

Resolution

Number 15-0829

Adopted Date June 02, 2015

APPROVE APPLICATION TO AMEND CONDITION #8 OF THE SITE PLAN OF THE SISTERS, LTD AND PILOT TRAVEL CENTER LLC, CASE NUMBER 103-2015 SP

WHEREAS, on Feb. 21, 2013, this Board adopted Resolution # 13-0340 that approved the Site Plan of The Sisters, Ltd. and Pilot Travel Centers, LLC (“Applicants”) on a 10.52 acre site along State Route 350, State Route 123 and Interstate 71 identified as Parcel # 13-16-100-018 in Turtlecreek Township, Warren County (the “Site”), subject to certain conditions of approval; and

WHEREAS, Condition #8 of Resolution # 13-0340 requires: the Site must connect to a central sanitary sewer system (as defined in Zoning Code Sec. 401.3 [Central Sanitary Sewer System]) with the approval of the statutorily created JEDD Board; and

WHEREAS, on Apr. 8, 2015, Applicants filed an Application for Site Plan Review to amend Condition #8 to allow the development of the Site to proceed with an onsite wastewater disposal system already approved by the Ohio EPA, subject to Applicants’ commitment that the Site (and the Country Kitchen Restaurant parcel also owned by The Sisters, Ltd.) connect to a central sanitary sewer system should it become available at the Site’s property line in the future; and

WHEREAS, said Application was assigned Case # 103-2015 by the Zoning Department and in accordance with Zoning Code Section 1.303.3 (C), the Zoning Inspector posted a sign on the Site that continuously remained on the Site stating the property is subject of a public process and where to obtain additional information about such public process; and

WHEREAS, the Board scheduled the Application for an adjudicatory hearing on May 19, 2015, at 9:30 A.M.; and

WHEREAS, in accordance with Zoning Code Section 1.303.3 (C), the Zoning Inspector mailed written notice, by first class mail, on Apr. 24, 2015, being more than ten (10) days prior to said scheduled hearing, giving notice of the date, time and place of the hearing to all owners of property within five hundred (500) feet from the property lines of the Site, as well as notice to the Applicants; and

WHEREAS, the hearing was opened on May 19, 2015, at 9:30 A.M., and at the Board’s request, the Zoning Inspector testified regarding the Application by way of presenting the Board with a power point presentation and the content of the Zoning Department’s file which included without limitation a copy of a Permit to Install (PTI) dated Dec. 14, 2012 granted to Applicant Pilot Travel Centers, LLC, which the Board accepted into evidence; and, Mr. Yetter explained that the Application is seeking a major modification of one of the conditions of the previously approved

Site Plan and in accordance with Warren County Rural Zoning Code ("Zoning Code") Sec. 1.303.7 (D)(2), the Board's approval is required for the proposed change to Condition #8; and

WHEREAS, the Board heard sworn testimony from the Applicants, including: Jillora Summers, being one of the owners of The Sisters, Ltd., who testified that the cost of the sanitary sewer is too much money for Pilot's development, and the Applicants are asking for the condition of public sanitary sewers be changed, but they are still trying to work out a solution for public sanitary sewer services for the Site; and, Brad Alsup, Representative of Pilot Travel Centers, LLC who testified the Site Plan drawings that were originally filed with the Board show the on-site waste water package plant which was approved by the Ohio EPA; that the Permit to Install (PTI) granted Dec. 14, 2012 for Pilot's on-site waste water package plant has been extended by the Ohio EPA but the Ohio EPA extension expires on June 14, 2015 and no future extensions will be granted; and, per the Ohio EPA's requirement, only this Site and the County Kitchen Restaurant site will be connected to the on-site system which will be operated by an licensed contractor approved by the Ohio EPA, thus, this system is not your typical back yard septic system; and

WHEREAS, at the Board's request, the Board heard testimony from the Executive Director of the Warren County Port Authority, Martin Russell, who testified the Port Authority had been requested to get involved with the City of Lebanon and Turtlecreek Township Joint Economic Development District (JEDD) to be the issuer of bonds for construction of the public sanitary sewer to the JEDD area (which includes the Site) and the cost estimate was \$2.5 Million which Applicant, Pilot Travel Centers, LLC committed to contribute \$500,00.00, however, the project was put on hold due to litigation of Board Resolution # 13-0340, thereafter the City of Lebanon hired a design firm to begin the sanitary sewer project and upon design, the project was bid with the cost coming in at \$4.1 Million but the Port Authority was unable to issue debt for the project at this time as no bank is willing to buy the debt; and, that Pilot is willing to raise its contribution to \$1 Million and the other owners of properties in the Joint Economic Development District (JEDD) are discussing their willingness to be assessed for the sanitary sewers which decision may be made in the near future; and

WHEREAS, during the hearing, the Board heard sworn testimony and accepted evidence from Opponents, including: Tony Collins, who stated he represented a number of residents in the area (without identifying any of them) and presented a Power Point presentation and a packet of what Mr. Collins testified contains violations issued by the Ohio EPA against Pilot Travel Center at other Pilot locations throughout Ohio; and Lauri Alesi, Mike Mantei, Kent Kimmle, Rachel Lott, Carol Prinz, Jeanette Kuschill, Paul Burger, and Elaine May; and

WHEREAS, the Board offered the Applicants the opportunity to offer rebuttal testimony, witnesses and evidence, and rebuttal was limited to Brad Alsup responding to the Opponents by testifying the Ohio EPA has sole jurisdiction over the proposed package treatment plant, and all processes required by the Ohio EPA for a permit to install have been followed ; and

WHEREAS, at the conclusion of all testimony on May 19, 2015, the Board voted to close the hearing and to deliberate on a future date, and announced that the Board would reconvene on June 2, 2015 at 9:45 A.M. to render its decision; and

WHEREAS, the Board deliberated in private on May 26, 2015; and

WHEREAS, after deliberating, based on the whole record, a part of which is described above and the entirety of which is incorporated by reference herein, the Board now makes the following findings:

- that the issue upon which the Board must render a decision is limited to whether amending Condition #8 of Resolution #13-0340 should be granted based on the applicable review criteria in Zoning Code Sec. 1.303.6; and
- that there is not a preponderance of substantial, reliable and probative evidence in the record that the proposed amendment of Condition #8 of Resolution # 13-0340 will have a negative impact on the public health, safety, convenience, comfort, prosperity or general welfare, or on public service facilities and utilities including without limitation for sanitary sewer, that would justify denial of the Application; and
- that the Permit to Install (PTI) issued by the Ohio EPA to Applicant, Pilot Travel Centers, LLC for an on-site waste water disposal system for the Site development (and Country Kitchen) rises to the level of a preponderance of substantial, reliable and probative evidence in the record that Applicant has satisfied the requirement of providing a plan of procedures to mitigate nuisances to the surrounding area relating to unsanitary operations.

NOW THEREFORE BE IT RESOLVED, by at least a majority of vote of its members, after weighing and balancing all of the testimony and evidence and applying the applicable review criteria, the Board does hereby approve the Site Plan Application identified as Case No. 103-2015 SP, to amend Condition #8 of Resolution # 13-0340, to allow the development of the Site to proceed and operate with an onsite wastewater disposal system as shown on the Site Plan drawings and in accordance with the Permit to Install (PTI) granted to Applicant, Pilot Travel Centers, LLC by the Ohio EPA, until such time as a central sanitary sewer system is available at the Site's property line in the future, whereupon, the Site shall connect to the Central Sanitary Sewer System.

BE IT FURTHER RESOLVED, that the **WHEREAS** clauses recited above are incorporated by reference herein.

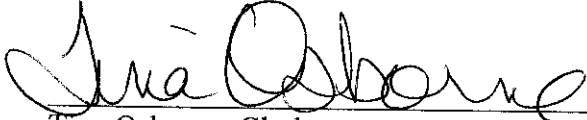
RESOLUTION #15-0829
JUNE 2, 2015
PAGE #4

Mrs. South moved for adoption of the foregoing resolution, being seconded by Mr. Grossmann.
Upon call of the roll, the following vote resulted:

Mr. Young - yea
Mr. Grossmann - yea
Mrs. South - yea

Resolution adopted this 2nd day of June 2015.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

NOTICE OF RIGHTS TO APPEAL

Please be advised that this is a final decision, therefore, any appeal must be brought within 30 days of this decision in the Warren County Court of Common Pleas in accordance with Chapters 2505 and 2506, Ohio Revised Code, and Section 1.303.5 (D) of the Warren County Rural Zoning Code.

cc:	Plat / Site Plan File	Applicants
	Prosecutor's Office – Bruce McGary	RPC
	Turtlecreek Township Trustees	RZC