

HAMILTON TOWNSHIP ZONING COMMISSION
January 13, 2020

The meeting was called to order at 7:00 p.m.

Members present: Cadi Kelly, Dan Riegner, Amanda Webb, Brady Hood and Julie Perelman.

Ms. Kelly swore in all persons wishing to give testimony during this hearing.

Ms. Kelly tabled the meeting minutes from July 8, 2019 due to not having a quorum from that meeting.

Mr. Riegner made a motion with a second from Mr. Hood to approve the meeting minutes from the December 9, 2019 meeting.

Roll call as follows:	Brady Hood	Yes
	Cadi Kelly	Yes
	Julie Perelman	Yes
	Dan Riegner	Yes
	Amanda Webb	Yes

Ms. Kelly reviewed the process of the hearing tonight stating that the meeting will begin with the staff report. The applicant will then have a chance to speak. Members of the public, both in support and opposition will be given the opportunity to speak. The applicant may make additional comments then the public portion of the meeting will be closed. The board will then begin their deliberations in public and then a vote will be cast.

All members agreed to have Ms. Kelly as the board Chair. Ms. Kelly nominated Dan Riegner as Vice Chair and the board agreed. Ms. Kelly nominated Ms. Webb as the Secretary and the Board agreed.

Mr. Alex Kraemer, Director of Economic Development and Zoning, explained that this hearing is for two items. The first being a proposal for Burger King. The applicant is Mannik and Smith Group. The property owner is Carolls LLC. The property location is 5463 State Route 48, Maineville, OH 45039. The legal ad was placed on December 29, 2019 in the Pulse Journal and letters were mailed to all property owners within 200 hundred feet of the property in question. The proposed project includes the construction of a 3,235 square foot Burger King restaurant with a drive-thru. The façade will be composed of a brick masonry base, stone vertical accents and stucco. A right turn lane from State Route 48 will be constructed to access the site as well as a private drive. Parking consists of 33 parking spaces, two of which are handicap accessible. The pavement will be concrete or asphalt, as noted on the plans. Signage will include a ground mounted monument sign and signage on the building which will have to be approved via a separate zoning certificate. Lighting will be LED and they are working to get that in line with our zoning code. The Storm water detention is accounted for by a modification to the existing pond in the northwest corner of the property. The Warren County Engineer's Office is working with TPC Riversbend Golf Course to make sure the detention plans make sense for everyone.

The site is currently zoned B-1 PUD. This is a revised Stage 2 and 3 PUD. Previously the proposal for this parcel in 2014 was for a 'Kiddie Academy Daycare' and for whatever reason that fell through. The Carrolls Group purchased this property back in September. Hamilton Township Zoning Code section 4.8.3.J outlines the requirements for restaurants with drive-thru's stating that any restaurant with a drive-thru must be a minimum of 100 feet away from any residential district. The developer is actually reducing the size of the lot from 1.5 acres down to 1.1 acres to provide a larger distance of 245 feet away from any residential district. All audible devices such as loudspeakers, automobile service order devices, and similar instruments shall not be located within 300 feet of any residential dwelling unit. The plans now show that it will be 380 feet away from any residential dwelling unit putting it in compliance with our zoning code. The tallest point on this Burger King will be 24 feet at its Apex. Parking complies with our zoning code. The drive-thru does meet the Hamilton Township Zoning Code as Table 4-6 Stacking Space requirements states that a minimum of 6 cars measured from the pick-up window with a separate stacking lane that is a minimum width of ten feet, and is set back 25 feet from the right-of-way and a minimum of 9 feet by 18 feet in size.

They have a very nice landscaping plan for this property. Currently a significantly wooded area provides a natural buffer between the proposed Burger King Site and South Lebanon Elementary School. It is recommended that this existing buffer be maintained.

RPC noted that the lighting and photometric plan was a little too bright on the southern end of the parcel. The developer has updated their lighting plan and they are now in compliance with the zoning code that states illumination cannot exceed the 1.0 foot-candles at the property line. Regional Planning Commission (RPC) also made the following recommendations:

- The applicant install road improvements as deemed necessary by ODOT and the Warren County Engineer's Office based on traffic studies required of the applicant.
- A sidewalk inclusive of cross-walk markings shall be provided along the entire private street frontage.
- The developer shall provide improvements to the Warren County central sanitary sewer and water systems as deemed necessary by the Warren County Sanitary Engineer to serve the use.
- Compliance with storm water management standards as required by the Warren County Engineer's Office.
- Erosion and sediment control plan approval and compliance as required by the Warren County Soil and Water Conservation District.
- Landscaping, lighting, and signage subject to Hamilton Township Trustees approval.
- Building exterior materials and character subject to Hamilton Township Trustees approval.

Recommendations were also given from the Warren County Water and Sewer Department, the Warren County Engineer's Office, and ODOT who stated that they are requiring a right turn lane on State Route 48 to facilitate the proposed restaurant use on the site. Burger King has agreed to comply with all comments.

Staff is recommending approval based on meeting the recommendations of partnering agencies such as compliance with the Hamilton Township Zoning Code and recommendations from the

Zoning Commission, compliance with recommendations from Warren County Regional Planning Commission (RPC), compliance with the requirements of the Warren County Soil & Water Conservation District, and lastly compliance with the requirements of the Warren County Engineers Office, specifically storm water basin requirements.

Ms. Kelly asked Mr. Kraemer to review the distance from the residential neighborhood. Based off the way she was looking at the plans, it did not appear to meet the requirements of a minimum of 300 feet from any residential district. Mr. Kraemer reviewed the plans with her and pointed out that they are reducing the size of the lot and therefore it will now exceed the minimum requirement.

Ms. Perelman referenced the existing wooded area between South Lebanon Elementary and this parcel stating that it is not currently being maintained. Would the current developer be responsible for maintaining that? Mr. Kraemer explained that what was meant is that the developer will not tear it down and it will remain.

Mr. Riegner also referenced the landscaping and wooded area stating that the bushes and other shrubbery that will be installed will have a green space in between them and the existing wooded area. Will that be mowed and maintained by the developer?

The board further reviewed plans and property plats and determined that the tree line in question actually belongs to the school district.

Ms. Webb asked if we require any kind of screening on the backside of the lot. Mr. Kraemer stated that he would look into it but since the lots are commercial-to-commercial, he does not believe so.

Ms. Perelman asked what happens with the land that is leftover after the parcel size reduction. Mr. Kraemer explained that it would now be part of the other parcel.

Ms. Kelly invited the applicant forward to speak.

Ralph Terbrueggen with Mannik and Smith Group as well as Amanda Aldridge with Carrols LLC stepped to the podium. Mr. Terbrueggen clarified the dimensions of the property. The original lot line shows 175 feet from that line to the closest rear residential line. 70 feet will be transferred back to the overall development. The menu board sits 35 feet from the property line. In addition, there is another 65 feet to the actual building.

Ms. Kelly asked if there were plans for the road that will be put in? Mr. Terbrueggen explained that would be up to the developer. He assumes that it would extend to the other parcels as three lots were originally proposed so that drive will serve those additional lots.

Mr. Terbrueggen explained that the north side will consist of three large deciduous trees. Below that will be a mixture of deciduous flowering shrubs and evergreens. The east side of the lot along State Route 48 will consist of three deciduous trees such as Honey Locust, evergreens and flowering deciduous shrubs. On the south side of the parcel, adjacent to the school, there are

existing White Pines that are 25-30 feet tall and those will be maintained and additional landscaping will be supplemented in between them where there is current open space. A mixture of shrubs and perennials will be planted around the menu board. Next, the lighting plans were discussed in detail explaining that the illumination is now well under the regulation for the zoning code. All four sides of the building are a brick blend as well as some stone elements.

Ms. Kelly stated that if this becomes a dedicated street, there will be a requirement for so many windows on the building. Ms. Aldridge stated that they could add a window into the design for the building.

Ms. Webb asked if the storm water could be explained. Mr. Terbrueggen stated that the storm water will be collected in a storm sewer that outlets to a ditch that drains to the existing pond for the short term. Long term the developer will pipe the storm water through the county.

Ms. Kelly opened the hearing to the public asking for those in favor to speak first. No one stepped forward. Therefore, she invited those wishing to speak in opposition of the development.

Ray Warrick expressed his concerns about the zoning process for developments as well as the storm water runoff.

Rhonda Smith spoke in objection of this development. She expressed concerns about adding to the existing water runoff for properties in the Rivers Bend community.

Peter Koenig owns the property that butts up to the northwest corner of this parcel. He too is concerned about water runoff and the effects of adding more to the existing pond on this property. He also mentioned that the developer could consider adding a significant buffer to the rear of the property to help with noise and lighting.

Ms. Perelman asked about the fencing that is already in place on the property. It is currently a six-foot privacy fence.

There was discussion of a sidewalk that runs alongside the fence and who that belongs to. Many students use that pathway to travel to and from South Lebanon Elementary. Other individuals use it via golf cart to access the golf course as well as Kroger.

Skip Markley referenced the Land Use Plan and asked the Board to look at that and the Comprehensive Plan to see if this type of development fits into that.

Jennifer Faz expressed concerns for the safety and security of the children at South Lebanon Elementary. She also mentioned that traffic is already heavy in the area so she is worried how adding this Burger King will play into that.

Brad Callahan spoke about the smell of the establishment that will encase the area. He believes that there are other places in the township that are better suited for this development.

Ginny Longnecker is another resident concerned about the safety of children at the school and in the surrounding neighborhoods as well as for her home and many of her neighbors.

Nick Weber suggested that the Board look into the violent crime statistics for fast food restaurants. He brought up topics such as the smell, appearance, trash collection, hours of operation and safety.

Heather Alley is concerned about the resale values of the homes in the surrounding neighborhoods as well as the safety of residents.

Rob Wilmot thanked the Burger King franchise for wanting to invest in the community but he does not believe this location is a good fit. The current traffic flow is only getting worse and this development will add to that making it nearly impossible to enter and exit the neighborhood across from this parcel.

Jason Jefferies asked why this is a proposed Burger King? Mr. Riegner explained that this parcel is zoned for Commercial use. The land owner is allowed to lease or rent to whomever they choose. The property is commercial whether it is a daycare or a restaurant. Ms. Kelly also explained that our zoning code gives specifics for what is allowed in each zone. This property has been zoned commercial since 2014 and this is one of the permitted uses.

Brad Meyer is concerned about the stormwater runoff into the existing pond. That pond will overflow and flood onto the golf course and surrounding properties. He also discussed landscaping concerns. The Board elaborated that our zoning code is very detailed and particular with our landscaping requirements for developments in the township. Every step of the way will be inspected by township staff to ensure that it is in compliance with our zoning code. Mr. Hood also stated that the Warren County Engineers Office has not approved the stormwater basin as presented. The developer has to update their plan and meet the satisfaction of the Engineers Office as well and the Warren County Water district. The plan that is in front of this board will not be able to obtain a permit until it is updated and approved by the county.

Susan Rust asked if this is a done deal as is rumored amongst residents?

Ms. Kelly stated that part of the concern is that this property is already zoned as business. They are asking for a permitted use under our zoning code. So, they are not asking for a zone change (ex: build a commercial building on a residential lot). Per our zoning code, if this is one of the permitted uses for this zoned parcel, it is hard for the board to turn it down. The township has a comprehensive plan in place and part of that plan is that this district is zoned commercial. Ms. Rust asked why more letters were not sent out about this development. Mr. Kraemer responded that per our zoning code, we are only required to notify property owners within two hundred feet of this parcel and give at least ten days' notice before the zoning meetings.

Ms. Perelman spoke up about what she believes the perception of the role of this Zoning Commission is amongst residents and she clarified as follows; this particular Board is meant to look at what is being presented, how it fits within our codes and our overall plan, and then the Zoning Commission makes recommendations based on those plans, to the Trustees. Ms. Kelly also agreed that this Board is a 'recommending body' that does not get to say yes or no. The

Trustees ultimately have the decision of whether this is approved or not. When this property was rezoned to business in 2014 there was undoubtedly more notice sent out to surrounding properties owners to let them know what was going on. However, some of the existing homes adjacent to this parcel may not have been built when that occurred. Since this hearing is for a developer that is wishing to build on a parcel that is zoned for their type of development, the appropriate notices were issued.

Matt Luecke, Director of Business Affairs for Kings Schools, stated that South Lebanon Elementary is within two hundred feet but was not notified as they are not part of Hamilton Township. There is a fear of increased foot traffic to and from the establishment and the school as well as a fear of children crossing State Route 48 to get to and from Burger King. The school wants to be good neighbors during this process.

Mr. Hood asked Mr. Luecke how Kings feels about the elementary having access to the much larger Kroger parking lot directly on the other side of their building? Mr. Luecke explained that a conversation took place about that. Fortunately, the children do not tend to drift toward the Kroger parking lot. The school is pressed to the north of their property line and Burger will be pressed to the south of their property line making the buildings much closer together. He stated that he is very thankful for the parents that shared their concerns with the school and he hopes that the school district can be a part of any conversations that would allow the developer and the district to find solutions to these valid concerns.

Information was given in relation to when the Trustee's meetings are held.

Ms. Kelly closed the public comments portion of the meeting.

The applicant was invited to step forward and address the questions from the public.

Ms. Aldridge with Carrols LLC answered questions about the smell. The Burger King located elsewhere that many were referring to in the meeting is not a Carrols owned business. A brand-new Burger King does not put out a pungent smell. Technology has changed so that they operate the businesses differently with minimal impact. The soundboard adjusts automatically based on ambient noise but aside from that you cannot hear it past four feet away. The children at the school will not hear order takers because the sound does not stretch that far. She explained that Carrols will work with the school to build a fence or put up some kind of barrier if that will help with safety concerns. Additional landscaping can be added at the back of the property as well. She stated that Carrols LLC prides themselves on helping communities so they will work with whoever they need to so all concerns are addressed. Neyer owns the property and will own the remaining parcels around this one as well. Carrols will be improving the storm water runoff system greatly to make sure it is adequate for all future development in this location. This particular property is zoned for their intended use so that is why they look at it. There will not be a sign placed on the interstate to direct people to the location. They do not view the interstate as a draw. She explained the Carrols company and stated that she is very passionate about this company and brand. They are working on several Burger King's in the Cincinnati market and bought into the Cincinnati market a few years ago from another company. There are still Burger

King's in the area that Carrols does not own but they would like to. The company wants all of their locations to be clean and modernized.

Ms. Kelly asked if they just built the location on Route 42 in Sharonville. That is a Carrol's owned establishment.

Mr. Terbrueggen explained that they are not going to draw from the expressway. This will be probably 2-3 miles from the highway so there will not be any signs directing traffic to this location. He acknowledged that State Route 48 is a very busy road. He does not condone any foot traffic crossing this road but the education will ultimately fall on the parents to provide. The stormwater piping will be sized to convey the water per the Engineers Office regulations. The ditch, even if temporary, will be sized rightfully. The detention basin will also be sized appropriately. There will be a flood route in the case of larger storms. We are working with the golf course maintenance director to address some issues that were developed when building the maintenance facility. The flood routing will pass the residents. It will not go through the subdivision. The existing mound facing the residents on Oakview is approximately 4-5 feet with some evergreens. Looking from google street view at the cul-de-sac, it shows the roofs of the pre-existing farmhouse and the barn. Any kind of low landscaping on the west side of the Burger King most likely will not benefit anything. The fence, mound and evergreens should prevent light from coming through. The biggest concern seems to be seeing the building and the lights there so it has been proposed to add some deciduous trees and that should have the best chance to block the building and lighting.

Ms. Kelly pointed out that there is only ten feet between where the drive will be and the rear property line. Mr. Terbrueggen stated that trees could be planted there and the canopy would overhang. Three trees are proposed but Ms. Kelly stated that she would like to see more.

Inaudible discussion of the landscaping plans took place. Mention of a non-living barrier took place such as a fence separating the school and this parcel. Ms. Kelly mentioned adding more landscaping at the residential side of the parking lot. She mentioned that the hours of operation will need to be addressed when this goes before the Trustees. She asked if there was a traffic study done. Mr. Terbrueggen and Ms. Aldridge both stated that they were not required to have one. Ms. Kelly asked if ODOT is allowing them to have full access to turn right and left onto State Route 48? Mr. Terbrueggen stated that it was initially allowed but we are working with them on the drive.

Ms. Perelman asked what the employee count is for this establishment since the hours will be approximately 6am to 11pm. Ms. Aldridge stated that there are roughly 35-40 employees. The lunch rush from 11am to 2pm will most likely have 7-10 employees at a time. Breakfast and dinner will only have around 4-7 for each shift. Employees arrive no earlier than 5am and leave no later than midnight.

There was discussion of adding another window into the design if the private drive becomes a dedicated street.

Mr. Riegner made a motion with a second from Mr. Hood to recommend approval to the Board of Trustees with the following conditions;

- Adding a buffer to the entire southern property line (school side) that is non-organic/fencing of some sort.
- Working with the developer to increase the buffer to the western property line (residential side) where there is an existing fence.
- All staff recommendations as listed above.
- Assuming that the drive becomes a public road, the building structure will need to reflect the requirements for that dedicated street.
- ODOT requirements for a right turn onto State Route 48 to facilitate the proposed restaurant
- Working with the Warren County Engineers Office to make sure that the plans for the stormwater basin are in compliance with the County's requirements.

Roll call is as follows:	Cadi Kelly	Yes
	Julie Perelman	Yes
	Dan Riegner	Yes
	Amanda Webb	Yes
	Brady Hood	Yes

Motion carries.

Ms. Kelly explained that the next item on the agenda is a consideration for zoning regulations for CBD Oil specific retail stores.

Mr. Kraemer read the legal notice stating that this hearing is a consideration for zoning regulations for CBD Oil specific retail stores in Hamilton Township. This is following a one-year moratorium put in place by the Hamilton Township Trustees who are asking the Zoning Commission to consider and recommend parameters for these types of businesses as soon as possible. Mr. Kraemer explained that CBD Oil was made federally legal by a bill passed on December 20, 2018. On July 30, 2019 the Ohio Legislature decriminalized hemp and licensed hemp cultivation in the state of Ohio. CBD is short for cannabidiol which is a compound found in a hemp plant. Hemp and marijuana are related but they are two different plants. Hemp contains a very low level of THC (tetrahydrocannabinol) which is the active ingredient that produces the high in marijuana. The maximum level of THC in hemp is .03% however many CBD retail stores promote that you can get many of the same benefits from CBD oil without the psychoactive effects of THC. Under the new law, the Ohio Department of Agriculture issues hemp cultivation and hemp processing licenses allowing hemp to be grown and processed in Ohio. Previously the State Board Pharmacy formulated a rule that the increasingly popular CBD made from hemp, can only be sold in marijuana dispensaries as a controlled substance. However, the new Ohio law now states that hemp products include cosmetics, personal care products, dietary supplements or food intended for animal or human consumption, cloth, cordage, fiber, fuel, paint, paper, particle board and any other product containing one form of cannabinoids or cannabidiols.

Mr. Kraemer looked into what local municipalities are doing pertaining to CBD Oil. Deerfield Township placed a one-year moratorium back in July 2019. "Your CBD Store" expressed

interest in opening a shop in Hamilton Township. They already operate out of Anderson Township as well. Mr. Kraemer is not aware of any regulations that they might have. They have a few CBD stores operating right now. The City of Montgomery has one store that is operating right now.

The question is, do we put any regulations on these retail shops? Do we just allow them to be in the township and open where they would like? Or do we consider regulations similar to what Deerfield is exploring such as location restrictions? They are looking at 2,500-foot buffer between CBD establishments. That would prevent an entire strip mall of multiple CBD stores from opening. We could look at distance restrictions for schools, libraries, government buildings, residential areas, etc. Mr. Kraemer would like to have an expert or someone who is well versed in CBD Oil explain what types and varieties are being sold. There seem to be a lot of different types of CBD oil. One item that popped up is that a very small number of stores seem to sell CBD that you can vape. Deerfield is also putting a cap on the number of stores that are allowed in their township. They are allowing one store per 10,000 residents. So only four total CBD Oil stores will be allowed to open in Deerfield. We could consider something similar.

Ms. Kelly asked if we have talked to our Legal Counsel to make sure that we can even do anything with this? Mr. Kraemer explained yes, we have and our legal counsel also represents Deerfield Township.

Mr. Hood commented on the vaping stance stating that he does not believe we should regulate what or how people do or do not smoke.

Discussion about the difficult choice of regulations and possible loop holes took place.

Mr. Kraemer stated that CBD Oil is currently being sold in the township at Walgreens and Kroger. However, they do not meet the 50% sale margin just for CBD products which is what the moratorium was set in place for.

Ms. Perelman commented that it might speak to the quality of the products sold if there is a dedicated store just for this purpose. The stuff that you buy at Kroger and elsewhere is probably a lower quality product.

Dan Wilson commented on adding regulations and mentioned that it might be more of a burden on staff to put regulations.

Dr. Duane Titus with Maineville Family Chiropractic spoke on his knowledge of CBD Oil. There are not many regulations on the law. He started looking into CBD Oil before the passage of the farm bill and prior to legalization in the State of Ohio. Looking at the medical literature that is available, it has benefits of use such as being a neuro protectant, an antioxidant, antipsychotic, anti-anxiety, anti-inflammatory, etc. His objective was to go out and find the best product available to provide for his patients. He found a USDA certified, organic, full spectrum CBD Oil. This particular option does contain THC which is the "high" component in marijuana. CBD is derived from hemp. Hemp is a plant, same genus species, as marijuana. Marijuana is a flowery plant, hemp is stalkier like bamboo. Any product out there should be third party tested, if

they are not, steer people away from them. CBD is only one of about a hundred cannabinoids from the hemp plant and the marijuana plant. In hemp it is highly predominant. The other 99 cannabinoids, including THC are in there but at much lower levels. That is why hemp is typically only grown with .3% THC. THC is the component that shows up on drug screens. There is not enough of it present that it would cause impairment. THC free is what individuals such as first responders are taking because it does not contain any THC. That can never be USDA certified organic because of the processing. Most people take an isolate which is CBD only. CBD has its effects in the body but it is better to use the entire plant.

Ms. Kelly mentioned that there is no prescription and the seller can buy any quality that they want to buy to put out for consumers.

Mr. Riegner asked at what level does THC start to have an effect?

Dr. Titus believes that it is upwards of 20%. He is not completely sure. Depending on the percentage it may have the same effect of alcohol.

Ms. Perelman stated that again, the THC is subjective. What may affect one person might be fine for another person.

Ms. Kelly asked what types are available? Is it only an oil? Are there gummies, tablets, etc.?

Dr. Titus explained that his practice offers a gel tablet. They have flavored oils well. It does come in gummies, sublingual oil (place under the tongue), there are powders that are THC free, Topical sav's both full spectrum and not.

Ms. Perelman asked where the percentage of .3% comes in?

Dr. Titus stated that comes from state and federal levels however, no one is policing it. That is one reason the third-party testing is important.

Mr. Riegner asked if there are stores in person and online that sell product significantly higher than the legal limit? Mr. Titus stated that he is not aware of any but that is why if no test results are published, then you should steer away from that product. You should be able to view test results to find out what is in the product that will be consumed.

Mr. Hood stated that the Attorney General has released a "guide" to follow with these hemp and CBD products.

Ms. Kelly asked if there is an age requirement for selling CBD Oil?

Dr. Titus stated that he is not aware of one.

Mr. Riegner asked how long this has been around? Is this something that has been in existence for a long time and someone just happened to promote it differently?

Dr. Titus stated that it has become a political stigma because it has been perceived differently in comparison to marijuana. Hemp products have been around for a very long time.

Mr. Hood stated that he believes regulations are too arbitrary. He thinks the market should regulate itself.

Ms. Perelman commented that she read several articles that said the Department of Agriculture is responsible for inspections. She thinks that one of the regulations we could put is how many of these stores do we actually want in the township?

All members thanked Dr. Titus for sharing his knowledge about CBD products.

Ms. Kelly believes that the topic should be tabled for now until more research can be done. She would also like to figure out for legal purposes if the township can technically regulate something that is legal.

Mr. Riegner made a motion with a second from Ms. Webb to table the CBD Oil discussion.

Roll call is as follows:	Julie Perelman	Yes
	Dan Riegner	Yes
	Amanda Webb	Yes
	Brady Hood	Yes
	Cadi Kelly	Yes

Motion carries.

Ms. Kelly made a motion to adjourn the meeting. There was a second from Mr. Hood.

All in favor.