



Land Use and
Long Range Planning
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City of Dublin Board of Zoning Appeals

Planning Report

Thursday, October 18, 2012

4056 West Dublin Granville Road - Administrative Appeal

Case Summary

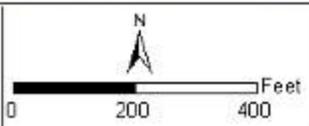
Agenda Number	1
Case Number	12-059AA
Location	4056 West Dublin Granville Road The 0.531-acre site is at the northwest corner of West Dublin Granville Road and David Drive.
Proposal	An Administrative Appeal to a decision by Land Use and Long Range Planning to disapprove a single-family, residential use on a property zoned BSC-O, Bridge Street Corridor Office District. The decision was rendered under the Existing Use provisions of the Bridge Street District zoning regulations.
Request	Non-Use (Area) Variance Review and approval of an Administrative Appeal under the provisions of Code Section 153.231.
Applicants	Abha and Sudhir Jindal, property owners.
Planning Contact	Tammy Noble-Flading, Senior Planner.
Contact Information	(614) 410-4649; tnoble-flading@dublin.oh.us
Planning Recommendation	<i>Planning recommends that the Board of Zoning Appeals uphold the decision by Land Use and Long Range Planning that a single-family, residential use was not established in accordance with the Existing Use provisions of the Bridge Street District zoning regulations.</i>

This recommendation is based on Planning's analysis that the request does not meet the criteria of Code Section 153.059(A)(6) of the Bridge Street District zoning regulations.



 City of Dublin
Land Use and
Long Range Planning

12-059AA
Jindal Property - Use Determination
Administrative Appeal
4056 W. Dublin-Granville Road



Facts	
Site Description	<ul style="list-style-type: none"> • 0.531-acre • Frontage along West Dublin Granville Road and David Drive • Site is accessed from David Road.
Zoning	BSC-O District, Bridge Street Corridor Office District.
Surrounding Zoning and Uses	Surrounding zoning is BSC-O, Bridge Street Corridor Office District. Uses include the Germain Auto service center to the north, vacant land to the east, the Stoneridge Medical Office Center to the south, and a single-family, residential use to the west.
Site Features	<ul style="list-style-type: none"> • The site contains a 1,554-square-foot residential structure with a detached garage. • The site is relatively flat with no significant land features such as tree strands or waterways. • The area is transitioning to a primarily office and commercial area with access from a major state route (State Route 161) and close proximity to Sawmill Road.
Case Background	<p>Violation Notice On August 15, 2012, a violation notice was sent to the property owner noting that a single-family, residential use was not permitted on the property. The decision was based on both the existing zoning and the zoning prior to implementation of the Bridge Street District area rezoning neither of which permitted single-family, residential uses for the property.</p> <p>Area Rezoning to Bridge Street Corridor Office District On April 9, 2012, Dublin City Council approved an area rezoning (Case #11-021ADM) for the Bridge Street District which included this property, which was rezoned from PUD, Planned Unit Development District to BSC-O, Bridge Street Corridor Office District. Effective date was May 9, 2012.</p> <p>Rezoning to PUD, Planned Unit Development On January 25, 2010, City Council approved of a rezoning/preliminary development plan (Case #09-067Z/PDP) that rezoned the site from R-4, Suburban Residential District, to PUD, Planned Unit Development District. The rezoning was for a 5,000-square-foot commercial building and associated site improvements. A final development plan has not been approved.</p>

Details	Administrative Appeal
Process	Zoning Code Section 153.231(C)(1) allows the Board of Zoning Appeals to review Administrative Appeals from any person or any governmental department affected or aggrieved, or to review any order, requirement, decision or determination where it is alleged by the appellant that there is error or misinterpretation in the administration of the Code. The Board may affirm, deny or modify a decision or determination rendered by LULRP.

Details		Administrative Appeal
Applicable Code Requirements	Section 153.059(A)(6) states existing uses that do not comply with the Bridge Street Corridor Districts can be permitted to continue if several criteria are met. These criteria are listed in more detail below (see Staff Analysis) but are intended to allow the corridor to develop over time and provide existing uses to continue until such time as the area transitions to the new uses associated with Bridge Street.	
Administrative Appeal	Land Use and Long Range Planning has determined that a single-family, residential use is not an Existing Use under Section 153.059(A)(6) of the Bridge Street Code (referred to BSC in remaining portions of the document). The applicant is requesting an Administrative Appeal to the decision rendered by LULRP and is requesting the Board of Zoning Appeals to reverse Planning's decision.	

Analysis		Existing Use
Appeal	<p>Under Section 153.231 (F), an appeal may be taken from any person or any governmental department affected or aggrieved, and review any order, requirement, decision or determination where it is alleged by the appellant that there is error or misinterpretation in any order, requirement, decision, grant or refusal made by an administrative official or body charged with the enforcement and administration of this Code.</p> <p>Planning has determined that a single-family, residential use is not permitted under Section 153.059(A)(6) of the Bridge Street District zoning provisions, and the property can not fall under the Existing Use provisions of the Zoning Code.</p>	
Basis of Decision	<p>The basis of this decision is that neither the existing zoning nor the zoning in place prior to the rezoning to the BSC-Office District (the appellant's PUD) permitted a single family use of the property, and any attempt to establish this use would have been a violation of the Zoning Code. Further, Section 153.059(A)(6)(a) must be met in order to establish an Existing Use under the Bridge Street District zoning provisions.</p> <p>Relevant Facts</p> <ol style="list-style-type: none"> 1. No evidence has been submitted or found as to when any previous residential use was established on this property. The applicant applied for a rezoning from R-4 to PUD in 2009; at that time the property was vacant. Accordingly, the property had not been in residential use from at least early in 2009 when discussions regarding the PUD were initiated. 2. The property does not qualify as an Existing Use under the provisions of Section 153.059(A)(6)(a) – quoted below - because there was not a continuous residential use of the property for 12 months prior to rezoning into a Bridge Street District (May 9, 2011 to May 9, 2012). <p><i>(a) All uses that were permitted or conditional uses under the zoning of a property immediately prior to its rezoning into a BSC district shall continue to be allowed as permitted or conditional uses on the property. These uses include permitted or conditional uses under the prior zoning has been operated continuously in an Existing Structure and/or associated use areas on the property within the 12 months prior to the rezoning of the property</i></p>	

Analysis	Existing Use
	<p><i>into the BSC district.</i></p> <p>3. The appellant's statements regarding contact with Building Standards, information on utilities, or repairs are not relevant to the facts of the basis of the appeal. The issues related to expansion of an Existing Building, while accurate, are not relevant in that they are only related to the building rather than the use of the property. Normal repairs and maintenance are permissible activities under the Zoning Code. Simply the intent to use the structure does not establish a use.</p> <p>4. The permitted and conditional uses that were permitted prior to the rezoning into the BSC District were the uses associated with the PUD, Planned Unit Development District that was approved on January 25, 2010. None of the uses permitted included single family dwellings. The current BSC-O District permits live work units, multi-family dwellings, institutional uses, and commercial uses. Single-family detached residential uses are not permitted.</p>
Applicants' Appeal	<p>The applicant is alleging that a single-family, residential use was the <i>intended</i> use of the property and is therefore a nonconforming use of the site. The applicant is stating that the use was established prior to rezoning to PUD and continued to remain as an <i>intended</i> use prior to the rezoning to BSC-O, Bridge Street Corridor Office District.</p> <p>The applicant has provided sales receipts and utility bills to demonstrate that the <i>intended</i> use of the property for a single-family, residential use since the purchase of the property in 2007. The applicant has stated that the structure was in such disrepair that it could not be used for habitation and that work was initiated to update the structure. The applicant has stated that the site has been vacant, based on this needed repair, until the mid-portion of 2012.</p>

Recommendation	Administrative Appeal
Administrative Appeal	<p>Planning recommends that the Board of Zoning Appeals uphold Planning's determination that an Existing Use was not established under the provisions of Section 153.059(A)(6) of the Zoning Code. Further, any attempt to establish a single family use from February 25, 2010 (the effective date of the rezoning to PUD) would have been a violation of the Zoning Code.</p>

ADMINISTRATIVE APPEALS

The City of Dublin Zoning Ordinance stipulates that the Board of Zoning Appeals may hear appeals to any administrative decision rendered by the City in the review, interpretation and enforcement of the Zoning Code. The authority of the Board and the appeal process are outlined in Sections 153.231(C)(1) and 153.235(F).

153.235 (F) Administrative Appeal to the Board of Zoning Appeals

- (F) Administrative Appeal to the Board of Zoning Appeals
- (1) An appeal may be taken from any person or any governmental department affected or aggrieved, and review any order, requirement, decision or determination where it is alleged by the appellant that there is error or misinterpretation in any order, requirement, decision, grant or refusal made by an administrative official or body charged with the enforcement and administration of this Code.
 - (2) Appeals shall be taken within 20 days after the decision by filing with the officer from whom the appeal is taken and with the Board of Zoning Appeals, a notice of appeal, specifying the grounds. The officer from whom the appeal is taken shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action was taken.
 - (3) An appeal shall stay all proceedings in furtherance of the action appealed from unless the Director of Land Use and Long Range Planning certifies to the Board, after notice of appeal has been filed, that, due to the facts stated in the certificate, a stay would cause imminent peril to life or property. In this case, the proceedings shall not be stayed other than by a restraining order, which may be granted by a court of record.
 - (4) In deciding the appeal, the Board shall determine whether or not the decision that was made was done so using the proper requirements and standards in this Code. The decision of the Board is limited to the information that was available to the administrative official or body who made the decision being appealed. Additional testimony is not appropriate.
 - (5) After a determination that the administrative official or body making the decision did so improperly, the Board may reverse or affirm, wholly or partly, or may modify, the order, requirement, decision or determination appealed from, and may make an order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the administrative official or body from whom the appeal was taken.