

Mr. Heilmeier: I will not be at the October 1st meeting.

Mr. Larson: Neither will I.

Mr. Taylor: Ok. So, I will be present. Julie?

Mrs. Oliver: I am planning to be here, yes.

Mr. Taylor: Stephan?

Mr. Ryder: Yes, I plan on being here.

Mr. Taylor: So the 3 of us would be a quorum, right?

Mrs. Hussing: Yes, 3 would be a quorum. There is a Public Hearing that will be on that day.

Mr. Taylor: Does it require any more than 3?

Mrs. Hussing: No, it would just need the full complement of the Board.

Mr. Taylor: Ok. Correspondence and communication? We did receive the memorandum from Helene regarding those issues. We also did get a copy Of Burgess and Niple City Engineer comments regarding both items on the agenda tonight and we can cover those as we go through it. We also got a copy of the Riparian Setback Variance Hold Harmless Agreement signed by Mr. & Mrs. Lorkowski dated 9-2-2020. We received that today. Thank you very much for that. Ok, First item:

Item PZ 20-09-01 Amendment to Conditional Zoning

The Breakfast Place, Inc dba Oscar's Place, applicant/owner

137 East Ave– Outdoor Dining

- For scheduling of Public Hearing

Mrs. Oliver: I move to set the Public Hearing for Item #PZ 20-09-01, The Breakfast Place, Inc. dba Oscar's Place, applicant, Ward Holdings LLC, owner, for Suite 30 at the property located at 137 East Avenue, based on the plans and application submitted to the Planning & Zoning Department on August 20, 2020 for the following month on Thursday, October 1 at 7:01 pm.

Mr. Heilmeier: **Second.**

Roll called. All members voted in favor. (5-0)

Mr. Taylor: Ok, next item.

Item PZ 20-09-02 Riparian Setback Variance

Randy Lorkowski, applicant/owner

1034 Martindale Dr

- For review and determination

Randy, Linda, James Lorkowski were sworn in.

Mr. Taylor: Ok, you're requesting a variance from the 75' riparian setback which is... actually when I looked at the plan, it's not a 75' variance, it's a 52' variance from the 75' setback. I sort of confirmed that with the Mayor. Looking at the Site Plan, it's 75' feet back to your house and from that point to the corner of the house, the maximum dimension would be 52', is that correct?

Mr. Lorkowski: That is correct.

Mr. Taylor: Ok, I just wanted to get that straightened out. We'll have several questions. When you purchased the property... I was looking at what your submittal was, was that Maca Ditch running through the center of your property?

Mr. Lorkowski: Originally? I do not know when they moved it over. It was close at that time.

Mr. Taylor: So, Maca Ditch, at one time, it ran through your property?

Mr. Lorkowski: Yes.

Mr. Taylor: And you don't know who filled that, it was prior to you owning it, is that correct?

Mr. Lorkowski: Whoever cleaned the ditch out. They straightened it and cleaned it out, moved it over, I think at that time is when it was done.

Mr. Taylor: Ok, and your property currently fronts on the unimproved Martindale Street and that street extends just a little passed the corner of your property there on the left side.

Mr. Lorkowski: That is correct.

Mr. Taylor: Do you know why the street was never extended?

Mr. Lorkowski: At the time, I think Atwood Construction Company was going to develop all this allotment, so this road was probably going to go through into the allotment. But there was too much wetlands on it or what the problem was but they abandoned the whole deal. I think that's why the street never went through.

Mr. Taylor: Ok, but it does go past that corner of your property about...

Mr. Lorkowski: Yea, it goes all the way to here.

Mr. Taylor: Ok. It's an unimproved street, there's some asphalt there and that's about it, right?

Mr. Lorkowski: The asphalt goes all the way... from this line it goes 10 feet into the front of the property here. The property line is right where this telephone pole is.

Mayor Kline: So, you can see that's the end of the asphalt there. Here's the Maca Ditch, the street right-of-way goes all the way to the edge of the stream. It does not go across the stream. And that's just hard, packed gravel right now.

Mr. Taylor: So, you don't have any intention of extending the street Martindale?

Mr. Lorkowski: No, my driveway is going to come out right here, so if I do extend it or if they repave it, they'll probably pave it to the end of my driveway. The driveway coming into the house is going to be right on the edge here.

Mr. Taylor: Ok, so your driveway is going to be right on the left-hand side there.

Mr. Lorkowski: Yes.

Mr. Taylor: And you do have all City Utilities here?

Mr. Lorkowski: Yes.

Mr. Taylor: According to the information you gave us, you bought this in 2000. And you've never developed it up until now, 20 years later?

Mr. Lorkowski: No.

Mr. Taylor: There's never been a house there...

Mr. Lorkowski: No.

Mr. Taylor: Any questions by other Commission Members?

Mr. Larson: I think the couple times, or at least once that we've done this, it's just a simple matter of the owner understanding the risk that they're taking begin that close to a waterway of some kind. And I speak from personal experience, that if my house was as close to our ditch, then I'd have some problems. So, as long as there's an understanding that the City is going to grant this but that the owners can't hold the City responsible for any damage done for potential flooding, not to say if there ever will be, but for that potential, then I think the risk is assumed by the property owner.

Mr. Taylor: The Mayor may have more experience, has there been any flooding in that area?

Mayor Kline: Well, if you look at the virgin trees that are still on the property, this was in 2019 and those heavy trees were cut down since but they're in an area that, if it was truly flooded or if it was wetlands, which we don't know if it is or not, the soil map indicated that it's soil is suitable for wetlands, one of the soils, but those trees are pretty established, but stumps. They're still out there today. Maca Ditch is down lower than the property. The homeowner said he's putting in a slab home, not putting in a basement house in. Back in 2000 when he bought it, he would not even have to come to this Board for a variance request but since the City adopted Summit Soil's Riparian Setback and EPA stuff, now that's the reason they have to come. Could it flood? Absolutely. If it blocks up or backs up somewhere down stream but how high he is, I don't think that would cause...

Mr. Ryder: Is it possible to allow them to build the house without a variance to the riparian buffer?

Mayor Kline: No.

Mr. Ryder: There's no way around that? If they're signing this Hold Harmless Agreement, I'm just thinking if you kept the riparian in place...

Mayor Kline: No, you can see the house, that would be in the riparian. It has to be granted otherwise he could not build there.

Mrs. Hussing: So, really what they're asking is to be allowed to build in that riparian. So, the setback is then adjusted just where they're building. That's really what they're asking. So, it's not that the riparian has disappeared, it's that they are allowed to build within that setback.

Mr. Ryder: Ok, so the riparian is still in place, it's 75', you just have a building variance...

Mrs. Hussing: That the setback is adjusted in that area, that's correct.

Mr. Taylor: You'd have a variance on the back of the house of 52' and then the front of the house was 37 or something like that.

Mr. Ryder: But even if the variance was granted and the house was never built, a 75' riparian setback would still remain on that property.

Mr. Taylor: Yes, it would continue with the property.

Mrs. Raber: The riparian remains. You're granting the variance in accordance with the plans and application submitted so it's only what is shown here. So, they have to build it as per the plans submitted and that is what you're granting the variance for, to allow them that portion, which is diagonal, that's it. So, if somebody else were to come along and try to build a different style house or change it, they would have to come back through the process.

Mr. Ryder: Ok, thank you.

Mayor Kline: And also, no structures can be built in the remaining back here, So, if you wanted to put a shed, it would have to be in this corner, away from the riparian. And this land has to be maintained, the growth that's there, as the riparian.

Mr. Taylor: Ok, that was my question. From what I read, they're not allowed to mow that area or do anything to it?

Mayor Kline: I can't answer that. I would think he's going to mow it if you look at it currently today.

Mr. Taylor: Well, currently it's level. There's nothing on it in that area.

Mayor Kline: It's supposed to be undisturbed in the remaining virgin land the way it lies. Part of the motion if you shall read those in, it's whatever Summit Soil and the EPA also...

Mr. Taylor: It's their requirements...

Mr. Taylor: Mr. Lorkowski, back in 2004, Pat Sauner sent you a letter regarding connecting your driveway with the existing street there and he suggested that you apply to BZA to get approval to connect your driveway to that street. Did you in fact get approval from BZA to do that?

Mrs. Raber: If I can actually interject, you have that matter in front of you this evening, that's part of what you are determining. Because of having to get the variance for the riparian, he's before this body

already and you are allowed to make the modification pursuant to our code. So, you have both issues before you this evening, that why you have in the Staff Report, the separate motions, one addressing the riparian variance and one addressing...

Mr. Taylor: I just want to make that clear that he did not get any prior approval.

Mrs. Raber: No, he will not be going in front of the other body, no.

Mr. Taylor: When I was trying to look at the packet, which is really pretty detailed, where are the wetlands in there. Is that in the 75' riparian setback? Or is the wetland just around Mace Ditch?

Mrs. Hussing: So, there may be wetland there, but they're not delineated there at all. What we're concerned about is the riparian setback. For that matter as well, he's asking for the least amount of setback and so the other modification that is before you is to move the front setback, usually it's 50' front, and so he's asking for 40' front so that there is less intrusion into that riparian setback. I just wanted to bring that to your attention as well.

Mr. Taylor: So, the EPA and Corps of Engineers will determine if there's wetland area there and he will have to address that with them accordingly. In the Staff Report, EPA made a conclusion about alteration or filling activity in the wetlands area, but I guess we already covered that. So, you haven't started any filling or grading out there? You have to get a permit from EPA first? Have you contacted them and talked to them?

Mr. Lorkowski: Not yet. I plan to.

Mayor Kline: There has been some filling that we've stopped so he's been working with us and Summit Soil. Just some fill dirt.

Mr. Taylor: Yea, I noticed when I was out there the other day there was some piles of dirt out there and I didn't know if that was there before or...

Mayor Kline: That's been accumulating over the years.

Mr. Taylor: Ok. I noticed the pile of dirt. Any other questions by Commission Members? We did receive a report from the City Engineer. Did you get a copy of that Mr. Lorkowski?

Mr. Lorkowski: Yes, I did.

Mr. Taylor: Ok, and they reviewed it and they didn't seem to have a problem on that as long as you provide all the information to Summit Soils and Ohio EPA. Have you contacted Summit Soils and EPA? OR you're not at that point yet?

Mr. Lorkowski: I didn't contact the EPA yet.

Mr. Taylor: Ok, you're waiting to get the approval from us to move forward, is that correct?

Mr. Lorkowski: That is correct.

Mr. Taylor: Now, you indicated that you're going to build the house on a slab. Is it going to be an elevated slab or at grade?

Mr. Lorkowski: For Summit County, I have to be 1 foot above the crust of the road to get my sewer permit so I'm going to be 1 foot higher than the road. So, wherever the crust of the road is, my first floor has to be 1 foot higher.

Mr. Taylor: Is that because of sewer?

Mr. Lorkowski: That's their requirement for sewer tap-in. Since it's a slab, that will be my lowest floor.

Mr. Taylor: Ok, so no basement, you're just having a garage and the house.

Mr. Lorkowski: That's correct.

Mr. Taylor: Mayor, do you have any comments or any concerns?

Mayor Kline: No, I think the way he's going to build it on slab.... If there was a basement there, I think it would be a wet basement. I think being a slab on grade with the requirements of Summit County DOES Sanitary Sewer, it's not a Tallmadge sewer, it's Tallmadge water but Summit County Sewer, 1 foot above the crest of the road. In the surface for the driveway going out to the butt end of the current Martindale, we've done that on other occasions but also, the homeowner has to work with the City what surface is going to be in the roadway must be approved by the Service Director. I'm concerned, if he takes a concrete driveway out there or even a gravel driveway, if the snow plows come down Martindale, I don't want to be responsible for replacing gravel or replacing concrete, so that's why we have in there that it must be approved. All surfaces within the public right-of-way must be approved by the City.

Mr. Taylor: So he would have to extend Martindale far enough so his driveway could make an approach there.

Mayor Kline: Or is he going to take right into it? I'm not sure how the plans are going to be. But we've done that on other occasions.

Mr. Taylor: Yea, Robey Rd?

Mayor Kline: Robey Rd, that homeowner was responsible for paving right beyond his new driveway.

Mr. Taylor: Ok, so this is very similar. Megan or Mayor, regarding granting this 51' variance from the 75' setback, do we have to have something that says if the property is sold, the seller would notify the buy of all these conditions that we're about to put on it?

Mrs. Raber: One of the conditions it's requiring them to put it on the deed. So, it will be recorded on the deed.

Mr. Taylor: Ok. Because sometimes you build your forever home and it's not forever. Situation changes... ok, so that's covered.

Mrs. Oliver: So, one of the conditions that we have for this first motion talks about the Hold Harmless Agreement and says that they agree to sign that. Would we still need to, since it is signed and filed, would we need to have that as a condition still?

Mrs. Raber: Yes, please.

Mr. Ryder: In the first motion number 3, “The strict application of the provisions of these regulations would/would not result in degree of hardship placed on the applicant and the availability of alternatives to the proposed activity have been considered.” By saying this, are we saying that anything within the riparian area that is done by the landowner that causes a hardship would be... are we evaluating that or just the variance being the hardship?

Mrs. Raber: This is the reason for granting the variance. So, with this particular property, for example, if that variance is not granted, it's an unbuildable lot, there's not enough room on the property to relocate a house in a different spot and be completely outside of the riparian, unless it's a tiny house or something. Other than that, there's really not that alternative, so, that's what you're evaluating is, the reason you're granting the variance, part of the rationale is because there's a hardship that would result, if you strictly apply the riparian setback.

Mr. Ryder: Ok, that makes sense.

Mrs. Oliver: I move to approve the Application for Riparian Setback Variance for Item #PZ 20-09-02, Mr. & Mrs. Lorkowski, applicant/owner for the property located at 1034 Martindale Dr. (Parcel No 6008392) for a riparian setback boundary extending 75’ from the defined boundary of the high water mark to a distance of 52’ based on the plans and application submitted to the Zoning Department on August 20 & 24, 2020 and that there was a showing that:

- (1) The granting of such variance will not impair the functions of the riparian area.**
- (2) The soil type and natural vegetation of the parcel as well as the percentage of the parcel that is in the 100-year floodplain does not apply.**
- (3) The strict application of the provisions of these regulations would result in degree of hardship placed on the applicant and the availability of alternatives to the proposed activity have been considered.**

And subject to the following conditions, modifications and/or amendments based on the evidence presented:

- (1) Applicant agrees to sign a “hold harmless” agreement, naming the City of Tallmadge, all reviewing agencies and acknowledging that they are building in the riparian setback at their own risk. The agreement will also acknowledge that as development continues within the watershed, problems associated with the wetlands and regularly defined riparian setback area, may present future impacts on the home and surrounding area. The Applicant is responsible for damage to their property resulting from building part of their house in a riparian setback.**
- (2) A notation of the Riparian Setback Variance Certificate is included on the recorded deed to the property and filed with the City**
- (3) A landscape plan is submitted to Summit Soil & Water Conservation District for the purpose of re-vegetation of the disturbed Riparian Setback area**
- (4) The Riparian Setback is delineated prior to moving any soils**
- (5) No further disturbance to the Riparian Setback**
- (6) The applicant attains all necessary approvals from Ohio EPA and the Army Corps of Engineer prior to moving any soils in the Riparian Setback**

- (7) **A modification is granted from Tallmadge Codified Ordinance 1157.07, where the minimum front yard setback is 50 feet from the proposed right-of-way per the Tallmadge Thoroughfare Plan, allowing a 10' variance to accommodate a building footprint least affecting the Riparian Setback.**

Mr. Heilmeier: **Second**

Roll called. All members voted in favor. (5-0)

Mr. Larson: **I move to approve the modification request for Item #PZ 20-09-02, Mr. & Mrs. Lorkowski, applicant/owner for the property located at 1034 Martindale Dr. (Parcel No 6008392) from Tallmadge Codified Ordinance 1191.10, every principal building shall be located on a lot having required frontage on a fully improved public street upon the showing based on the plans and application submitted to the Zoning Department on August 20 & 24, 2020 and that there was a showing that compliance with the procedural requirements of these regulations and that all requested modifications requested per the application are granted upon a finding that there are unusual or exceptional factors or conditions that require such modification due to a finding that:**

- (1) **unusual topographical or exceptional physical conditions exist**
- (2) **strict compliance with the regulations would create an extraordinary hardship in the face of the exceptional conditions**
- (3) **the approved modifications depart from these regulations only to the extent necessary to remove the extraordinary hardship,**
- (4) **the modifications granted will not be detrimental to the public interest nor in conflict with the intent and purposes of the regulations when modified, and**
- (5) **require such other conditions to be met based on the evidence presented as the Commission may find necessary to accomplish the purposes of these regulations when modified, which shall include the following:**
 - (1) **The driveway extending into the Right-of-Way must meet the standards of improvements agreed to by the City of Tallmadge**
 - (2) **Approval of construction materials and inspection services by City of Tallmadge Public Service Department**

Mr. Heilmeier: **Second.**

Roll called. All members present voted in favor. (5-0)

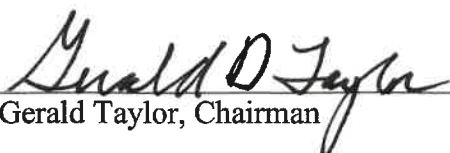
Mr. Larson: **Motion to adjourn.**

Mrs. Oliver: **Second.**

All members present voted in favor. (5-0)

Respectfully submitted,


Kelli Funk, Secretary


Gerald Taylor, Chairman