

## MINUTES

### CITY OF WOOSTER BOARD OF BUILDING & ZONING APPEALS

November 2, 2017

**I. MEETING CALLED TO ORDER AND ROLL CALL**

Lukas Gaffey, Chairman of the Board of Building and Zoning Appeals, called the meeting to order. Board members Stewart Fitz Gibbon, Brad Gowins, Doug MacMillan, Gregg McIlvaine, Ken Suchan, and Lukas Gaffey were present at the meeting. Board member Greg Taylor was absent. Andrew Dutton, Planning and Zoning Manager, and Linda Applebaum, Law Director, were present representing the City of Wooster.

**II. APPROVAL OF MINUTES**

Brad Gowins moved to approve the September 7, 2017, regular meeting minutes. Stewart Fitz Gibbon seconded the motion. The motion passed 5-0-1, with Doug MacMillan abstaining.

**III. EXECUTIVE SESSION**

Stewart Fitz Gibbon moved to adjourn to Executive Session. Ken Suchan seconded the motion. The motion passed unanimously 6-0 at 5:30 pm.

Stewart Fitz Gibbon moved to come out of Executive Session. Brad Gowins seconded the motion. The motion passed unanimously 6-0 at 5:40 pm.

**IV. PUBLIC HEARINGS**

***Application #BZA-17-45.***

Marc Haven requested an area variance from Planning and Zoning Code Section 1141.09(a) to allow an accessory structure within required side and rear setbacks at 580 North Market Street in a C-1 (Office/Institutional) District.

Marc Haven, 580 North Market Street, stated that he wanted to build a storage shed in the southwest corner of the property. He explained that the property was zoned commercially and there was an eight foot setback requirement. Mr. Haven continued that the request was to move the setback to a residential setback requirement of five feet. Mr. Haven stated this would make the shed more centered in the driveway and allow easier access to the shed.

Andrew Dutton stated that the shed aesthetics were approved by the Design and Review Board in October.

Mr. Haven stated that he talked to his neighbors and both agreed that the shed would not interfere with their property.

Mr. Gaffey asked if anyone from the public would like to address the Board regarding the application. No one from the public was present to address the application.

Ken Suchan asked if the house was used residentially. Mr. Haven stated that the house was used residentially, zoned commercial, and was nonconforming.

Stewart Fitz Gibbon made a motion to approve the variance as presented. Brad Gowins seconded the motion.

Stewart Fitz Gibbon voted yes and stated that his vote was based on the description and the agreement of the neighbors. He noted that the shed was a good fit for the neighborhood.

Brad Gowins voted yes for the same reasons cited. He also noted that there were no negative responses from the neighbors.

Doug MacMillan voted yes and stated that his vote was for the same reasons cited.

Ken Suchan voted yes and stated that, since the property was residential, the five foot setback requirement made sense.

Gregg McIlvaine voted yes and stated that his vote was for the same reasons cited.

Lukas Gaffey voted yes and stated that his vote was for the same reasons cited.

The motion unanimously passed 6-0.

***Application #BZA-17-46.***

Bryce Zimmerly requested an area variance from Planning and Zoning Code Section 1143.06 to allow parking spaces within required front and side setbacks at 823 Spruce Street in an M-2 (General Manufacturing) District.

No one present to address the application.

Mr. Gaffey asked if anyone from the public would like to address the Board regarding the application. No one from the public was present to address the application.

Stewart Fitz Gibbon moved to adjourn to Executive Session. Gregg McIlvaine seconded the motion. The motion passed unanimously 6-0 at 6:12 pm.

Stewart Fitz Gibbon moved to come out of Executive Session. Ken Suchan seconded the motion. The motion passed unanimously 6-0 at 6:15 pm.

Gregg McIlvaine made a motion to table the variance until the December Meeting. Stewart Fitz Gibbon seconded the motion.

The motion to table unanimously passed 6-0.

***Application #BZA-17-47.***

Matthew Long of Critchfield, Critchfield, and Johnston, Ltd. requested an area variance from Planning and Zoning Code Section 1133.02(d)(1)(J) to allow two flag lots, Section 1133.03(c)(2) to allow two lots with less frontage than required, Section 1133.04 to allow modifications to setback requirements, and Section 1133.07(b)(2) to allow a driveway less than 3 ft. from a property line at Parcel 71-00121.119 on Firethorn Lane in an R-2 (Single Family Residential) District.

Matthew Long, 225 North Market Street, stated that he represented Deal Land Company, the owner of the proposed subdivision of properties. Mr. Long explained that the proposal was

to develop four lots in the center of the Summerlin Subdivision. Mr. Long continued that the unique size and shape of the lots prevented a conventional compliant subdivision. Mr. Long continued that the proposed four single-family homes would share a private drive off of Firethorn Lane. Mr. Long explained that the area variance requested minimized impacts on adjacent property owners and create a high-quality development.

Mr. Long continued that the quality of houses would be in the character of the neighborhood, though the proposed lots would be larger than those in the area. Mr. Long stated that the two flag lots would front on Firethorn Lane and be accessed via a shared drive.

Ken Suchan asked Mr. Long to elaborate on the shared driveway. Mr. Long answered that there would be only one driveway divided between all of the units. Gregg McIlvaine asked about the zoning and the previously indicated multifamily dwellings. Mr. Long stated that the lot was originally zoned for multifamily. Mr. Dutton stated the area was zoned R-2, which previously allowed both multi-family and single family homes.

Mr. Gaffey asked if anyone from the public would like to address the Board regarding the application.

Katelyn Stenger, 1636 Springwood, stated that she was opposed to the application because of the decreased value of her home. Mrs. Stenger explained that the proposal was not something she wanted in her backyard.

Brad Gowins moved to adjourn for Executive Session. Stewart Fitz Gibbon seconded the motion. The motion passed unanimously 6-0 at 6:24 pm.

Brad Gowins moved to come out of Executive Session. Gregg McIlvaine seconded the motion. The motion passed unanimously 6-0 at 6:30 pm.

Stewart Fitz Gibbon made a motion to approve the variance as presented. Ken Suchan seconded the motion.

Stewart Fitz Gibbon voted yes and stated that the application was reasonable and was a less intensive solution. He noted that a similar project could end up with traffic problems by incorporating multiple driveways.

Brad Gowins voted yes and stated that the plan made good use of the land and he noted that the homes were in character with the neighborhood.

Doug MacMillan voted yes and stated that he appreciated comments, but the land was proposed to be developed with low intensity.

Ken Suchan voted yes and stated that the internal drive would help with traffic on Melrose Drive.

Gregg McIlvaine voted yes and stated that the use was less intense.

Lukas Gaffey voted yes and stated that the single family homes and single shared drive would have minimal impact on the neighborhood.

The motion unanimously passed 6-0.

***Application #BZA-17-48.***

Robert Reynolds of Reynolds Law Office requested a use variance from Planning and Zoning Code Section 1133.02(d) to allow a commercial storage and workshop use at 603 East Henry Street in an R-T (Traditional Residential) District.

Robert Reynolds, 839 Forest Drive, stated that the Board had heard this application on two previous occasions. Mr. Reynolds explained that an application could be reheard by the Board when substantial new evidence was submitted. Mr. Reynolds continued that the submitted appraisal shows new evidence for the application. He continued that there were a large number of nonconforming commercial buildings within the area and provided several examples. Mr. Reynolds noted that the building was not suitable for a residential use. He explained that the building had been vacant for ten or more years. Mr. Reynolds continued that the owner satisfied all of the requirements for the use variance.

Mr. Reynolds gave a brief overview of the criteria for approval. Mr. Reynolds explained that the property could not be put to any economically viable use under any uses permitted in the R-T district. Mr. Reynolds continued that the appraisal showed that, without the building on the property, the land was valued at \$12,400. He explained that the zoning regulations have rendered the building legally useless, but otherwise the building was considered to be in fair condition. Mr. Reynolds continued that the financial possibility of constructing a new home on the property was not likely. He explained that, with the demolition of the building estimated at \$10,000, the property would only be worth \$2,400. Mr. Reynolds stated that with the Bogner Construction estimated demolition cost of \$16,000, the property would have a negative worth. Mr. Reynolds noted that the building predated the zoning code.

Mr. Gaffey stated that the zoning code restrictions were already in place before the purchase of the property. Mr. Gaffey explained that the owner bought the property in 2016 and the zoning code restrictions were in place in 2007. Mr. Gaffey continued that because of the property's vacancy, the nonconforming status was lost. Mr. Gaffey stated that if the owner of the property knew the zoning restrictions prior to purchase, then the owner was possibly creating the hardship themselves.

Gregg McIlvaine asked what the specific use was for the property. Mr. Reynolds stated that Mr. Swartzentruber wanted to use the property for the storage within the building including mowing equipment, snow plowing, and equipment for rentals. Mr. Reynolds continued that the property would create less traffic than a home.

Stewart Fitz Gibbon asked what were other uses for a cinder block building. Mr. Reynolds stated that there were no permitted uses in the RT-District, which was the reason for the variance.

Mr. Gaffey noted that the Board received a letter in opposition and a phone call.

Mr. Gaffey asked if anyone from the public would like to address the Board regarding the application.

Tim Giaouque, 331 Maiden Lane, stated that he lived across the street from the property and had lived there all of his life. Mr. Giaouque explained that the property was vacant for more than 20 years. He continued that he was opposed to the commercial use of the building.

Mr. Reynolds asked Mr. Giaouque if his home was located southwest of the property. Mr. Giaouque stated that he lived across the street, where the alley was located. Mr. Reynolds asked how long Mr. Giaouque lived in the area. Mr. Giaouque stated he was born and raised and lived in the home since 1991. Mr. Reynolds asked if the building was used. Mr. Giaouque stated that the building was vacant. Mr. Reynolds asked what Mr. Giaouque would like to see the building used for. Mr. Giaouque stated that he did not want a commercial use and he would like to see a home on the property. Mr. Reynolds asked if a house would produce less traffic than the storage use. Mr. Giaouque answered that there was a lot of traffic on the alley and the road.

Clayton Wyatt, 539 East Henry Street, stated that he was against changing the property to commercial. Mr. Wyatt stated that once the property became commercial and the owner sells the property, anything could replace it. Mr. Wyatt continued that he had lived straight across the street from the property for over 50 years. Mr. Wyatt maintained that the area was terrible before and he did not want to see commercial zoning back on the property.

Mr. Reynolds asked where Mr. Wyatt lived. Mr. Wyatt confirmed his address and that he lived directly across the street. Mr. Gaffey confirmed that Mr. Wyatt lived on the corner of Maiden Lane and Henry Street. Mr. Reynolds asked if Mr. Wyatt lived there when the building was built. Mr. Wyatt responded that the building was there and was previously a trucking business. Mr. Reynolds asked if the owner was Jim Reesman. Mr. Wyatt confirmed that the owner was Jim Reesman and he was in the oil field business. Mr. Wyatt stated he was against commercial zoning because of the problems in the past. Mr. Reynolds noted that Mr. Swartzentruber wanted a limited use and that the business could not be expanded without getting another variance.

Mr. Dutton stated the property was zoned R-T, which mostly allowed single-family residential homes. He continued that the owner was requesting a use variance to use the building for a specific storage and workshop use. Mr. Dutton explained that if the variance was granted, the owner could only use the building for the proposed storage and a workshop use or a permitted use in the R-T district. He stated the zoning of the property would not change.

Mr. Reynolds asked Mr. Wyatt if the zoning remained the same, he would not be concerned. Mr. Wyatt stated he did not want the zoning to change.

Jeanette Holtrey, 432 Emerick Street, stated that her father lived across the street for 50 years. Mrs. Holtrey explained that when James Reesman owned the property, it was a bad situation. She continued that Mr. Reesman stored oil rigs on the property. Mrs. Holtrey stated that she understood that the new owner was proposing a different use, but she was afraid that approval of the use would lead to something more. Mrs. Holtrey explained that she was entirely against a commercial use for the building.

Mr. Reynolds asked Mrs. Holtrey if her permanent residence was nearby. Mrs. Holtrey stated that her parents live at 539 East Henry Street and she was with her parents every day. Mr. Reynolds clarified that the property across the street was zoned M-2, which was a

Manufacturing District. Mr. Reynolds asked if the manufacturing business created a lot of noise. Mrs. Holtrey replied that the business was noisy.

Mr. Gaffey clarified that the property at 500 East Henry Street was zoned M-3.

Mindy Cavin, 324 Palmer Street, stated that the Board made the correct decision to deny the application twice before. Mrs. Cavin stated that the court also agreed with the Board of Building and Zoning Appeals.

Linda Applebaum, City of Wooster Law Director, clarified that the court's decision was not based on merit. She indicated that the court found that substantial, reliable, and probative evidence was at the hearing to support the Board's decision at that time. She continued that the Judge was not asked to decide whether the variance should be granted or not. Mrs. Applebaum explained that the current application was based on new evidence presented. She continued that the previous judicial decision did not have a bearing on this appeal or hearing.

Mrs. Cavin stated that, of the commercial buildings that were mentioned, only 331 Lucca Street was grandfathered by the Board. Mrs. Cavin explained that the subject property was not grandfathered and was vacant. She continued that the existing building would not meet current setback regulations. Mrs. Cavin stated that the \$16,000 demolition quote from Bogner Construction for was reasonable, but a lower quote could be obtained.

Mrs. Cavin referenced the use variance criteria for approval in Section 1111.09(c)(2), which included the language: "In order to grant a use variance, the Board of Building and Zoning Appeals shall determine that strict compliance with the terms of this Planning and Zoning Code will result in unnecessary hardship to the applicant. The applicant must demonstrate such hardship by clear and convincing evidence that all of the following criteria are satisfied". She then read and responded to the variance criteria as follows:

Criteria (A) - Mrs. Cavin stated the property could be put to an economically viable use. She continued that a third property was included in the purchase. Mrs. Cavin stated that all three properties could be utilized for single family residential uses. Mrs. Cavin explained that a cinderblock building on Callowhill Street was converted into an economically viable use.

Criteria (B) - Mrs. Cavin stated that several properties in the same zoning district were previously mentioned.

Criteria (C) - Mrs. Cavin indicated that she disagreed with the applicant and the applicant did not have to buy the property.

Criteria (D) - Mrs. Cavin noted that property owners spoke about the adverse effects on their properties.

Criteria (E) - Mrs. Cavin stated the location of the garage door adjacent to the street was a safety issue.

Criteria (F) - Mrs. Cavin stated that proposed use was not within the intent of the R-T. She noted that the Planning and Zoning Code stated that nonconforming uses were intended to be brought into conformance over time.

Criteria (G) - Mrs. Cavin stated that the owner paid about \$12,000 a lot, which was about the norm for buildable lots in the area.

Mrs. Cavin continued that the applicant must demonstrate that all of the criteria were satisfied and she did not believe that the requirements were met.

Mr. Reynolds asked Mrs. Cavin her address. Mrs. Cavin answered 324 Palmer Street. Mr. Reynolds asked how far her home was from the subject property. Mrs. Cavin responded her home was about 10 blocks away. Mr. Reynolds noted that Mrs. Cavin stated that similar properties cited were grandfathered and asked why was a variance needed for grandfathered uses. Mrs. Cavin explained that the properties changed ownership.

Mr. Dutton clarified that a nonconforming use may be substituted with another nonconforming use, which would be a separate application to the Board. He noted that an application to substitute a nonconforming use did not include criteria for approval of a use variance.

There was discussion regarding previous use variance applications and nonconforming use substitution applications in the R-T district.

Stewart Fitz Gibbon moved to adjourn for Executive Session. Brad Gowins seconded the motion. The motion passed unanimously 6-0 at 7:40 pm.

Brad Gowins moved to come out of Executive Session. Stewart Fitz Gibbon seconded the motion. The motion passed unanimously 6-0 at 7:53 pm.

Stewart Fitz Gibbon made a motion to approve the variance as presented. Doug MacMillan seconded the motion.

Stewart Fitz Gibbon voted yes and stated that he believed that all the criteria involved had been met. He noted that the eventual intent of the R-T District to get back to residential simply required time, such as the time need for the cinderblock building to crumble into ruin. Mr. Fitz Gibbon explained that in the interim, he felt that the proposed use was an appropriate low intensity use which was beneficial to the neighborhood.

Brad Gowins voted no and stated he believe the Criteria (A) was not sufficiently proven. He noted that the singular appraisal and demolition estimates were not sufficient for him to vote to approve the application.

Doug MacMillan voted yes. He noted he agreed with Mr. Fitz Gibbon's reasons for approval of the application. He noted that the building was built originally for commercial use, the proposed use was low intensity, and the zoning of the property would not be changed.

Ken Suchan voted yes. He stated that he felt the variance criteria were met. Mr. Suchan noted that the building was built prior to zoning in the City. He stated that he felt that the application was similar to the Kone Koner, which was also built as a commercial building and would be difficult to use residentially. He noted that examples provided converting commercial buildings to residences were extraordinary circumstances.

Gregg McIlvaine voted yes. He stated that the use was minimal and would produce less traffic and noise than a residence. Mr. McIlvaine noted that any extension of the use would require a separate variance application. He stated that the proposed use would include the upkeep of the existing building.

Lukas Gaffey voted no. He stated that he did not believe the application met all variance criteria for approval. Mr. Gaffey stated that he believed that the property could be put to

use in a profitable manner, though it may be more difficult. He indicated that if the zoning restrictions were known before purchase, the buyer may have created their own hardship. Mr. Gaffey continued that he did not believe criteria (A) and (C) had been met. He also stated that he felt criteria (F) was not met, which addresses the spirit and intent of the code. He noted that the approval would inhibit the intent of Section 1149.01 (d) and (e).

The motion passed 4-2.

**V. APPLICATIONS CONTINUED TO BE TABLED**

***Application #2016-19. (Application Continued to be Tabled by the Applicant)***

Doug Drushal of Critchfield, Critchfield and Johnson, Ltd. representing Renner Development Company Ltd. requested a use variance from Planning and Zoning Code Section 1143.02(d)(2)G. To allow a prohibited use for the outdoor storage of materials at 1055 East Henry Street in an M-1 (Office/Limited Manufacturing) District.

***Application #2016-20. (Application Continued to be Tabled by the Applicant)***

Doug Drushal of Critchfield, Critchfield, and Johnston, Ltd. representing Renner Development Company Ltd. requested an area variance from Planning and Zoning Code Section 1143.07(a)(2) to allow the outdoor bulk storage of materials without a means to effectively prevent spreading, Section 1143.07(d) to store outdoor materials on a surface which is not asphalt or concrete, Section 1143.07(e) to store outdoor materials without the required screening, Section 1165.07 to allow a non-residential development without the required buffer yard, and Section 1169.15(b) to allow gravel access drives at 1055 East Henry Street in an M-1 (Office/Limited Manufacturing) District.

**V. ADJOURNMENT**

Stewart Fitz Gibbon made a motion to adjourn. Brad Gowins seconded the motion. The motion passed unanimously 6-0.

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**Lukas Gaffey, Chairman**

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**Carla Jessie, Administrative Assistant**