

PUBLIC HEARING
BOARD OF ZONING APPEALS
April 16, 2009

The Austintown Township Board of Zoning Appeals held a Public Hearing on Thursday, April 16, 2009, at the Township Building, 82 Ohltown Road, Austintown, Ohio, for consideration of Appeal Cases 2009-08-A and 2009-09-A.

The following Board members were in attendance:

Mr. Robert Satterlee – Chairman
Dr. Thomas Stellers
Mrs. Dawn Owens
Mr. William Glaros
Mr. Michael Beaudis

Chair Satterlee opened the public hearing at 7:10 P.M. All testimony in the following cases given under oath or affirmation. Court Reporter in attendance, complete transcript taken of the hearing.

Motion by Mr. Glaros to **APPROVE** the minutes of the April 2, 2009 meeting. Seconded by Dr. Stellers.

Roll call vote: Dr. Stellers – YES; Mr. Beaudis – YES; Mrs. Owens – YES; Mr. Glaros – YES; Mr. Satterlee – YES.

APPEAL CASE 2009-08-A

Phillips Sekanick Architects, Inc., 142 East Market Street, Warren, Ohio, 44481-1121, on behalf of J.A.M. Dunkin Donuts, Inc., dba Dunkin Donuts, 4812 Mahoning Avenue, Austintown, Ohio, 44515, appeals from the decision of the Austintown Township Zoning Inspector and requests two (2) variances from the terms of Article XI-Business B-2 District, Section 1105-General Requirements: “Parking” & “Buffering” and Article XVII-Supplementary District Regulations, Section 1702-Minimum Off-Street Parking Requirements, Paragraph 11: “Restaurants, Bars and Night Clubs”, of the Austintown Township Zoning Ordinance, as amended through May 24, 2007, to allow for the remodeling and occupancy of a Dunkin Donuts restaurant and drive-thru at the property located at 1123 North Canfield-Niles Road with less than the required ten (10) feet of green space at the westerly front and northerly side property lines and less than the required parking ratio for a restaurant use. The parking ratio for a restaurant use is one (1) space for every fifty (50) square feet of gross floor space. Said property is further described as Lot 15, Oakwood Allotment, is located at the southeast corner of the North

Canfield-Niles Road-Lou Ida Boulevard intersection; and is zoned as a Business B-2 District in Austintown Township, Mahoning County, State of Ohio.

Zoning Inspector Darren Crivelli read the applicant's letter into the case record, referenced a site plan with a fence buffer and a site plan with an arborvitae buffer, two elevation drawings, a fence elevation drawing, a signage drawing, the case mailing list, and two plat maps prepared by the Zoning Office.

Chairperson Satterlee stated the mailing list of those property owners notified for Case 2009-08-A would be incorporated into the case record.

Bruce W. Sekanick, Phillips Sekanick Architects, Inc., 142 East Market Street, Warren, Ohio, 44481 testified they are reducing the area of the building and increasing the parking lot area while including a buffer to be either a fence or arborvitae depending on what the adjacent property owners want. Submitted Exhibit "A" a color coded floor plan and noted the pink area is for dining which measures 700-800 sq. ft. for a total seating of 31 people. Dunkin Donuts traffic is approximately 65-70% drive-thru. Most drive-thru is coffee sales which take about a 90 seconds to service. Dine-in customers have a short stay. Don't have the same parking requirements of traditional restaurants. Dunkin Donuts looks for 20-22 spaces when reviewing a potential site based on their experience and this site provides more spaces than what they feel they need. Made an effort to reduce as much impervious surface as possible to reduce storm water flows into existing system. The building improvements will enhance the site, morning hours will be busiest time. Upon exiting will direct left hand turns to Lou Ida at the traffic signal. Proposing landscaping at front and side of building in addition to rear buffer.

Mr. Beaudis asked how does this facility compares with the Mahoning Avenue store. Jim Braga, 4367 Janel Court, Canfield, Ohio, 44406 testified that the facility on Mahoning Avenue is 2,700 sq. ft. whereas this facility is larger due to the expanded storage area. The Mahoning Avenue sit down area is larger than what is being proposed at the new location. Mr. Beaudis observed that the Mahoning Avenue store has 43 parking spaces.

Mrs. Owens inquired about existing green space. Mr. Sekanick stated the existing front green space is approximately 23 feet from property line to the building.

Mr. Braga stated the the Mahoning Avenue store has 44 parking spaces. At least 15 spaces are never used even during his busiest times. Zoning Inspector Crivelli stated that when the Mahoning Avenue site was developed the previous Zoning Inspector allowed the applicant to land back about half the required parking stalls.

Mrs. Owens asked if they were proposing a fence or arborvitae buffer. Mr. Sekanick stated they were going to take into account the wishes of the neighbors but the dumpster enclosure would be fencing. Additional plant material would be installed at the northeast corner to buffer headlights from the drive-thru traffic. Expect most traffic to come from the highway.

Mr. Beaudis inquired about signage for exiting customers. Mr. Sekanick stated they would place directional signage alerting traffic exiting the drive-thru heading south on State Route 46 to utilize the light at Lou Ida rather than attempting a left turn onto State Route 46 and he expected ODOT to limit the curb cut on State Route 46 to possibly right-in and right-out only.

Mr. Satterlee asked how customers would enter the building. Mr. Sekanick stated they would enter from the south with a designated emergency exit on the west side of the building.

Mrs. Owens asked the location of the order-board. Mr. Sekanick pointed to the order-board and stated they placed it about five cars back of the pick-up window.

Dr. Stellars asked if the sign is intended to be visible from the freeway. Mr. Sekanick stated two signs are proposed and they meet the zoning requirements although they may not construct the sign on Lou Ida. The signs will not be extremely high. Mr. Braga stated he did apply for a sign on the highway. Dr. Stellars inquired if it was their intent to come back in the future to request a high-rise sign. Mr. Braga stated he did not foresee that request in the near future.

Nadyne Macejko, 5483 Lou Ida Boulevard, Austintown, Ohio 44515 stated she owns Lot Nos. 16 and 17 and wanted to know more specifically where the speaker and pick-up windows were. Mr. Sekanick stated the pick-up window was on the northwest portion of the building (the Lou Ida side). The speaker will be located where the garage currently is and is about 97 feet from the rear property line. Mrs. Macejko estimated the speaker will be about 240 feet from her bedroom window. Stated she is concerned about noise, traffic flow, and the buffer zone. Stated the fence needed to be higher than six feet. Would prefer a fence and plantings to buffer headlights and noise. Has concerns about the dumpsters and asked that it be secured and hidden. Stated she wants the building occupied and welcomed the new neighbor. Zoning Inspector Crivelli stated the fence height is limited to six feet in residential but not in commercial or industrial. Applicant is showing a fence six feet in height but could be asked to increase it to eight feet similar to the fence at Pilot.

Joseph Homa, Little Joe's Car Wash, 1105 North Canfield-Niles Road asked about signage. Mr. Sekanick stated the sign on 46 would be a pylon with eight feet of clearance from the ground to the bottom of the sign and it meets the zoning requirements.

No one else in attendance to speak for the request.

No one in attendance to speak against the request.

The Board recessed into executive session.

A general discussion regarding buffering ensued. Mr. Satterlee asked Mr. Braga if he would have any objections to a plant material buffer at the northeast portion of the

property to protect the owner of the single-family home across the street from the vehicular headlights at the drive-thru. Mr. Braga agreed to a buffer. Mr. Satterlee stated that fences are subject to being blown down and can be vandalized. He stated the plant material buffers are better as they stay green all year round and will grow taller than a fence. Mrs. Owens stated she had arborvitae in her rear yard and they create a better buffer for sound than a fence and are much nicer to look at since they are green all year round. Mr. Satterlee stated the Board would not ask the applicant to provide both a fence and arb buffer and inquired of Mr. Braga if he would be willing to construct a vinyl fence eight feet high. Mr. Braga stated he would agree to an eight foot fence. Mrs. Macejko asked how fast arbs grow. Mr. Satterlee stated they grow about one foot a year and can be purchased from three feet high to eight feet high to ten foot with the average size being five foot. They will grow and fill-in. Zoning Inspector Crivelli explained to Mrs. Macejko that in the short-term an eight foot fence will block the headlights from the drive-thru vehicular traffic, however, in the long-term the arborvitae buffer would be better since they would grow to be much higher than eight feet. The buffer will have to be maintained by the current property owner and future property owners and referenced the quality of the arb buffer behind the former 84 Lumber.

2009-08-A – Dunkin Donuts

Motion by Dr. Stellers to approve the variance request per the representations made. Seconded by Mrs. Owens.

Roll call vote: Dr. Stellers – YES; Mr. Beaudis – YES; Mrs. Owens – YES; Mr. Glaros – YES; Mr. Satterlee – YES.

APPEAL CASE 2009-09-A

Frank Adams, 952 Lantania Place, Ovedo, Florida, 32765, on behalf of Burdkidz, LLC, 5050 Belmont Avenue, Youngstown, Ohio, 44505, appeals from the decision of the Austintown Township Zoning Inspector and requests a Conditional Use Permit from the terms of Article XI-Business B-2 District, Section 1102-Conditionally Permitted Uses, Paragraph No. 6-Game Room/Amusement Center, of the Austintown Township Zoning Ordinance, as amended through May 24, 2007, to allow for the establishment and operation of a proposed internet cafe game room to be located at 4767 Mahoning Avenue. Said property is further described as Lot Nos. 14 and 15, Austinwoods Heights Replat, is located approximately 425 feet south of the Mahoning Avenue-Idaho Road intersection; and is zoned as a Business B-2 District in Austintown Township, Mahoning County, State of Ohio.

Zoning Inspector Darren Crivelli read the applicant's letter into the case record, referenced a floor plan, a case mailing list, and two plat maps prepared by the Zoning Office.

Dr. Stellers asked what the applicant was requesting. Zoning Inspector Crivelli responded that he was told it was a game room similar to Treasure Island in Boardman and that the applicant would have to provide further detail.

Chairperson Satterlee stated the mailing list of those property owners notified for Case 2009-09-A would be incorporated into the case record.

Atty. Mark DeVicchio, 759 Greenfield Drive, Boardman, Ohio 44512 stated Mr. Adams was not present and as we speak is in transit from Florida and will arrive in town tomorrow. Mr. Adams spent Easter holiday with his family. Atty. DeVicchio stated because of his travel difficulties Mr. Adams requested that he speak on his behalf and he was retained by Mr. Adams to represent this business venture. Atty. DeVicchio stated that Mr. Adams appeared before the Boardman Zoning Committee and is owner of the T&I location in Boardman that was just previously referred to as Treasure Island. Submitted Exhibit "A": a photo of the current T&I signage at the Boardman location. Atty. DeVicchio stated just last week Atty. Terry Grenga stood before the Board on behalf of RGT Vending for a limited use-conditional use permit for a location on Raccoon Road.

Dr. Stellers stated there was nothing in the applicant's letter stating what he was requesting. Atty. DeVicchio apologized and stated he did not draft the letter and he would have written a completely different letter had he had the opportunity so he is at a slight disadvantage. Mr. Satterlee stated that each case runs on its own merits and won't compare to other cases. Atty. DeVicchio stated that if it was the same Board members the concept is the same that Atty. Grenga presented and for the Board's benefit he did not want to be redundant. Mr. Satterlee advised there is one new Board member. Atty. DeVicchio stated that his client would sell phone cards and will be a long distance phone service provider, and it is also an internet café, that can be utilized by people not fortunate enough to own a computer. For a price of approximately \$10.00 per hour you would have use of the computer. All adult sites are blocked and there will be no download opportunities. For the price of a phone card you will get long distance phone service at 3 cents per minute. Once the card is purchased you are entered into a sweepstake. The sweepstake is the market promotion for purchasing the phone card. With the sweepstake you can find out if you are a winner immediately or you can sit down at a terminal, swipe your card, and play one of the many sweepstake games.

Mrs. Owens stated that she had read the letter for the 16th time and asked what customized management services are they referring to. Atty. DeVicchio apologized and said unfortunately he did not have the answer. Had he been given the letter in advance he would have had the opportunity to speak with Mr. Adams about the letter. He was unaware of what customized management services other than the phone card, the use of the computer and internet access, faxing, and coping services will be provided.

Dr. Stellers observed that the letter indicates the management services are for businesses and not individuals. Atty. DeVicchio once again stated that he did not have an opportunity to speak with Mr. Adams regarding the particular verbiage in the letter but

assumed the fax and copy service is what Mr. Adams was referencing and stated these service would be a useful business tool.

Atty. DeVicchio submitted Exhibit "B": a copy of the first page that comes up on the computer terminal and the rules and regulations governing the sweepstakes. Once a phone card is purchased, anyone in the continental United States can call the 1-800 number to activate the phone service. Exhibit "C": a phone card was submitted. Once the phone card is purchased, you have the option to determine if your sweepstake is redeemable at the point of purchase or you can sit down at the computers and enter in to a number of different sweepstakes. Mr. Satterlee asked what is redeemable. Atty. DeVicchio stated a prize that has a cash value. Mr. Satterlee asked if cash is paid out at the establishment. Atty. DeVicchio stated that it was a cash payout if it was a winning sweepstake. Mr. Satterlee asked how much could he win if he bought a phone card. Atty. DeVicchio stated up to five thousand dollars.

Atty. Samuel Ferruccio, Jr., 220 Market Avenue South, Canton, Ohio stated it was a sweepstake similar to McDonald's Monopoly. Stated the pool was 16 million and you could go in and ask for a free sweepstake pursuant to Federal law and they will give you a card and you can see if you won based on a pin number. Zoning Inspector Crivelli asked if every ticket is a winner. Atty. Ferruccio stated it was a sweepstake. If you buy a phone card from Speedway or Walmart there is no sweepstake so you don't win anything. If you buy a phone card from the Internet café there is a sweepstake so you have a chance to win something, but not every card is a winner. Dr. Stellers stated that by bringing up Wal-Mart the presentation is becoming more confusing. Atty. Ferruccio stated they are selling phone cards. The sweepstakes are the marketing tool to sell the phone cards. Mr. Satterlee asked if he could operate one of the computers from a phone card purchased at Wal-Mart. Atty. Ferruccio advised he could not, but, if he bought the internet café's phone card, he would have the same phone calling options for a card purchased at Wal-Mart. Mrs. Owens asked if they issued 1099's. Atty. Ferruccio said they would comply with Federal law. Mr. Satterlee asked if they paid by check or cash. Atty. Ferruccio did not know the answer. Atty. DeVicchio stated they would pay cash redemptions. Mrs. Owens asked what type of 1099 would be issued. Neither attorney could answer her question but Atty. DeVicchio stated sales tax are paid for each phone card sold and he could get back to her the answer to her questions thru due diligence. Zoning Inspector Crivelli asked if they had a chart with probabilities for winning tickets and what was the lowest cash prize. Atty. Ferruccio said there is a probability chart available on the computer when you sign in.

Dr. Stellers inquired about Exhibit B information regarding prizes and questioned what other types of prizes are listed. Atty. Ferruccio stated he did not understand the question. Dr. Stellers read the following from Exhibit "B": "A list of prizes is posted in all retail locations". Atty. DeVicchio stated there were also companies affiliated with other companies that we are all familiar with and stated you could enter a sweepstakes with the Marriott to win a Marriott vacation. Atty. Ferruccio stated those were just items listed on the computer and stated he still wasn't sure he understood the question. Dr. Stellers again read from the handout and asked what prizes are on the list. The attorneys paused

to review the handout they submitted into evidence. Atty. Ferruccio stated he thought it was a breakdown of what's in the pool of 16 million potential players and pin numbers if you will and stated it should be listed on the computer. Dr. Stellers than read the following: "No substitution, assignment of transfer of prize is permitted, except by the Sponsor or Promoters, who reserve the right to substitute a prize with another prize of comparable or greater value" and inquired as to who were the sponsors and promoters. The attorneys once again paused to review their exhibit. Atty. Ferruccio stated the sponsor and promoter is the company he represents "Gametronics" who is the producer of this particular software. Dr. Stellers asked if you could substitute prizes. Atty. Ferruccio stated that prizes are associated with a pin number and have a value and the prize does not change. Dr. Stellers than asked who reserves the right to substitute a prize with another prize. Atty. DeVicchio answered that there are affiliations and you could opt to play the game on a number of screens or areas on the screen that you can click on, that being Marriott, Tootsie Roll, Keystone RV, and you could enter your name into those sweepstakes as well and they have drawings. Dr. Stellers asked if you win the Marriott vacation and the promoter decided he wants the vacation, than the promoter could substitute the vacation with sugar rolls. Atty. DeVicchio stated they were not affiliated. Dr. Stellers stated the handout says you can substitute. Atty. DeVicchio stated he was unaware of any substitutions that have ever been made. Dr. Stellers asked why that was written in the handout. Atty. DeVicchio stated as an example that if someone opted to go to a Marriott in Hawaii and there were no rooms available, or if there was a misfortune with the hotel where someone wanted to stay from possibly damage from a storm, then, they could substitute and send you to the Bermuda. Atty. Ferruccio stated that he thought the language referred to the other sponsors of the sweepstakes, not Gametronics.

Mr. Satterlee asked if you would consider the sweepstakes a form of gambling. Atty. Ferruccio stated no. Atty DeVicchio stated the State of Ohio does not consider this gambling. He referenced an operation owned in Boardman by his client that he visited today prior to the hearing and had the opportunity to sit between to retired young ladies that told him how much they enjoyed coming and it was a wonderful source of entertainment for them. One of the ladies was from Austintown. This is recognized in the State as being a lawful activity. Dr. Stellers asked if he had a legal opinion regarding the legality of the sweepstakes. Atty. DeVicchio stated that he thinks the approval from last week would answer that question. Mrs. Owens stated that was a separate case. Atty. DeVicchio once again referenced the approval of Winners Palace as proof that it is legal. Dr. Stellers stated that he asked if the State has approved this sweepstake. Atty. Ferruccio stated that under the law gambling is defined as paying a price for a chance to win a prize. Here you are not paying a price for a chance to win a prize, but rather you are paying a price for a consumer product, the phone card, and that is the distinction in the law. Dr. Stellers was not satisfied that his question was answered. He wanted to know what legislation or what Attorney General opinion stated it was legal. Atty. DeVicchio stated he did not have that readily available. Mrs. Owens stated the applicants were sorely lacking in information. Atty DeVicchio stated that his colleague Sam had traveled throughout the State discussing this business and he is remiss and maybe he relied too much on the fact that this was approved previously. He didn't want to sound

redundant and waste anyone's time and he should have had the answers readily available. The business his client is proposing and the one that was before the Board last week are relatively the same. His client has an on-going business in Boardman less than ten minutes away and it is well run, clean, and neat. There is a vacancy in the plaza and the developer, the realtor, and the community would like to see this space occupied and he apologized for not have legislative numbers or quotes readily available from the lawmakers. Stated if there was a concern and something changed than the Attorney General's office would come in and take appropriate action. Atty. Ferruccio advised Dr. Stellers there was no specific legislation but this was an interpretation of the gambling laws. He has been in touch with the AG's office to try a clarify the laws and negotiate and lobby the State to clarify this area of law. Gametronics takes the position it is legal and they want their expert and the State's expert from the AG's office to meet and make sure everyone is on the same page. Eventually there will be legislation for this type of activity. Dr. Stellers asked whose interpretation is he speaking of. Atty. Ferruccio stated it was Gametronics interpretation. He has also talked to Prosecutor's in Lucas, Elyria, Stark County, and Franklin County. Mr. Satterlee asked if they had establishments in all those Counties. Atty. Ferruccio stated there were about twenty of these throughout the State in various counties. He stated his protocol is to sit down with the prosecutor, show them his operation, and at this point, they have not had anyone say they disagree.

Mr. Satterlee stated there are many unanswered questions and the Board understands part of it but not all of it. Atty. Ferruccio stated that what they meant in the letter is that they are like Kinko's but their main service is to sell phone cards. Mrs. Owens stated the person who wrote the letter is not present. Dr. Stellers stated the floor plan drawing showed no space for a copy machine. Atty. Ferruccio asked if it was possible to continue. Mr. Satterlee responded yes and stated the Board has further questions but they don't feel they are going to get answers and the letter is vague and the Board wants to meet Mr. Adams.

Mrs. Owens made a motion to continue the case. Mr. Satterlee stated he would like to take other testimony.

Geri D'Amico, 3900 Mercedes Place, Canfield, Ohio stated that when these gentlemen first came to her she was confused. However, after being in the business after they opened, one of the confusing things is they keep talking about Treasure Island. There was a Treasure Island in that particular spot but they changed the sign to T&I. They are not Treasure Island and this has nothing to do with Treasure Island. This is a different kind of situation, they have computers there, and they have computers for people who do not have computers at home, and she has been in there several times, and they go there for phone time and sites are blocked off for porno. No one is allowed in unless they are 21 years of age, and they hired a girl at the desk who oversees everything, and she walks around to make sure no one is doing anything they are not supposed to do. She can see the screens and everything. It's computers being used and phone time and there are games on the computers, the sweepstakes, and that's my understanding and the confusion is resulting from the name Treasure Island and she hopes she has cleared up the confusion.

No one else in attendance to speak for the request.

No one else in attendance to speak against the request.

2009-09-A – Frank Adams

Motion by Mrs. Owens to continue the hearing and have all parties, specifically Mr. Adams, here.

Dr. Stellers asked Mrs. D'Amico who these individuals were who came to her and could she identify them. Mrs. Owens asked if any of these people were in attendance. Mrs. D'Amico stated that Frank Adams called her and Jack and Jerry and she showed them different properties. The gentleman who does the construction for them is Earl. They went to different sites and some were unavailable because of community issues and different things like that and then they found this site. Dr. Stellers asked who drew the floor plan. She stated the guy who does construction work for them but they were not changing anything in this facility. Dr. Stellers asked about the girl at the desk but stated he saw no desk on the drawing. Mrs. D'Amico stated she was talking about the facility in Boardman. Dr. Stellers asked if they were going to have a desk at the entrance to this facility. Mrs. D'Amico stated that they have equipment. Dr. Stellers asked about the partition. Mrs. D'Amico stated that she stands behind it and that's where they have the register to buy the phone cards. Dr. Stellers inquired about what looks like a desk at the rear. Mrs. D'Amico stated there were computer desks everywhere and a little space in the back.... And there's maybe two restrooms or one restroom. Dr. Stellers stated that she is not adequately explaining what is on her drawing. Mrs. D'Amico stated that she did not draw it, or see it, but that it was mailed directly to the zoning office.

Atty. DeVicchio stated this was thrown together in a short amount of time, he had anticipated Mr. Adams being back for this, but the Easter holiday and problems with Mr. Adams's father's illness prevented him from being here. He asked the Board to table the hearing to allow time to make a more thorough presentation.

Seconded by Mr. Glaros. Dr. Stellers asked for a date certain. Zoning Inspector Crivelli stated it would be within 40 days and public notice would have to be given to all parties in interest.

Roll call vote: Dr. Stellers – YES; Mr. Beaudis – YES; Mr. Glaros – YES; Mrs. Owens – YES; Mr. Satterlee – YES.

There being nothing further to come before the Board, the meeting was adjourned at 8:40 P.M.

AUSTINTOWN BOARD OF ZONING APPEALS

DARREN L. CRIVELLI, ZONING INSPECTOR

APPROVED: _____
ROBERT SATTERLEE, Chair

DATED: _____