

**CITY OF GAHANNA
BOARD OF ZONING AND BUILDING APPEALS**

The Academy Ridge Community Association,
Inc.,

Appellant,

vs.

City of Gahanna, Planning Commission

Appellee.

BZA No: 0001-2020

Re: FDP-007-2019

DR-0022-2019

MOTION OF THE APPLICANT

Now comes Academy Development Limited Partnership and William J. Schottenstein (“Applicants”) and respectfully requests the Board to allow it to participate in the above captioned matter pursuant GCC 147.03(c). The Applicants are the owners of the property the subject of this appeal and the applicants on the applications the subject of this appeal, and thus are proper parties this Appeal and filed a Notice as an Interested Party on January 3, 2020. Academy Development Limited Partnership is the owner of the property the subject of Design Review Application (DR-0022-2019) (the “DR Application” herein) and Final Development Plan (FDP-0007-2019) (the “FDP Application” herein) (the DR Application and the FDP Application individually and collectively the “Applications” herein). William J. Schottenstein was the applicant in both Applications. William J. Schottenstein is a member of Academy Development Limited Partnership. Applicants maintain that in both Applications they are a proper party before the Board in this Appeal, which the Applications were properly decided by

the Gahanna Planning Commission (the “Planning Commission”) and this Appeal should be rejected.

MEMORANDUM IN SUPPORT OF UPHOLDING
APPROVAL IN GAHANNA PLANNING COMMISSION CASES,
DR-0022-2019 AND FDP-0007-2019

I. Summary

The Applications relate to two development approvals granted by the Gahanna Planning Commission on November 20, 2019 concerning a 5.19 acre tract generally located at 1041 N. Hamilton Road, Gahanna, Ohio (the “Property”). Applicants are a limited partnership engaged in real estate investment and development which owns the properties the subject of this appeal, and one of its members who signed as Applicant on the Applications. Appellants fail to demonstrate by a preponderance of the evidence that the Planning Commission’s decision to approve the Design Review Application (DR-0022-2019), and the Final Development Plan (FDP-0007-2019) were in error. Applicants assert the decision by the Commission on the Applications should be confirmed and this Appeal dismissed.

II. Background

In 1990, Gahanna City Council passed Ordinance Number 111-1990 (the “Zoning Ordinance”) rezoning the Property at 1041 North Hamilton Road, Gahanna, Ohio to the Planned Commercial Center (PCC) Zoning District. On November 20, 2019 the Planning Commission approved a FDP Application for the Property and a DR Application in the form of a Certificate of Appropriateness for one of the buildings to be constructed on the Property.

At the Hearing on November 20, 2019, the Planning Commission found that the Applications meet the requirements of Gahanna's City Code ("GCC") 1108.05 and 1197.07 and approved the Applications. The Academy Ridge Community Association, Inc., (the "Appellants") appealed the Planning Commission's decision. The Applicants assert that the Appellants have failed to meet their burden of proof that the Planning Commission was in error in their approval of the Applications.

III. Law and Argument

A. Standard of Proof. Gahanna City Code 147.03(g) provides that the "Appellant ...has the burden of proof by a preponderance of the evidence". Black's Law dictionary defines "preponderance" as that which has a "greater weight of evidence which is more credible and convincing", and that which "means something more than weight; it denotes a superiority of weight or outweighing." Black's Law Dictionary, 4th Ed. 1951. The preponderance of the evidence in the Applications and the testimony during the hearing supports the Planning Commission's approval of the Applications.

B. Planning Commission's Review Authority to Approve a Final Development Plan Application. The Planning Commission is required to make several findings pursuant to GCC to approve a Final Development Plan. Gahanna City Code 1108. (a) (1) states:

(1) Approval. The Planning Commission shall approve an application for a Final Development Plan if the following four conditions are met;

A. The proposed development meets the applicable development standards of this ordinance.

B. The proposed development is in accord with appropriate plans for the area.

C. the proposed development would not have undesirable effects on the surrounding area.

D. The proposed development would be in keeping with the existing land use character and physical development potential of the area.

There is ample probative, authoritative evidence in the FDP Application and the Record that this evidence was presented to the Commission, and that the Commission found that these requirements were met by the Applications.

1. Staff Found the FDP Application Met Requirements for Approval. First, the City Staff report prepared by Michael Blackford, Interim Director of Planning and Development for Gahanna, after a review of the applicable zoning ordinance and requirements for approval, stated that “Staff recommends approval of the application as submitted.” (Staff Report, page 3). It’s implicit that Mr. Blackford could not make this determination without first finding that the application met the requirements of GCC 1108.01 (a) (1) A-D.

Second, the Record indicates Mr. Blackford testified at the hearing that the applications met the requirements for Final Development Plan approval. (Meeting Minutes page 2). The minutes of the hearing summarize Mr. Blackford’s testimony state that he:

provided summaries of the Final Development Plan and Design Review applications; he showed images of the site plan and zoning districts as well as surrounding zoning districts; reviewed code requirements for building setbacks and buffers; showed rendering which were submitted as part of the applications; materials include brick; the overlay text requires a popular design from the 1990’s; stated the property is appropriate for 52,000 square feet of retail, but that does not account for the ravine; land use plan proposes a mixed use of retail and

residential is permitted; this project is significantly less intense than the recommendation of the land use plan which is not a bad thing when thinking about the ravine. Blackford provided a history of the area; there was a 2018 approval which had a similar layout; it was appealed later that year to the BZBA, which granted the appeal in favor of the appellant; reviewed the criteria for granting approvals for Final Development Plan and Design Review applications; staff recommends approval of both applications; when looking at requests, this is consistent with zoning, the materials and design are consistent with the overlay text; has been zoned for commercial use since the 1990's but has not been developed. (Meeting Minutes page 2).

Mr. Blackford's testimony indicates he found the Applications met the development standards of the zoning ordinance, the land uses proposed were permitted, the plans were in compliance with plans for the area, the proposal was less intense than recommended in the city's plans (but that was not a bad thing given the ravine on the property's west side), and that the applications were consistent with the zoning and the overlay text. No mention was made of any undesirable effects on surrounding properties.

Appellants claim that the medical use proposed by the Applicant is not permitted in the zoning district. Mr. Blackford testified at the hearing that the city had previously prepared a letter for the property owner to the north which concluded the PCC district permits shopping centers by right, and the term "shopping centers" is a "group of retail and other commercial establishments that is planned, developed and owned and managed as a single property typically with on-site parking". (Meeting Minutes page 7). This letter was from Bonnie Gard, in her capacity as Planning and Zoning Director for the City of Gahanna. Mr. Blackford testified he agreed with the letter. (Meeting Minutes page 7). Thus, two Gahanna city officials charged with administering the city's zoning code, Michael Blackford as Interim Director of Planning and Development, and Bonnie Gard, as Planning and Zoning Administrator, who are experts on the operation of the Gahanna

City Code, concluded that the use proposed by the Applicants was a permitted use in the PCC zoning district.

2. The Commission Found the FDP Application Met Requirements for

Approval. The Record indicates the Commission found the requirements for Final Development Plan approval were met. After the motion was made the meeting minutes reflects a discussion amongst the Planning Commission members wherein Commission member Wester stated:

“that he is in support because he believes the plan meets the applicable development standards; the plan compliments the area, this is a medical facility and there are others around the area; this has a positive effect on the surrounding area; its not a restaurant or a bar, and there will not be a lot of night life; it serves the community in a positive way; it will bring high paying jobs to the area; is a key component to development”.

Planning Commission member Mr. Suriano, said he “agrees with Mr. Wester; will be voting in support for many of the same reason outlined (by Mr. Wester); from a commission stand point, we look at context and fit and Wester outlined that eloquently, believes it appropriate for the area when looking at the Land Use Plan.” (Meeting Minutes page 7). The Planning Commission, having weighed the evidence, found the preponderance of evidence in support of approval of the FDP Application.

C. Planning Commission’s Review Authority to Approve a Design Review

Application. The Planning Commission is required to make several findings pursuant to GCC to approve a Design Review Application and issue a Certificate of Appropriateness for that application. Gahanna City Code 1197.07 (a) states:

The Planning Commission shall review an application for a Certificate of Appropriateness to determine if proposed new construction... promotes,

preserves, and enhances the overall architectural character of the Design Review District in which the structure is proposed to be located and to endeavor to assure that the proposed structure or alteration would not be incompatible with existing structures within the surrounding area.

The record is clear that Planning Commission properly reviewed the application and found that the Application satisfied these requirements.

1. City Staff Found the DR Application met the Requirements for Approval.

Gahanna City Staff member Michael Blackford, the Interim Planning Director for the City of Gahanna stated in his staff report: “Staff recommends approval of the applications as submitted. The materials, colors, and style of the proposed buildings are consistent with the 1990 ordinance and the Applicable standards of the DRD-3”. (Staff Report page 2). The DRD-3 referenced in the Mr. Blackford’s statement is an acronym for Design Review District-3. The city has multiple design review districts, his statement is specific that this application is consistent with the requirements of the specific Design Review District No.3 in which the Property is located.

Mr. Blackford also testified during the Hearing on the DR Application as to its compliance with the requirements found in the GCC, and found that the DR Application met the GCC 1197.07 (a) requirements set forth above. Blackford “reviewed the criteria for granting approvals for the Final Development Plan and the Design Review application; and Staff recommends approval of both applications...” (Meeting Minutes page 2).

2. The Commission Found the DR Application Met Requirements for

Approval. The Board made clear in its Motion on the DR Application and found that the DR Application met the requirements set forth in GCC 1197.07(a). After the Motion was made by Ms. Burba that the DR Application be approved, the meeting minutes state

discussion followed by a statement made by Commission member Mr. Wester: “Wester said he is in support for many of the reasons he stated moments ago; the development is in accordance with the land use plan, it complements the area, is a positive development for the city and the area; the plan meet applicable development standards” (Meeting Minutes page 9). Further, Commission member Hicks added that he “finds the proposed design meets those requirements and will be in support” (Record page 9). Finally, Commission member Suriano, who on information and belief is an architect licensed in the state of Ohio and thus uniquely qualified to opine as to whether the DR Application met the Design Review standards as set forth in GCC 1197.07 (a), also voted in favor of the DR Application.

D. Expert Testimony Supersedes Opinion Testimony in Administrative Hearings. The record reflects that none of the application opponents who testified at the hearing were qualified as experts on the fields of traffic, architecture, land use, or zoning. As a component of the Applications, the Applicants submitted a traffic study prepared by American StructurePoint, consulting civil engineers licensed in the state of Ohio. This report was reviewed by the Gahanna City engineer, on information and belief, a civil engineer licensed in the state of Ohio. The City engineer reviewed the traffic study submitted with the Applications and indicated in his report to the Planning Commission the Applications met Gahanna City Code requirements. The conclusions of experts American StructurePoint and the City Engineer, who concluded the plan complied with City requirements as to traffic, supersede the opinion testimony provided by the application opponents and Appellants to the contrary. Mr. Blackford, the Interim city Planning and Development Director, an expert on Gahanna zoning and city planning,

reviewed the site plan and building elevations and indicated in his report to the Planning Commission that the applications met Gahanna City Code requirements. As a part of their review, and as stated in the hearing, the city staff reviewed the project landscape plan, the lighting plan, the tree survey, and the economic feasibility statement and indicated all submittals met Gahanna requirements. Appellant's objections, both at the hearing and in their brief, were provided by non-experts and is subjective, opinion testimony. Such testimony was found by the Planning Commission to be surmounted by the professional review and expert opinions provided by appropriate city officials and the Applicant's subject area experts as contained in the Applications. *See Jenkins v. City of Gallipolis*, 128 Ohio App. 3rd 376, 715 N.E. 2nd 196 (1998). "The ploy of swearing in the member of the public does not alter the fact that the bulk of these witnesses are merely offering their subjective and speculative comments and unsubstantiated opinions." *Shelley Materials, Inc. v. Daniels*, 2003-Ohio-51, ¶ 2, *Adelman Real Estate Co. v. Grabanic*, 109 Ohio App. 3rd 689, 694, 672 N. E.2nd 1087, (1996), *citing In re Rocky Point Plaza Corp*, 86 Ohio App. 3d 486, 621 N.E.2nd 566, (1993). The Planning Commission found the preponderance of expert testimony outweighed the opinion testimony presented by the Appellants, as they should have.

It is the Appellant's burden to show that Planning Commission's approval of the Applications in error by a preponderance of the evidence. The Planning Commission's authorization (or denial in a given case) is presumed to be valid and the burden of showing the claimed invalidity rests upon the party contesting the determination. *See C. Miller Chevrolet v. Willoughby Hills*, 38 Ohio St.2d 298, 313 N.E.2d 400, (1974). Appellants have failed to show by a preponderance of evidence that the Planning

Commission's decision was incorrect for failure to meet the requirements of GCC 1108(a)(1) and GCC 1197.07(a). The Commission heard testimony from city staff experts, and reviewed reports from the Applicant's experts as contained in the Applications. This expert evidence, presumed to be valid, is not surmounted by the subjective, non-expert opinion testimony of the Applicant's opponents.

IV. Conclusion

The Planning Commission properly weighed the testimony and reports provided by the City's professional staff, who are experts in planning, zoning, engineering, traffic and landscaping, against the non-professional, non-expert, opinion testimony of the Appellants, and found that a preponderance of the weight of the evidence landed in favor of approval of the Applications. This Board should not substitute its judgment for the judgment and consideration of the Commission who heard the evidence, the testimony of the parties and of the professional city staff. The Applications complied with requirements of GCC and the Planning Commission's decisions should be upheld and Appellant's appeal dismissed.