SWEENEY: Thanks.

21 MR. ROWE: Mr. Chairman.

22 VICE CHAIR SWEENEY: Yes?

23 MR. ROWE: At that time, also confirm that you were  
24 sworn in, confirm.

25 VICE CHAIR SWEENEY: Yes. When you come up, confirm  
26 that you were sworn in, state your name and address for the  
27 record.

28 MR. ROWE: For the record, just for the record.

29 VICE CHAIR SWEENEY: Thank you.

30 MR. ROWE: Certainly.

1           VICE CHAIR SWEENEY: Okay. Tonight we have three  
2 matters. We have an Amended Conditional Use Permit  
3 Application Number 52, Powerhouse Retail Services is  
4 requesting an amended conditional use permit in accordance  
5 with Section 13.17 for the drive-thru facilities for  
6 Starbucks, located at 7639 Crile Road.

7           Number 2 is a Conditional Use Permit Application  
8 2021-20, Sheetz, Inc., is requesting five conditional use  
9 permits for the property located on Capital Parkway, being  
10 current permanent parcel number 08-A-020-0-00-006-0 and  
11 08-A-020-0-00-027-0 as follows:

12           (a) to operate a gas pump in accordance with Section  
13 13.25;

14           (b) to operate a restaurant, counter service in  
15 accordance with Section 13.20;

16           (c) to operate a car wash in accordance with Section  
17 13.26;

18           (d) for outdoor storage and/or display in  
19 association with a permitted or conditional use in accordance  
20 with Section 13.32; and

21           (e) for outside dining in accordance with Section  
22 13.33.

23           And 3, a variance Application 2021-94, Sheetz, Inc.,  
24 is requesting variances for the property located on Capital  
25 Parkway, being current permanent parcel numbers -- I believe  
26 I have already stated those -- and for the following:

27           (a) variance from Section 22.10(H)(4) to allow a row  
28 of parking in the front yard of a corner lot, which is not  
29 permitted;

30           (b) variance from Section 22.10(H)(7)(a) to allow 13

1 parking spaces side by side in lieu of the maximum 10  
2 permitted without a landscape island to break up the parking;  
3 and

4 (c) variance from Section 38.04(A) to eliminate the  
5 required minimum of 5 foot planting area between the northwest  
6 and south building walls and the paved area.

7 We will start with Number 1. If you would like to  
8 approach and present your, your application for Amended  
9 Conditional Use Permit Number 52. Starbucks, anybody here for  
10 Starbucks?

11 (No response.)

12 Never had that before.

13 MS. FREEMAN: Me neither.

14 MR. ROWE: First time.

15 VICE CHAIR SWEENEY: Anybody here for Starbucks?

16 MR. ROWE: You buying? I thought I would ask.

17 VICE CHAIR SWEENEY: Is that automatically tabled,  
18 counsel?

19 MR. LUCAS: Well, unless Mr. Rinker wants to take  
20 this one, too.

21 MR. RINKER: Excuse me?

22 VICE CHAIR SWEENEY: Do you want to do a pro bono?

23 MR. LUCAS: No. I think, I've always, if somebody  
24 doesn't show up and they, obviously, they should show up, I  
25 generally ask that it be tabled to the next meeting to give  
26 them, for whatever reason, just as a matter of due process, to  
27 let them -- because something might have happened. You don't  
28 know.

29 VICE CHAIR SWEENEY: So do I entertain a motion  
30 then?

1 MR. LUCAS: A motion to put it on the table to the  
2 next meeting.

3 MR. ROWE: So moved.

4 VICE CHAIR SWEENEY: So moved. Second?

5 MR. DYNES: Second.

6 VICE CHAIR SWEENEY: Okay. The application is  
7 tabled.

8 MR. ROWE: Are we all in favor?

9 VICE CHAIR SWEENEY: Yeah, all right.

10 MR. RINKER: You've got to vote.

11 VICE CHAIR SWEENEY: Oh, vote. All in favor say  
12 aye. Nay?

13 (Five aye votes, no nay votes.)

14 VICE CHAIR SWEENEY: The ayes have it and the motion  
15 passes. Said matter, Application Number 52, has been tabled  
16 until further scheduling.

17 Moving on to Number 2, we have Conditional Use  
18 Permit Application 2021-20.

19 MR. DYNES: Mr. Chairman, just to be clear, I  
20 notified Ms. Freeman and other members of the panel that I am  
21 going to recuse myself from this matter as a potential  
22 conflict may arise. I am sure Mr. Rinker and Mr. Lucas can  
23 advise, counsel accordingly.

24 VICE CHAIR SWEENEY: Okay. Counsel, as you probably  
25 already know, a three-vote majority is required to pass any  
26 application variance or appeal. In this case, that will still  
27 remain the same. A three-vote majority is needed to pass.  
28 However, there are only four members voting tonight. I  
29 believe that you do have the option to continue the hearing --

30 MR. RINKER: Correct.

1           VICE CHAIR SWEENEY:  -- until there is a five-panel  
2 majority.

3           MR. RINKER:  I appreciate that.  If I may, my name  
4 is Bruce Rinker.  I'm with the law firm of Mansour, Gavin.  
5 That's 1001 Lakeside Avenue East, Suite 1400, in Cleveland.  I  
6 and my firm are land use counsel for Sheetz.

7           If I may, give me a couple minutes to talk with the  
8 folks here on that very point.

9           VICE CHAIR SWEENEY:  Absolutely.

10          MR. LUCAS:  Mr. Chairman, if I might make a comment  
11 to Mr. Rinker, number one, this recusal occurred within the  
12 last hour.

13          MR. RINKER:  I figured it was last minute.

14          MR. LUCAS:  Yeah, it definitely was.  I agree with  
15 Mr. Dynes recusing himself and, in fact, counseled him to do  
16 so.  There is a problem right now and I want to be open about  
17 it.  We only have one alternate for the Board of Zoning  
18 Appeals.  And with the two recusals, the alternate comes on,  
19 obviously, as you are well aware from your years of  
20 experience, but you only have four.  So at this point, unless  
21 the township -- which both the Zoning Inspector and I, in  
22 talking about this as I came in, we need another alternate to  
23 have a five -- but unless they act upon that and appoint an  
24 alternate, there is only going to be four, as a practical  
25 matter, that's going to be sitting.

26          MR. RINKER:  The next meeting is when?  I thought  
27 there were two alternates.  That's why --

28          MR. LUCAS:  I have to tell you, in all honesty, I  
29 did, too.  As a matter of fact, I was corrected by the Zoning  
30 Inspector.

1 MR. RINKER: So all kinds of revelations tonight.

2 MR. LUCAS: Yeah, yeah.

3 MS. FREEMAN: The next meeting is the --

4 MR. RINKER: 8th?

5 MS. FREEMAN: December 8th.

6 We had a full BZA member move out of Concord  
7 Township a couple months ago and, at that point, they, the  
8 Trustees, then filled his position with one of our former  
9 alternates who is now a regular member. So, currently, we  
10 just have the one alternate.

11 MR. LUCAS: Just, I believe I am speaking for the  
12 Zoning Inspector as well as myself, having just found out  
13 about this, tomorrow, I will represent to you that I am going  
14 to contact the Trustees to ask that immediately, hopefully at  
15 the next meeting, they can be in a position of appointing a  
16 second alternate because this is an important issue for you  
17 and your client and, in my opinion, and, obviously, you and  
18 I --

19 MR. RINKER: We agree, yes.

20 MR. LUCAS: Yeah. You and I have known each other a  
21 long time. You know, in the ideal Bruce Rinker/Mike Lucas  
22 world of land use, you want a full board. And I can't, I  
23 can't guarantee that next December, next month, you would have  
24 that but, certainly, I would tell you -- and, again, I am  
25 speaking for the Zoning Inspector as well --

26 MR. RINKER: No, I appreciate that. That's good  
27 insight. So if you give us just a few minutes, let me, with  
28 that understanding, let me see what --

29 MR. LUCAS: Okay, very good. I just wanted to let  
30 you know where we are.

1 MR. RINKER: No, that's -- We get it. Thank you  
2 very much.

3 MR. LUCAS: Yeah.

4 THE REPORTER: Are we off the record?

5 MR. LUCAS: Off the record.

6 (Whereupon, discussion was held off the record.)

7 VICE CHAIR SWEENEY: Okay. We are back on the  
8 record.

9 Mr. Rinker.

10 MR. RINKER: Thank you. In consideration of these  
11 last-minute circumstances -- and we appreciate, first,  
12 everyone, I think, is just kind of surprised at how we're  
13 going to have to deal with it. We would appreciate having the  
14 continuance. Ideally, you're able to get a fifth person. I  
15 think our understanding is that, regardless, we will plan to  
16 be back here. We just appreciate the opportunity to have a  
17 full, full contingent, if possible.

18 MR. LUCAS: Mr. Rinker, I will keep you apprised.

19 MR. RINKER: Great.

20 MR. LUCAS: In terms of the progress on that, too.  
21 I know it's important.

22 MR. RINKER: So with that, we'd ask for the  
23 continuance then. Thank you.

24 MR. LUCAS: Have a good time at Starbucks.

25 MR. GOLLING: They're closed right now.

26 MR. RINKER: I've got a young father here. He is  
27 looking for more caffeine.

28 VICE CHAIR SWEENEY: So we don't, we don't need a  
29 motion for that, do you?

30 MR. LUCAS: Well, you want to, at the request of



1 the -- I am sorry. You want to make a motion, at the request  
2 of the applicant, to continue this to the next regularly  
3 scheduled BZA meeting in light of the absence of a five-member  
4 board.

5 VICE CHAIR SWEENEY: Okay. Do I have a motion?

6 MR. ROWE: So moved.

7 VICE CHAIR SWEENEY: Second?

8 MS. JARRELL: Second.

9 VICE CHAIR SWEENEY: All right. All in favor?

10 Against?

11 (Four aye votes, no nay votes, one abstention.)

12 VICE CHAIR SWEENEY: The ayes have it.

13 MR. ROWE: The ayes have it.

14 MR. LUCAS: Mr. Chairman.

15 VICE CHAIR SWEENEY: Conditional Use Permit  
16 Application 2021-20 and Variance Application 2021-94 have been  
17 continued to the next hearing or next available hearing to be  
18 scheduled.

19 MR. ROWE: December 8th.

20 VICE CHAIR SWEENEY: Upon request of counsel for the  
21 applicant. All right.

22 MR. LUCAS: Mr. Chairman.

23 VICE CHAIR SWEENEY: Yes.

24 MR. LUCAS: I wonder, just because I know there is  
25 residents here, if I could just explain, putting aside the  
26 legalese, what happened here, all right, with your permission,  
27 Mr. Chairman.

28 VICE CHAIR SWEENEY: Absolutely.

29 MR. LUCAS: So the Board of Zoning Appeals has five  
30 members. And any application or appeal that comes before the

1 Board of Zoning Appeals requires a majority vote of at least  
2 three of the members. Now, because of some amazing  
3 circumstances that I have never seen before, two of the  
4 members have recused themselves, leaving three. We have one  
5 alternate. So that alternate comes on, so now there is four.  
6 But we only have one alternate. So as a result of which, the  
7 applicant would need three out of four votes. We've always  
8 represented to the applicants when they come on, in the  
9 mathematical odds, it's easier to have three out of five votes  
10 than three out of four votes, which is obvious.

11 In this case, we are missing anybody to plug in as  
12 the fifth member of the Board. I happen to believe that, in  
13 that situation, we need a second alternate. And in point of  
14 fact, in all honesty, I thought we had two alternates but I  
15 was wrong and I was corrected by the Zoning Administrator.

16 So we are, the Zoning Inspector/Administrator,  
17 Heather Freeman, and I are going to request that the  
18 Trustees -- and it's their decision because they make the  
19 appointment -- but request that they appoint a second  
20 alternate, not just for this situation but it happens. So we  
21 are going to strongly recommend it with the idea being that it  
22 can be done through the Trustees at a meeting prior to the  
23 next Board of Zoning Appeals meeting, at which point in time  
24 the ideal circumstance, I think, for everybody concerned would  
25 be that there be five full members that can sit and adjudge  
26 this.

27 So I just wanted to explain that kind of in a more  
28 practical matter than going through a lot of legalese on it.  
29 Okay? So there will be, next meeting in December, everybody  
30 can come back because you're not being deprived of anything.

1 You'll have the right to speak and everything else on it. So  
2 okay?

3 Thank you, Mr. Chairman. I appreciate the  
4 opportunity.

5 VICE CHAIR SWEENEY: Thank you for your explanation.

6 All right. So I guess, moving on now, final order  
7 of business is to approve the minutes for October 13th and do  
8 I -- All in favor?

9 MR. DYNES: Mr. Chairman, I'd move to approve the  
10 minutes. Once again, Ms. Melton did a fantastic job. Thank  
11 you for all your efforts.

12 VICE CHAIR SWEENEY: Thank you, Mr. Dynes. All  
13 those opposed? The ayes have it. The minutes for October 2nd  
14 (sic) are hereby approved as written.

15 MR. DYNES: We need a second.

16 VICE CHAIR SWEENEY: Second?

17 MR. ROWE: Second.

18 VICE CHAIR SWEENEY: Okay. We do have a second on  
19 that. Now all in favor say aye. Opposed?

20 (Five aye votes, no nay votes.)

21 VICE CHAIR SWEENEY: The ayes have it. Minutes are  
22 approved for October 13th. Anything else?

23 MR. ROWE: Wouldn't you like to be a ventriloquist  
24 and go "aye" from the audience?

25 VICE CHAIR SWEENEY: All right. The meeting for  
26 November 10, 2021, is now closed. Thank you for coming.

27 (Whereupon, the meeting was adjourned at 7:20 p.m.)  
28  
29  
30

