



Commissioner Paula Brooks • Commissioner Marilyn Brown • Commissioner John O'Grady
President

Economic Development & Planning Department
James Schimmer, Director

Franklin County Board of Zoning Appeals

Franklin County Courthouse
Commissioners Hearing Room – 26th Floor
Columbus, OH 43215

Monday, December 17, 2012
1:30 p.m.

1. Call roll for board members
2. Introduction of staff
3. Swearing in of witnesses
4. Approval of minutes from the October 15, 2012 meeting
5. Old Business

A. AP-3781 – Scott Ulrich – *Requesting to table until February 19, 2013*

| | |
|-------------------------|---|
| Applicant/Owner: | Hotspur Inc. |
| Agent: | David Hodge, Esq. |
| Township: | Clinton Township |
| Site: | 3708 Cleveland Ave. (PID #130-006705) |
| Request: | The applicant is appealing the determination of the Franklin County Zoning Code Enforcement Officer that the property located at 3708-3710 Cleveland Avenue is in violation of Section 328.021 and/or Section 300.021 of the Franklin County Zoning Resolution. |

6. New Business

B. VA-3783 – Scott Ulrich

| | |
|-------------------------|--|
| Applicant/Owner: | Hotspur Inc. |
| Agent: | David Hodge, Esq. |
| Township: | Clinton Township |
| Site: | 3708 Cleveland Ave. (PID #130-006705) |
| Request: | Requesting a Variance from Section 328.021 to allow an adult entertainment establishment to continue to operate within 500 feet of a residential zone. |

7. Adjournment of Meeting to January 22, 2013



Commissioner Paula Brooks • **Commissioner** Marilyn Brown • **Commissioner** John O'Grady
President

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MINUTES OF THE FRANKLIN COUNTY BOARD OF ZONING APPEALS

Monday, October 15, 2012

The Franklin County Board of Zoning Appeals convened on the 26th floor, Franklin County Courthouse, 373 South High Street, Columbus, Ohio, 43215, on Monday, October 15, 2012.

Present were:

Christopher Baer, Vice Chairperson
Tim Guyton
Nancy Hunter

Franklin County Economic Development and Planning Department members:

Matt Brown, Planner/Floodplain Manager
Scott Ulrich, Planner

Vice Chairperson Baer opened the hearing, which was followed by the swearing in of all witnesses by Mr. Matt Brown.

The first order of business being the approval of the minutes of the September 17, 2012, Franklin County Board of Zoning Appeals hearing. Ms. Hunter made a motion to approve the minutes. It was seconded by Mr. Guyton. The minutes were approved by a three-to-zero vote.

OLD BUSINESS: The next order of business being Variance Case No. VA-3773. The owner is Ronald Durrer. The township is Hamilton Township. The site is located at 4850 Reese Road, and it is 3.25 acres. The request is to withdraw the case. Mr. Guyton made a motion to withdraw Variance Case No. VA-3773. Ms. Hunter seconded the motion. The motion was approved by a three-to-zero vote.

The next order of business being appeal Case No. AP-3781. The owner is Hotspur, Inc. The township is Clinton Township. The site is located at 3708 Cleveland Avenue. The request is to appeal the determination of the Franklin County Zoning Code Enforcement Officer that the property located at 3708 through 3710 Cleveland Avenue is in violation of Section 328.021 and/or Section 300.021 of the Franklin County Zoning Resolution. The applicant is requesting to table until the November 19, 2012 meeting. Mr. Guyton made a motion to take Case No. AP-3781 off the table. It was seconded by Mr. Baer. The motion was approved by a three-to-zero vote.

Mr. Ulrich read and presented the case to the Franklin County Board of Zoning Appeals. Mr. Guyton made a motion to table Appeal Case No. AP-3781 until the December 17th, 2010 meeting. Ms. Hunter seconded the motion. The motion was approved by a three-to-zero vote.

There being no further new business to come before the Board of Zoning Appeals, a motion was made by Ms. Hunter to adjourn the hearing. It was seconded by Mr. Guyton.

And, thereupon, the hearing adjourned at 1:58 p.m. Minutes of the October 15, 2012, Board of Zoning Appeals hearing were approved this 17th day of December, 2012.

Signature

Brown, R. Lee

From: David Hodge [DHodge@smithandhale.com]
Sent: Monday, December 10, 2012 11:58 AM
To: Brown, R. Lee; Ulrich, Scott T.
Subject: Cleveland Ave.

Lee-

In consultation with you and staff, and Adria Fields from the Franklin Co. Prosecutor's office, we have mutually agreed to proceed with the variance request at the December BZA meeting and table the appeal until the February BZA meeting.

Please let me know if you have questions or need additional information from me.

Thanks,

David Hodge
Smith & Hale LLC
37 W. Broad St., Suite 725
Columbus, OH 43215
(614) 221-4255 phone
(614) 221-4409 fax
dhodge@smithandhale.com

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Commissioner Paula Brooks • Commissioner Marilyn Brown • Commissioner John O'Grady
President

Economic Development & Planning Department
James Schimmer, Director

STAFF REPORT

Board of Zoning Appeals
December 17, 2012

Case VA-3783

Prepared by: Scott Ulrich

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|-------------------------|--|
| Applicant/Owner: | Hotspur Inc. |
| Agent | David Hodge, Esq. |
| Township: | Clinton Township |
| Site: | 3708 Cleveland Ave. (PID #130-006705) |
| Zoning: | Community Service (CS) |
| Utilities: | Public water & sewer |
| Acreage: | 0.5-acres |
| Request: | Requesting a Variance from Section 328.021 to allow an adult entertainment establishment to continue to operate within 500 feet of a residential zone. |

Summary

The applicant is requesting a variance to allow an existing adult entertainment establishment to continue to operate within 500 feet of a residential zone. The request satisfies the criteria required to approve a variance request. Staff recommends approval with conditions.

Description of the Request

The 0.5-acre site is located at the northeast corner of the intersection of Cleveland and Melrose Avenues in Clinton Township. The site is zoned Community Service (CS) and contains a 2,836 single-story commercial building which is split into two units and an illegally-constructed outdoor patio area to the rear of the building. The applicant claims to have operated an adult entertainment establishment in the southern half since 1986; the northern half is currently vacant but was previously used as a food service establishment.

In 1982, Franklin County adopted a zoning amendment that prohibited adult entertainment uses within 500 feet of a school, playground, church, residence, or residential district. The subject site is located 15 feet from a multi-family residence located directly across the rear alley. The Franklin County Economic Development and Planning Department has no record of any complaints against the applicant during its 26-year tenure at the site.

Surrounding Area

Properties to the north, south, and west are also within Clinton Township and are zoned Community Service (CS). Properties to the east are zoned Urban Residential (R-12).

Comprehensive Plan

The Clinton-Mifflin Land Use Plan, adopted in 2009 recommends a full range of commercial uses, as well as multi-family housing, for this property. The current use of the property is consistent with this recommendation.

Staff Review

Variance from Section 328.021 – Permitted Uses (Community Commercial District Regulations)

Adult entertainment - sale of adult books, magazines, videos, and adult performances (including nude dancing) provided the following standards are met and the required zoning compliance is applied for:

- A) Such uses shall not be permitted within five hundred (500) feet of:
 - 1.) Church
 - 2.) School
 - 3.) Park or playground
 - 4.) Residence or residential district
 - B) Such uses shall not be permitted within one thousand (1000) feet of another adults-only use.
 - C) For any township that requires a license under Section 503.41 of the Ohio Revised Code, the applicant shall provide a certified copy of the license issued by the township.
- o The applicant proposes to continue operating an adult entertainment use within 15 feet of a residential district.

Technical Review Agencies

All technical review agencies have expressed no concerns with the variance request.

Staff Analysis – Section 810.041

- 1) *Special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same Zoning District;*
 - » The applicant has operated at the subject site for 26 years, in advance of nearly every other property owner within 500 feet. These owners willingly came to their properties; the applicant is not introducing anything new to the property or the neighborhood.
- 2) *That a literal interpretation of the provisions of this Zoning Resolution would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Zoning Resolution;*
 - » Again, the applicant's business has operated for 26 years, without complaint and without the awareness of the Franklin County Economic Development and Planning Department.
- 3) *That the special conditions and circumstances do not result from the action of the applicant;*
 - » The applicant was unaware that its use of the property was not compliant with the applicable zoning regulations.
- 4) *That granting the variance requested will not confer on the applicant any special privilege that is denied by this Zoning Resolution to other lands or structures in the same Zoning District;*
 - » It is staff's belief that the granting of this variance will allow a long-standing business to continue operation without undue hardship. Staff also believes that, due the unique circumstances of the case, special privileges will not be conferred on the applicant.
- 5) *That granting the variance will not adversely affect the health or safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity;*
 - » Again, the applicant's business has operated for 26 years without complaint or zoning enforcement, indicating that it can operate without adversely affecting health or safety, being detrimental to the public welfare, or injurious to property and improvements in the area.

Recommendation

Staff recommends that the BZA approve a Variance from Section 328.021 of the Franklin County Zoning Resolution to allow an adult entertainment establishment to continue to operate within 500 feet of a residential zone, with the following conditions:

1. The applicant must remove the outdoor patio area within 90 days; replacement will be allowed in front of the building, provided a 15-foot buffer from the current right-of-way is maintained.
2. The applicant must apply for and receive an approved Certificate of Zoning Compliance from the Franklin County Economic Development and Planning Department for the removal and/or replacement of the outdoor patio area.

Resolution

For your convenience, the following is a proposed resolution:

(a) **Proposed Resolution for Request:**

_____ moves to approve the Variance from Section 328.021 to allow an adult entertainment establishment to continue to operate within 500 feet of a residential zone, with staff's recommendations, for the applicant identified in Case No. VA-3783.

Seconded by: _____

Voting:

Findings of Fact

For your convenience, the following are proposed findings of fact:

If the resolution fails for lack of support, the following are proposed findings of fact for adoption by the BZA:

_____ moves that the basis for denying the applicant's request for the variances as outlined in the request above for Case No. VA-3783 results from the applicant's failure to meet the requirements for granting such variance under Section 810.041 of the Franklin County Zoning Resolution.

Seconded by: _____

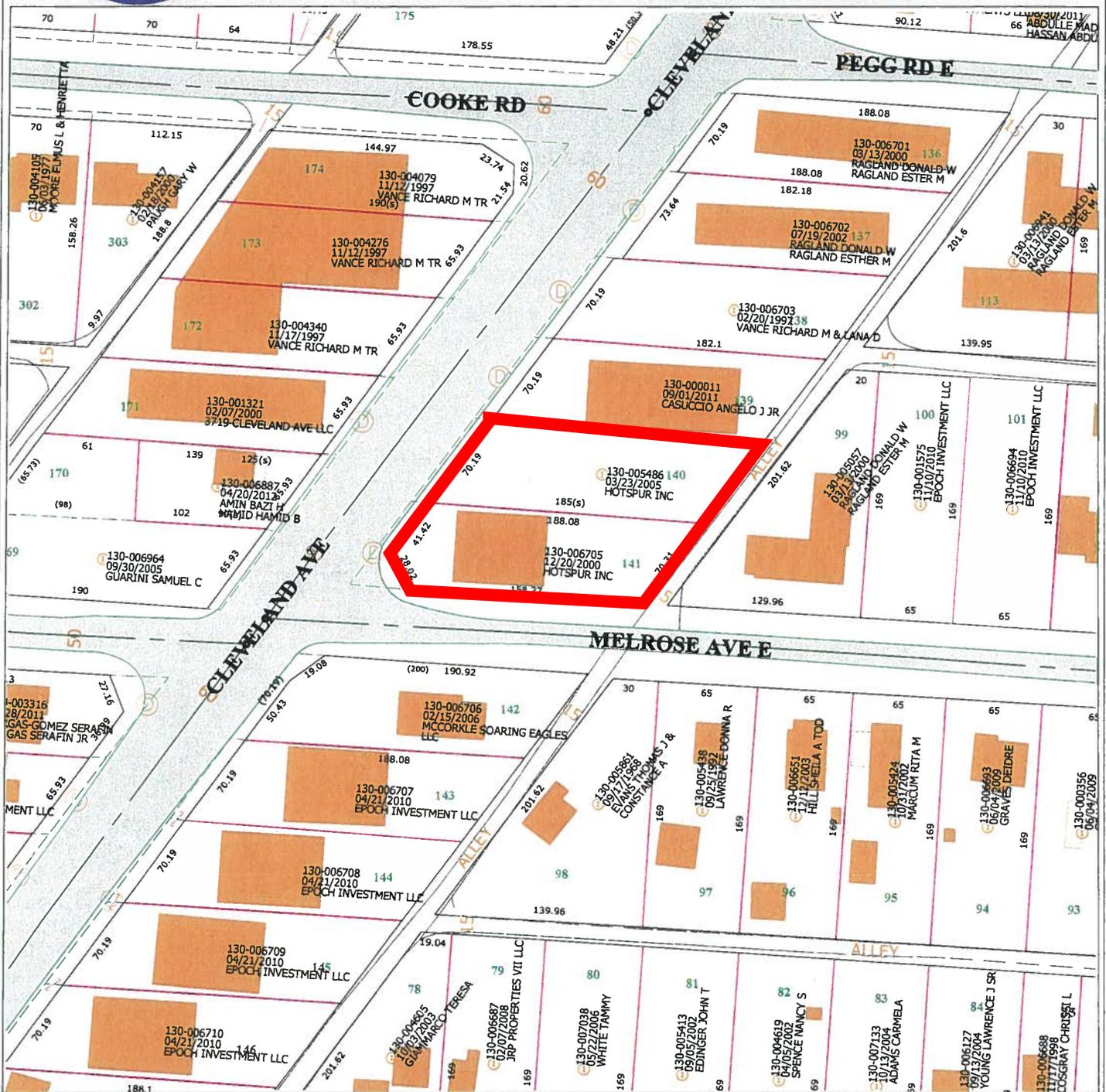
Voting:



CLARENCE E MINGO II FRANKLIN COUNTY AUDITOR

MAP ID: dlh

DATE: 8/8/12



Disclaimer

Scale = 100



This map is prepared for the real property inventory within this county. It is compiled from recorded deeds, survey plats, and other public records and data. Users of this map are notified that the public primary information sources should be consulted for verification of the information contained on this map. The county and the mapping companies assume no legal responsibilities for the information contained on this map. Please notify the Franklin County GIS Division of any discrepancies.

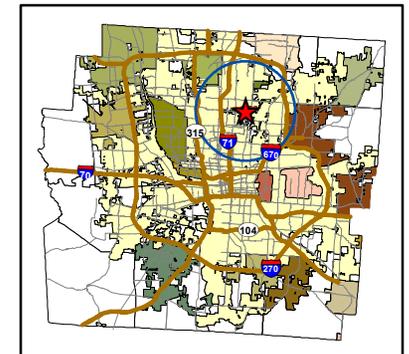


VA-3783

Requesting a Variance from Section 328.021 to allow an adult entertainment establishment to continue to operate within 500 feet of a residential zone.

0.50-acres
Clinton Township

-  3708 Cleveland Avenue
-  500 ft. Buffer
-  Parcels
-  Streets





VA-3783

Requesting a Variance from Section 328.021 to allow an adult entertainment establishment to continue to operate within 500 feet of a residential zone.

0.50-acres
Clinton Township

-  3708 Cleveland Avenue
-  Parcels
-  Streets

