NOTICE OF APPEAL

RECEIVED
AUG 29 2014
BY: R. Lee Brown

TO: City Clerk, Kay Thress
City of Worthington
6550 N. High Street
Worthington, OH 43085

and

Board of Zoning Appeals
City Municipal Building
City of Worthington
6550 N. High Street
Worthington, OH 43085

BZA 36-14
8-29-14
Mtg: 10-2-14

APPEAL: **VIOLATION ORDER, Dated August 18, 2014, copy attached**
LOCATION: **6568 North High Street**

The owner of 6568 North High Street, 6600 North High Street, LLC ("Owner"), and the tenant of 6568 North High Street, Andy Tilton, doing business as Tilton's Automotive Service ("Tilton"), hereby appeal the Violation Order referenced above and attached hereto.

The grounds of this Appeal follow:

1. The 2004 Board of Zoning Appeals ("BZA"), granting the approval of the change of non-conforming use for the 6568 North High Street property (the "Property"), contained no condition limiting the number of cars that can be parked at the Property.

2. The BZA's decision is memorialized in its order. Extraneous documents and testimony presented or discussed at the hearing, including the summary of the hearing contained in the edited BZA's minutes but not included as conditions in the BZA's order, cannot be the basis for conditions to the BZA's approval as granted. A contrary interpretation would deny the Owner/Tilton the opportunity to appeal an unacceptable condition.

3. The discussion in the minutes regarding parking did not, and was not intended, to amount to a limitation on parking. At no place in the minutes was there discussion about conditioning the BZA's approval on a limitation of parking spaces.

4. Worthington Zoning Code Section 1171(c) specifically permits parking on adjacent lots, other than that lot containing the principal use; therefore, parking on the 6560 and 6600 North High Street properties by Tilton is permitted.

For these and other grounds, Owner and Tilton appeal the Violation Order.

Donald T. Plank
Plank Law Firm, LPA
145 E. Rich Street, FL 3
Columbus, OH 43215
(614) 947-8600

ABUTTING PROPERTY OWNERS
FOR
6568 N. High St.

AT&T	6650 N. High St.	Worthington, OH 43085
6565 Worthington LLC	642 Eagle Ridge Ct.	Powell, OH 43065
United Methodist Children Home West Ohio	1033 High St.	Worthington, OH 43085
6600 North High Street LLC	PO Box 780	Worthington, OH 43085

CITY OF WORTHINGTON
BZA 36-14
DRAWING NO.
DATE 8-29-14

Via certified and first class mail

NOTICE OF VIOLATION AND ORDER TO CORRECT

August 18, 2014

TO:
6600 North High Street LLC
PO Box 780
Worthington, OH 43085

LOCATION OF REAL ESTATE:
6568 High Street North
Parcel # 100-002591
Zoning District C-3
Investigation 2014-1131

6600 North High Street LLC
Agent: Randall E Worth
7500 Slate Ridge Blvd
Reynoldsburg, OH 43068

Tilton's Automotive Service
6568 N. High St.
Worthington, OH 43085

Tilton's Automotive Service
Agent: Tas of GH, LLC
1700 North Star Rd.
Columbus, OH 43212

The above referenced property is in the C-3 zoning district where Automotives Services is neither a permitted or conditional use.

On May 18, 2004, an application for a change in nonconforming use was received to allow Tilton's Automotive Services to operate at the above referenced property. Included with the application was a partial site plan of that portion of the property to be used by Tilton's Automotive Service. The site plan included 17 parking spaces. It would be reasonable to assume the 3 vehicle maintenance bays would raise the total number of parking for this portion of the property to 20. Enclosed is a copy of that site plan.

At the June 3, 2004 meeting of the Board of Zoning Appeals, Andy Tilton testified he would have from 10 to 20 cars on the lot at any given time. The Board of Zoning Appeals approved the change from one nonconforming use to another nonconforming use to allow Tilton's Automotive Services to operate at 6568 High Street North. Enclosed is a copy of the minutes of that meeting.

Approved was up to 20 vehicles on that portion of the above reference property used by Tinton's Automotive Services.

On August 4, 2014, Jerry L. Graves, Field Inspector, Building and Zoning found the following vehicles on the Tilton's Automotive Services' portion of the property:

20 south of the building
19 north of the building
3 inside the building
====
42 vehicles

Mr. Graves also found 13 vehicles parked in the lot of 6660 High Street North. The total number of vehicles found was 55. On that day no vehicles were parked in the parking lot of 6600 High Street North.

On August 12, 2014, I found 6 vehicles parked in the parking lot of 6600 High Street North.

I find that 6600 North High Street LLC and Tilton's Automotive Services has expanded a nonconforming use and is in violation of the Codified Ordinances of Worthington, Ohio:

1121.04 COMPLIANCE WITH REGULATIONS.

(a) No building or structure shall be located, erected, constructed, reconstructed, enlarged or structurally altered except in conformity with the area, height and yard regulations of the district in which such building or structure is located or except as specifically hereinafter provided.

(b) No building, structure or lot shall be used for any purpose other than that which is permitted in the district in which such building, structure or lot is located except as specifically hereinafter provided.

(c) No yard or other open space existing about any building or structure shall be so reduced in area or dimension as to make it less than the minimum required by this Zoning Ordinance except as specifically hereinafter provided.

(d) No lot or acreage held under one ownership at the time of the effective date of this Zoning Ordinance (Ordinance 51-71, passed December 13, 1971) shall be reduced or subdivided in any manner below the minimum area and yard provisions required by this Ordinance except as specifically hereinafter provided.

1151.04 NONCONFORMING USES OF LAND (OR LAND WITH MINOR STRUCTURES ONLY).

Where at the time of passage of this Zoning Ordinance (Ordinance 51-71, passed December 13, 1971) lawful use of land exists which would not be permitted by the regulations imposed by this Ordinance, and where such use involves no individual structures with a replacement cost exceeding one thousand dollars ($1,000), the use may be continued so long as it remains otherwise lawful, provided:

(a) No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance;

(b) No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance;

(c) If any such nonconforming use of land ceases for any reason for a period of more than one year, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located; and

(d) No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land.

1151.05 NONCONFORMING STRUCTURES.

Where a lawful structure exists at the effective date of adoption of this Zoning Ordinance or amendment thereto, that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

(a) No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.

(b) Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than fifty percent (50%) of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance.

(c) Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

(d) Should the graphics portion of a nonconforming sign be destroyed by any means to an extent of more than fifty percent (50%) of its replacement cost at the time of destruction, the graphics portion shall not be reconstructed except in conformity with the provisions of this Ordinance.

1151.06 NONCONFORMING USES OF STRUCTURES OR OF STRUCTURES AND PREMISES IN COMBINATION.

If lawful use involving individual structures with a replacement cost of one thousand dollars ($1,000) or more, or of structures and premises in combination, exists at the effective date of adoption of this Zoning Ordinance (Ordinance 51-71, passed December 13, 1971), or amendment thereto, that would not be allowed in the district under the terms of this Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

(a) No existing structure devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;

(b) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building;

(c) If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may as a special exception be changed to another nonconforming use provided that the Board of Zoning Appeals either by general rule or by making findings in the specific case, finds that the proposed use is equally

appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Zoning Appeals may require appropriate conditions and safeguards in accord with the provisions of this Ordinance;

(d) Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed;

(e) When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six consecutive months or for eighteen months during any three-year period, except when government action impedes access to the premises, the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located; and

(f) Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction for the purpose of this subsection is defined as damage to an extent of more than fifty percent of the replacement cost at time of destruction.

You are hereby ordered to correct this violation within 30 days.

Failure to comply with this order is subject to the following:

1125.99 Penalty. It shall be unlawful to locate, erect, construct, reconstruct, enlarge, change, maintain or use any structure or land in violation of any regulation in or any provision of this Zoning Ordinance or any amendment or supplement thereto adopted by Council. Any person, firm or corporation violating any regulation thereto shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars ($500.00). Everyday during which such illegal location, erection, construction, reconstruction, enlargement, change, maintenance or use continues may be deemed a separate offense.

YOU HAVE THE RIGHT TO SEEK MODIFICATION OR WITHDRAWAL OF THIS NOTICE AND ORDER BY FILING AN APPLICATION WITH THE WORTHINGTON CITY CLERK FOR A HEARING BEFORE THE WORTHINGTON BOARD OF ZONING APPEALS. THE APPLICATION MUST BE IN WRITING AND MUST SPECIFY THE GROUNDS THEREOF, AND SHALL BE MADE WITHIN TWENTY (20) DAYS AFTER THE DATE OF THIS NOTICE. THE APPLICATION MUST BE FILED IN THE OFFICES OF THE WORTHINGTON CITY CLERK AT 614-436-3100, LOCATED AT 6550 N. HIGH STREET, WORTHINGTON, OHIO OPEN 8:00 A.M. to 5:00 P.M. MONDAY THROUGH FRIDAY.

Thank you for your cooperation and feel free to contact me with any questions at 614-431-2424.

Sincerely,

Donald L. Phillips, Jr., P.E.
Chief Building Inspector
Division of Building Regulation

There being no further discussion, Mrs. Crane moved:

THAT THE REQUEST BY SCOTT RECTOR FOR AN EXTENSION OF TIME OF ONE YEAR FOR A BUILDING PERMIT TO CONSTRUCT A HOUSE AT 5859 LINWORTH ROAD AS PER CASE NO. BZA 26-04, DRAWING NO. BZA 26-04 DATED 05/17/04, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND AS PRESENTED AT THE MEETING.

The motion was seconded by Mr. Hunter and all members voted "aye" thereon. The motion carried.

AGENDA ITEM C-14 - Change in Nonconforming Use – Gasoline Service Station to Automotive Services – 6568 N. High St. (Andy Tilton) BZA 27-04

Mr. Kohler asked for staff comments.

Mr. Phillips stated that this property is in a C-3 district, Institutions and Offices. Gasoline Service Stations and Automotive Services are not permitted or conditional uses in this district. Gasoline Service Stations and Automotive Services are conditional uses in a C-4 district, Highway and Automotive Services. There was a legally nonconforming use that recently ceased operations. Their primary use was a Gasoline Service Station with incidental Automotive Services. The underground storage tanks were also removed. The applicant is proposing a change from one nonconforming use; Gasoline Services Stations to another nonconforming use; Automotive Services. Any changes to the exterior of the property would require approval of the Architectural Review Board.

Staff sees this site as ready for redevelopment. The site is approximately 1.31 acres with older structures that could be updated or replaced to accommodate permitted or conditional uses of C-3. There are other properties within the city zoned for Automotive Services as a conditional use. If the previous operator had desired to transition from Gasoline Service station as the primary use to Automotive Services as the primary use, it would be reasonable to support that change in nonconforming use. It could be considered a hardship to require an established operation to relocate or

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venue, by the way this is the executive that very book, it's the first 3 pages. In the planned development, the first vision states "to insure a sustainable economic base by retaining and attracting businesses, by respecting the needs of both the business and residential communities and considering the effects of the economic development plan the quality of life. Mr. West when he moved out of this facility some 35 days ago, he believes left a void for this community. Worthington has a Chevrolet dealership and it has a Volvo dealership within its grasp and it has no other repair facility other than Sammy Justis in the middle of town. Sammy has been there for sometime and he's a personal friend of his. But he would suggest to them that there is a need that he would like to fill for this community. He has lived here 39 years. The first couple of years he didn't have a real impact on the community. His kids went to these schools. He supports and have supported monetarily and by rooting and hollering at the football games for years and years. He is a member of the Chamber of Commerce. He gets involved when the school system has trouble financially. He thinks by his participation, and the reason he brings that to them, is because he wants them to understand that he is connected and committed to this community. He is a businessman, there is no doubt about. But being connected and being committed to this community, living in this community. He has lived in Colonial Hills and now he lives just off the square. He thinks it's important that they preserve the ability for a small businessman to be in business to fulfill a need. This building was built to repair automobiles. It was not for a Starbucks. It was not built for office space. The only reasonable activity that should really go on in that building is to repair automobiles. Razing that site and building another building upon that site would inhibit the future redevelopment of those 1.3 acres. Denying somebody to go in there today and asking the three other businesses that exist on those 1.3 acres, you would be creating a hardship for those businesses to find other places to reside. He doesn't believe that his community desires that to happen. He is a community member. He's a businessman. I bring to the table accountability, honesty, and integrity and a venue that quite honestly, nationally, doesn't have that prospective. He believes in this city, he believes in the economic development of this city but he also believes by not granting this nonconforming use we are being short sighted. He will also tell them that he desires a five-year plan. He doesn't know any business that goes much past a five-year plan. He wouldn't stand in the way of development of this site if SBC, Worthington or somebody in five years came along and wanted to buy the entire site and redevelopment. But he stands in front of them today, having no contract, no information

through the service station or automobile repair. There is no engine replacement. No transmission replacement. He will tell them that it is not in his thought process to create an eyesore either. That building has been gray for as long as he can remember. His plan is to take the brick back to brick. Have it all sandblasted bring it back to the favorite color, he thinks they call it, just kind of neutral colors, gray is not going to be one of them. As for his site on 6188 Ambleside Drive, he spent $7,000 on a monument sign back in a neighborhood where there were no restrictions. He could have put up a red neon sign out there, but he didn't do that. If you were over at his facility and drove out to 161 and notice the island, he takes care of that and has for 10 years. He completely redid all of the landscaping on that island 4 years ago. He paid for the electric to light the flag. He does that for that community. Because the community gives to him, he gives back. He looks at this site as 1100 rooftops across the street, 450 rooftops behind him and an opportunity up and down this corridor to take care of people that quite honestly probably don't much appreciate people in his business. Because they aren't talked to honestly. They aren't taken care of. His desire is to bring that back that back to a condition, that it's a show place. That it's bright and when you walk in there's no grease running out the floors. Nice white walls. Well dressed people. Well mannered people. Gasoline associated with service in his industry has always been that could hardly get the hose in the car, can't find out how to check the oil and gets half the window cleaned, is the same guy that's going to work on your $40,000 Mercedes. It doesn't happen at his facility. They don't have gasoline first and foremost . But he does have technicians that are very good and they are paid very well. His annual payroll is just about ½ million dollars at that site on Ambleside. He would agree with them that he could make an impact. Is it the impact that they want right now? He would suggest no. Is it something that we can work towards or they can work together as a community that if in some point in time somebody comes to the owner of that property and says "I want to redevelop it". Is he going to stand in the way. He will tell you he is not going to do what West Brothers s Shell did. He will move but he will take his customers with him. He is not going to stay in the way. But he can't see it setting empty either.

Mr. Hunter wanted to know how many bays were there and Mr. Tilton said 3 and possibly 4. There's an addition of a store room that is the size or could be made to be the size a bay.

Mr. Kohler asked Mr. Tilton if he wanted to address the couple of issues that were raised.

Mr. Tilton responded that he took the canopy down at his facility. But it was encumbering his ability to operate, but this one on the other hand does not.

Mr. Tilton said that his goal is to have $15,000 of gross revenue per bay per month. That's a goal. They exceed that goal at 6188 Ambleside. Stacking of cars and the amount of cars you work on, if you were an oil change facility, to accommodate those goals you would have to run 100 cars through a day to even attempt to reach those goals. He is not going to be your oil change guy to the neighborhood and don't want to be. You've got one just down the street and they do very well. He does oil changes but his focus is to troubleshoot electrical, computer, carberation injection, fuel related, electrical, tires, batteries, and accessories.

Mr. Kohler asked him if they didn't do transmissions, engine change outs.

Mr. Tilton said they did at 6188 Ambleside Drive but it is not within a nonconforming use so he has elected not to perform those operations here. He will take them in here and he will transport them to 6188 Ambleside. So, you won't have cars that are raised up in the front end and the hoods raised sitting outside for any length of time at all. The amount of cars that he pass through on a regular basis at his facility with 7 bays is between 15 and 20 a day. Turnover, that's really up to the customer. If he has your car done and you don't come pick up, he can't collect his money and he gets to baby-sit their car. They try not to have that be an issue. One, they do take appointments, two, they take first come first serve. So, if your car would break down tomorrow and you needed it yesterday, he's going to work it as quickly as he can to get you back on the road. You would not let your car set there on his lot if you needed. So, his theory about turnover about cars, his guess is at any given time, you may see 10 to 20 cars on that lot. He doesn't know what the parking structure is right now. He believes there are 5 or 4 parking spaces on the north side, 7 on the south side and 4 or 5 at an angle up against the building. Of course, you have that pathway around the building that 2 cars could go side by side all the way around it. He doesn't know what the facility has to have.

Mr. Phillips told him it was 1 space for each 200 spare feet of gross floor area. He thinks basically the area under the canopy, if that was stripped,

Mr. Kohler asked if there was anyone else that would like to speak for or against the variance.

Mr. Kohler asked Mr. Tilton if his plan was to get a five year lease on the building. Mr. Tilton said at this point in time they are in the exploratory stages. To even start buying equipment and processing payroll, etc. he really needed to know the idea, based upon economic development or what was going to happen. The parcel as it is, most likely he would set it up just as he does his own and he does lease his building but owns the property. So, there would probably be something used in that sort of vein. It's some sort of tax idea. Right away he would probably lease it from Mr. Severance.

Mr. Kohler asked if anyone else had any questions or comments or motions.

Mr. Hunter wanted to know if it had to come to Architectural Review at this point.

Mr. Phillips said if he changes the exterior.

Mr. Tilton said signs, etc. all sorts of stuff.

Mr. Kohler said the question is do they want a conditional use for C-4 in a C-3 district. Right now it's zoned C-3 and automotive services aren't permitted. The question is, do they want to allow this operation to go in, which is ordinarily a C-4 district. That's the issue before them.

Mr. Hunter wanted to know how much C-3 space they have in the City right now.

Mr. Phillips said in C-3 there was a lot.

Mr. Kohler said he guessed the question they always have, whether or not there is a hardship on the requested variance. He already has his own business, so what's the hardship?

Mr. Tilton said there is none.

Mr. Hunter said he disagrees. He thinks the hardship is not with the folks business it's the City's. The hardship is, if something like this property, if

perfectly in his realm to do that as it is already a non-conforming use for gasoline and maybe you want another gasoline station.

Someone in the audience said something to the Board that could not be discerned.

Mr. Kohler asked if there were any other comments or motion.

There being no further discussion, Mrs. Crane moved:

THAT THE REQUEST BY ANDY TILTON FOR A CHANGE IN NONCONFORMING USE TO PERMIT AUTOMOTIVE SERVICES AT 6568 NORTH HIGH STREET AS PER CAE NO. BZA 17-04, DRAWING NO. BZA 27-04 DATED 05/18/04, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND PRESENTED AT THE MEETING.

The motion was seconded by Mrs. Schuster. Mr. Phillips called the roll with Mr. Hunter voting yes, Mrs. Moore voting yes, Mrs. Schuster voting yes, Mrs. Crane voting no and Mr. Kohler voting no. Motion carried with a 3-2 vote.

Mr. Hunter moved the meeting be adjourned and Mrs. Moore seconded the motion. All members voted "aye" thereon. The meeting was adjourned at 11:45 P.M.

Access to O.O.
CITY OF WORTHINGTON
DRAWING NO. BZA 27-04
DATE 5/18/04
Overhang
Canopy (proposed demo)
Sign
Service Station
CITY OF WORTHINGTON
DRAWING NO. BZA 36-14
DATE 8-29-14
APPROVED
BOARD OF ZONING APPEALS
CITY OF WORTHINGTON
DATE 6-3-04
Trash

RECEIVED 9/19/14

Plank Law Firm

A Legal Professional Association

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Columbus, Ohio 43215-5240
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Fax: 614-228-1790

September 19, 2014

Donald L. Phillips, Jr., PE
City of Worthington
374 Highland Ave.
Worthington, OH 43085

Via E-mail Only

RE: Appeal of Violation Order: 6568 N. High Street

Mr. Phillips:

On behalf of 6600 North High Street, LLC and Tilton's Automotive Service, I respectfully request that the appeal referenced above, scheduled before the Board of Zoning Appeals on October 2, 2014, be tabled until the Board's November 2014 meeting. A parking plan is being prepared that will be shared with the City's Planning and Building Department, in order to clarify and resolve some of the issues involved in the appeal.

Sincerely yours,

Donald Plank

Donald T. Plank

DTP/bp

298.00//Corres/LtrPhillips Appeal Table Request (9-19-14)

CITY OF WORTHINGTON
DRAWING NO. BZA 36-14
DATE 8-29-14