

RECORD OF PROCEEDINGS

Minutes of the Public Hearing of the Trustees of Sycamore Township Sycamore Township, Hamilton County, Ohio

September 19, 2023

The public hearing for Zoning Case 2023-06MA was called to order at 5:00 p.m. by Chairman Schwegmann.

Present for the hearing were Chairman Schwegmann, Vice Chairman Weidman, Trustee James, Law Director Barbieri, Administrator Kellums, and Planning & Zoning Administrator Uckotter.

Mr. Barbieri asked all those planning to provide testimony to stand to be sworn in.

Mr. Uckotter presented Zoning Case 2023-06MA, a request by applicant Thomas M. Tepe, Jr, of Keating, Muething & Klekamp PLL, on behalf of property owner RCG-Cincinnati, LLC, for a major adjustment to a PUD at 7700-7724 Montgomery Road. He noted the proposal is for a Major Adjustment to a PUD to Case 2000-01Z to allow for an earlier start time of 5:30 a.m. for two tenants, plus other potential changes. Mr. Uckotter reviewed the surrounding Zoning Districts and site characteristics and reported on the zoning case history of the site.

Mr. Uckotter noted that some of the conditions noted in the historical cases for the site (e.g., 2000-01Z, 2000-10MA, and 2009-10MA), are not being met, creating disharmony with adjoining residential uses. He noted Case 2023-06MA was initiated from a complaint from a resident in or around January 2023. He said it was discovered that a CrossFit Studio, Homegrown Strength and Conditioning, was found to have commenced operations illegally without Zoning Certificates at 7712 C Montgomery Road. He said this was noticeable to neighboring residents due to increased activity at the rear of the building, illegal signage that sprung up around the site directing people to the rear of the building, and the early start time. Condition 13 of the approved PUD restricts commercial uses from operating between the hours of 1:00 a.m. and 7:00 a.m. Mr. Uckotter reported there is another tenant, 6 'N The Mornin', a breakfast restaurant tenant, beginning operations at 6:00 a.m., which was issued several zoning certificates in 2020 and 2021. As a result of the zoning certificates that were issued to the breakfast restaurant tenant, Mr. Uckotter stated staff recommends a 6:00 a.m. opening time for the two businesses.

Mr. Uckotter stated Condition 15 of the approved PUD restricts loud noise and music emanating from the building. He reported the Township has received complaints about noise and music emanating from the open rear garage door. He stated testimony given at the August 14, 2023 Zoning Commission Meeting confirmed that the rear entry to the CrossFit Studio is being used by customers. Mr. Uckotter explained why he had determined that the framers of the PUD did not intend for there to be rear customer access to the building and recommended a condition prohibiting rear customer access.

Mr. Uckotter then reviewed other PUD violations on the site to conditions listed in Cases 200-01Z, 2000-10MA, and 2009-10MA, including violations having to do with lot consolidation, the acknowledgment that a sufficient filtering system to eliminate restaurant odors is required, delivery times, dumpster locations and dumpster screening, as well as the location of a grease storage container in the no-restaurant zone on the site. He noted that GFS or Dollar General also stores cardboard and other materials in an unscreened area containing at least four parking spaces behind the building. Mr. Uckotter reported the applicant has worked with staff and submitted a draft dumpster plan to consolidate and relocate the dumpsters. He displayed a site plan in which dumpster locations were noted in boxes numbered one through six. He reviewed the plan and said staff recommends the grease container be moved to box five on the site plan, just north of the dumpster compacter. He said the Zoning Commission recommended the dumpster in box four be permitted to remain in that location even though it is not shown on previous case plans. There was discussion about the cleanliness of the dumpster areas, dumpster screening, and gates left open. Mr. Uckotter stated the applicant proposes a chain link fence slatted with vinyl to screen the area in which GFS or Dollar General stores cardboard (after a brief discussion, it was corrected by the applicant that the cardboard stored was indeed from Dollar General). He said the screen is insufficient as it is a 40-foot-wide area. Mr. Uckotter reported Zoning Commission made a recommendation to allow non-masonry screening; however, staff recommends that the Board of Trustees require masonry screening of the cardboard waste storage area as it is a commercial trash handling area – the Zoning Resolution requires masonry screening, not only for dumpster enclosures but waste and trash handling areas.

Mr. Uckotter then reviewed the signage on the site, noting the Zoning Commission recommended allowing up to two commercial real estate signs for 180 days per vacancy; however, staff recommends following Section 13-9.1 of the Zoning Resolution.

Mr. Uckotter discussed the landscaping on the site, pointing out missing trees in violation of Case 2000-01Z condition number 23. He went on to review the Landscape Plan proposed by the applicant as well as staff recommendations.

Mr. Uckotter reviewed property maintenance issues on the property, including trash strewn throughout the site, potholes, building maintenance issues, and fences that are falling over. He said the property owner has begun to invest in fixing some of these issues, but issues related to roof flashing and gutters remain, causing damage to the building façade. Mr. Uckotter also pointed out another unpermitted business opened on the site in June 2023 but has since obtained a zoning certificate.

Mr. Uckotter reported the Zoning Commission recommended approval of the Major Adjustment to a PUD with conditions at their August 14, 2023, meeting by a five to zero vote. He then reviewed the Zoning Commission's recommended conditions, noting anything in bold was proposed by staff.

Mr. Uckotter stated staff recommends the Zoning Commission condition related to temporary signage not be adopted. He then read what the Zoning Resolution permits with regard to temporary lease signs. He then reviewed the attachments included in the staff report. The Board asked questions of Mr. Uckotter.

Ms. Schwegmann asked for clarification on one of the conditions relating to a dumpster.

Mr. James asked about the term operating hours, and if there was a definition of that in the Zoning Resolution and asked if there was testimony from the public at the Zoning Commission meeting about the operating hours.

Mr. Uckotter answered staff interprets operating hours as hours in which a business is open to the public. He stated there was testimony from the public both for and against the 5:30 a.m. opening time.

Ms. Schwegmann invited the applicant to address the Board.

Mr. Thomas M. Tepe, Jr. of Keating, Muething & Klekamp PLL, One East Fourth Street, Suite 1400, Cincinnati, OH 45202, addressed the Board. Mr. Tepe stated that he and his client have been working with the Township for seven months and have been working on improving the condition of the property. Mr. Tepe said his client agrees with all of the recommendations set forth by the Zoning Commission, with the exception of the location of the grease container. He stated if it were to be located where the Zoning Commission recommends, it would take up parking spaces and be in front of a pediatrician's office door.

Mr. James stated he witnessed trash piled on top of the dumpsters and asked if there is sufficient dumpster space for the property.

Mr. Tepe said he believes so, noting he thinks it is a matter of reminding and educating the tenants on where the trash should go.

Mr. Weidman posed a question to Mr. Tepe whether it is a good idea to put a grease container that is an accessory use to a restaurant in an area restricted to restaurants.

Mr. Tepe said he asked the Board to consider that location to behind the building (in box 3 of the dumpster plan) because it is a more logical place than outside a pediatrician's office door (in box 5 of the dumpster plan). He said that his client has worked long and hard on the landscaping and are doing things to clean up the site. Mr. Tepe stated the hours of operation are what started this and said they believe they have taken all measures that would allow a quiet and peaceful enjoyment for the business to operate at 5:30 a.m. with all gym clients going in from the front of the property. He noted the hours of operation issue is really important to the gym and noted other similar businesses that also open that early or earlier, including Terry Bryan Fitness which is very close to the property in question.

Mr. Weidman said none of those other properties have an hours of operation restriction in their PUD, and the majority of them do not back up to residential in such proximity as this case, so there is no comparison.

Mr. Tepe stated they believe the odor mitigation issue is a non-issue and that what is there fully complies with the original condition and described the reasoning for this assertion.

Mr. Weidman noted there is a restaurant in Kenwood that is required to have scrubbers and refrigerate their trash to prevent odor and stated the Board could require scrubbers here as well to comply with conditions.

Mr. Tepe reiterated that the restaurants have been there, one of them has been there since 2001, and there have been no complaints about odor. There was continued discussion about this topic and then Mr. Tepe thanked the Board and introduced the next speaker.

Mr. Randy Garfinkle, of 675 River Chase Ridge, Sandy Springs, GA, addressed the Board. Mr. Garfinkle said he is the COO and Director of Investments for RCG Ventures. He said RCG is a real estate company that owns and operates shopping centers and has been in operation since 2004. He said the company purchases shopping centers to add value to them by securing national, regional, and local tenants for a healthy mix of tenants that creates jobs, stimulates the local economy, and gives citizens a place to meet. He said they purchased this property in 2014 and since have signed 11 tenants, which he went on to list.

Mr. Garfinkle stated Homegrown Strength & Conditioning is running a business and also providing a valuable service to the citizens. He referenced their partnership with Moeller High School. Mr. Garfinkle noted it is not unusual for gyms to open at 5:30 a.m., and there is a need for it. He said the reason for their request for a PUD amendment is mostly to change the operating hours for that business and 6 'N the Mornin'. He discussed the concerns Mr. Uckotter has brought to them and said they have worked closely with the tenant to mitigate or eliminate these concerns. He said upon approval of the operating hours, RCG will build out the space for the gym to have an entrance through the front of the building and what else they have agreed to do to eliminate activity in the rear.

Ms. Schwegmann stated it is incumbent on the owners to know and enforce the rules with tenants, and there is a significant amount of concern about enforcement.

Mr. Garfinkle agreed and described efforts made to get tenants to follow the rules and to remedy other property maintenance issues and other concerns with the building and its operations.

Mr. James asked if the workout space would be moving forward or if it would still be in the rear adjacent to the garage door, which may not be as soundproof as a wall.

Mr. Garfinkle answered the tenant would lease the entire space but stated they agreed there may now be noise at any time of day.

Mr. Garfinkle then addressed the grease container, stating the two possible locations are near the pediatrician's office close to Montgomery Road (in box 5 of the dumpster plan) or to the rear of the building in a masonry enclosure more than 30 feet from the residents (in box 3 of the dumpster plan). Mr. Garfinkle spoke about the landscaping, fence repairs, and other improvements to the property they have made and plan to make. He said he hoped the Board would reconsider the grease container location and went on to discuss the screening of the cardboard. He said the issue with a masonry enclosure is the proximity to two to three doors. He

said they would speak to the tenant about not using so much space and proposed a fence to screen the area.

Mr. Uckotter asked if the tenants had considered placing the cardboard in a recycling dumpster container.

There was a discussion about the cardboard with Mr. James.

Mr. Garfinkle agreed there should not be smells but said the tenant has been there for over 20 years with no complaints. He reiterated that they were there for the two tenants and that the 5:30 a.m. opening time is critical, and they will take all necessary measures to make sure there won't be disturbances to the adjacent residences.

Ms. Schwegmann asked about the business signage.

Mr. Uckotter said originally, they had snipe signage directing people to the rear of the property, which had been removed. The goal is to issue a zoning certificate to the gym, at which time the emblem in the rear will have to be removed.

Ms. Schwegmann asked if there would be signage for the gym in the front of the building as that could be important in an emergency.

Mr. Garfinkle said the tenant has agreed to expand their premises so the entrance is through the front, and there will be a sign at the front.

Mr. James asked if Mr. Garfinkle was okay with staff recommendations, outside of the hours of operation, which differ from Zoning Commission recommendations.

Mr. Garfinkle stated the items they have issues with and would like the Board to consider are the hours, the screening for the cardboard, and the location of the grease container. He encouraged residents to reach out to them if they have any concerns.

Mr. Weidman brought up issues with trash and the grease container attracting rodents and insects so close to residential areas, trees dying and not being replaced, and a former storage area being turned into rentable space with no zoning certificate. He said there was also no zoning certificate for a tenant who moved in after that to sell shoes. Mr. Weidman said it looks like the wild, wild west and he is surprised, since RCG is a reputable company, that all these things have happened in a shopping center with so much potential. He said that is a real problem for the Township.

Mr. Garfinkle said when Mr. Uckotter alerted him to the issues, he came here and visited and has since tried to address the problems, saying it was not previously on their radar. He said they are committed to maintaining this asset.

Mrs. Schwegmann began the public comment section of the hearing. Mr. Barbieri reminded anyone who came in late after he swore people in must now be sworn in to provide testimony.

Janelle Bookout, co-owner of Homegrown Strength and Conditioning, of 7966 W. Gate Park, West Chester, OH 45069, addressed the Board. Ms. Bookout gave background on the business saying it is a local small business she owns with her husband. She said the business has been open since October, and the goal is to give back to the community. She said they have 80 recurring members and 20 punch card holders who use the gym. Ms. Bookout stated she reached out to Mr. Uckotter's predecessor and was told everything was fine and did not know anything was done incorrectly. She said in mid-December she learned they needed to get into compliance they reached out and heard back from Mr. Uckotter when he started his new role as Planning & Zoning Administrator. Ms. Bookout stated when she found out this was a site-wide issue, they pulled in the landlord.

Ms. Bookout said once they found out the hours of operation were an issue, they worked with the landlord and Mr. Uckotter to attempt to remedy the issues for the residents. She said three days a week, Moeller students get trained by her husband at 3:30 p.m. and they have been dropped in the back as the space in the front is not great to walk through. Ms. Bookout stated there was an issue before they were in the space with people hopping the fence and breaking into cars at the residences behind them. She said that did not have anything to do with their business. She said their clients are high-income people. Ms. Bookout said the 5:30 a.m. class is their second best-attended class and is crucial to them. She said the rear door is intended to be closed. Ms. Bookout said she will lose a lot of members and will likely have to close if the 5:30 a.m. time slot is lost. She stated once the front is built out, classes will be in the front, and the rear will be reserved for low-noise activities such as personal training.

Mr. James asked if noise emanated from the closed garage door.

Ms. Bookout stated they would have to install soundproofing to move classes to the front so other tenants wouldn't hear anything. She stated that currently, she has not heard much noise in the back during peak class time, and she would be very surprised if those in the residences could hear anything.

Mr. Weidman asked Mr. Uckotter how the Township monitors sound spillage from the space.

Mr. Uckotter said the inspector has a sound meter, and staff visited the site at 6:00 a.m. and was able to hear muffled sounds through the garage door. He said if the door is closed, adjacent residents may still be able to hear sounds from the tenant in the early morning when there is little ambient noise.

Ms. Schwegmann asked if the garage door could be locked or walled in.

Mr. Uckotter answered in conversations with Fire Marshall Doug Morath he learned that there is a sufficient fire escape route, as there is a separate door that exits to the outside in the rear of the property.

Ms. Bookout said once this is resolved they would provide their members with a specific set of rules to follow. There was discussion about locking the door or eliminating it.

Mr. Uckotter addressed Ms. Bookout's comment about his predecessor, Skylor Miller, refuting her claim that Mr. Miller told her everything was fine to open the business. He noted in the early January period, Mr. Miller was the one who took the initial call from a concerned resident, who was present at the hearing, alerting him to the CrossFit studio being in business. He said as far as he was aware, this was the first awareness the Township had of the unpermitted CrossFit studio's presence, as he has seen no evidence of communications regarding it prior to January 2023/ when the business apparently opened earlier in (the fall of) 2022 without the knowledge of the Township.

There was a discussion with Ms. Bookout about her attempts to contact the Township in early 2023. Mr. Uckotter noted for the record it was his understanding that Mr. Miller learned of the issue in late December/early January, not earlier in October 2022, when the business opened without the knowledge of the Township, and the first meeting with RCG was on February 7, 2023. Ms. Bookout confirmed that the correspondence with Mr. Miller did not occur in the fall of 2022 but around the 1st of the year, in 2023 – she noted she had emails.

Tom Kreitinger, of 6150 St. Regis Drive, addressed the Board. Mr. Kreitinger presented a petition containing 67 resident signatures in support of restricting the area behind the Shoppes of Kenwood to employees only, with no customers or activity permitted.

Patty Kreitinger, of 6150 St. Regis Drive, addressed the Board. Ms. Kreitinger stated the original PUD envisioned no rear entry and no restaurants near the adjacent residential area. She spoke against the rear garage door being open with people exercising back there and stated that 5:30 a.m. is too early; nothing should be open before 7:00 a.m. She noted that her family has witnessed the rear garage door open early in the morning with people exercising in the parking lot. She asked how the early morning operating time came about without a PUD adjustment. She also expressed concerns about the landscaping.

Mary Jo Post, of 6946 Rosemary, addressed the Board. Ms. Post said she was concerned about the management company and asked why new tenants aren't being given the rules and opening without an occupancy permit. She said there should be no businesses open before 7:00 a.m. She also expressed concerns about Rumpke picking up trash at 4:30 a.m.

Marguerite Nordlund, of 6051 St. Regis, addressed the Board. Ms. Nordlund stated she has a huge problem with the business starting at 5:30 a.m., saying there should be no noise at that time. She stated the shopping center is falling apart and expressed concerns about a rat problem with the grease container, which she said she be placed away from residential areas. Ms. Nordlund also said the rear garage door should remain closed.

Steve Conway, of 6051 St. Regis, addressed the Board. Mr. Conway stated the residents already made concessions when the original PUD was approved and said no more changes should be made.

Brian Richard, of 6065 Winnetka Drive, addressed the Board. Mr. Richard stated he is the President of the Winnetka HOA, which consists of eight houses. He described issues with the fence on the Shoppes of Kenwood property and discussed security, cameras, and signs. He stated

the rear garage door should have a lock. He said there are problems with rodents due to the grease container. Mr. Richard discussed basic maintenance issues and the lack of cleanliness on the property. He said the HOA members do not like the early morning hours of operation. Mr. Richard reported issues with kids cutting through residential properties. He said there are huge holes in the driveway that create noise when vehicles drive through. Mr. Richard asked if security on the property could be increased.

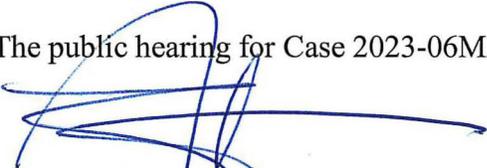
Pauline Barthel, of 5953 Winnetka Drive, addressed the Board. Ms. Barthel stated there should be no businesses operating from the rear of the shopping center. She said the rear of the property was intended as a service drive from the beginning. She said noise is a problem and spoke against the early 5:30 a.m. opening time.

Carol Schneider, of 5960 Winnetka Drive, addressed the Board. Ms. Schneider reiterated that 7:00 a.m. opening time is the rule in the PUD with no exceptions. She expressed concerns about any exceptions made to that snowballing to more businesses.

Mike Sunderman, of Mariemont, a patron of the CrossFit studio, addressed the Board. Mr. Sunderman stated there is no congregating at the gym at 5:30 a.m. and no noise in the morning. He also said the garage door is not open in the morning.

Barrie Martin, of 6970 Rosemary Lane, addressed the Board. Ms. Martin stated there should be no 5:30 a.m. start time for tenants and no grease container near the residential properties.

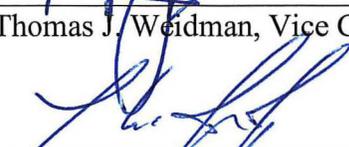
The public hearing for Case 2023-06MA adjourned at 7:48 p.m.



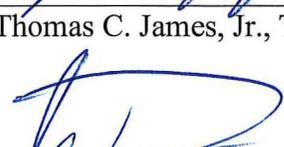
Tracy Schwegmann, Chairman



Thomas J. Weidman, Vice Chairman



Thomas C. James, Jr., Trustee



Jonathan T. Deters, Fiscal Officer
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