

MINUTES

CITY OF WOOSTER BOARD OF BUILDING & ZONING APPEALS

September 1, 2016

I. MEETING CALLED TO ORDER AND ROLL CALL

Tate Emerson, Chairman of the Board of Building and Zoning Appeals, called the meeting to order. Board members Ken Suchan, Lukas Gaffey, Stewart Fitz Gibbon, Doug MacMillan, and Tate Emerson were present at the meeting. Board member Gregg McIlvaine was absent. Andrew Dutton, Planning and Zoning Manager, was present representing the City of Wooster.

II. APPROVAL OF MINUTES

Ken Suchan moved to approve the August 4, 2016, regular meeting minutes. Lukas Gaffey seconded the motion. The motion passed unanimously, 4-0 with Tate Emerson abstaining.

III. PUBLIC HEARINGS

Appeal #2016-29.

Anthony and Acacia Holcombe requested an area variance from Planning and Zoning Code Section 1125.07(a) to allow a pool with a fence less than six feet in height at 1862 Autumn Run in an R-1 (Suburban Single Family Residential) District.

Acacia Holcombe, 1862 Autumn Run, stated her request was to install a 16 ft. by 36 ft. rectangular pool. Mrs. Holcombe stated an existing three foot fence was located around the perimeter of the property. Mrs. Holcombe continued that proposed pool would include an automatic pool cover, which would act as a horizontal fence and would be controlled by a coded lock. Mrs. Holcombe continued that she wanted to maintain the existing three foot fence instead of constructing a six foot required fence. Mrs. Holcombe stated she had talked with the neighbors and they were all in support of the application.

Mr. Emerson questioned if the auto-cover would provide adequate safety. Mr. Holcombe responded that an adult could walk on the cover.

Mr. Suchan asked if there were other pools in the development without fences. Mrs. Holcombe stated there were other pools in the development without fences. She indicated there was a variance granted in her neighborhood allowing a pool without a fence.

Mrs. Holcombe indicated that the cover could only be open or closed by inputting a code.

Mr. Dutton indicated the referenced variance was not related to fence height surrounding a pool.

Mr. Emerson inquired whether a variance was necessary and if the matter should be heard by the Planning Commission as an acceptable alternative to constructing the required fence. Mr. Dutton responded the Planning Commission could hear such a request or the Board of Building and Zoning Appeals could hear the variance before them.

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

John Campbell, 719 Woodmere Drive, stated the board approved the same application three years ago for his property. Mr. Campbell stated he had the same cover and it was extremely secure.

Doug MacMillan moved to approve the area variance as requested. Stewart Fitz Gibbon seconded the motion.

Ken Suchan voted yes and noted that the code allowed alternatives to constructing a fence.

Doug MacMillian voted yes and added that the application was similar to a previously approved application.

Lukas Gaffeys voted yes.

Stewart Fitz Gibbon voted yes and stated that he felt that the proposal was safer than the required fence.

Tate Emerson voted yes.

The motion passed unanimously, 5-0.

Appeal #2016-30.

Johannah Harper and Carson Christian requested a use variance from Planning and Zoning Code Section 1133.02 to allow a second single family detached dwelling on an existing lot at 506 Gasche Street in an R-T (Traditional Residential) District.

Johannah Harper, 506 Gasche Street, stated she was requesting the construction of a second single family residential dwelling on the property. Mrs. Harper continued the purpose of the dwelling was to provide a home for her mother. Mrs. Harper stated the home would mimic the style of their existing home and was about 400 sq. ft. in area.

Ken Suchan asked if an addition to the existing home was an option. Mrs. Harper stated it was her mother's preference that the unit would be separate for independence and privacy.

Lukas Gaffey stated the R-T District was setup to preserve historical value and historical elements in Wooster. Mr. Gaffey continued that he felt the intent of the code was to get away from the multi-family and get back to single family homes. Mr. Gaffey stated he was concerned with what would happen to the property in the future.

Mr. Suchan questioned whether a deed restriction could be placed on the property preventing the use of the structure as a rental in the future.

Mrs. Harper stated there was an alley planned, but an alley was never constructed. Mr. Suchan stated that the absence of the alley prevented anyone using the lot because it had no access and noted that the alley was vacated in 1992.

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

Gary Maynard, 441 Gasche Street, stated he lived on the corner of Wilson Avenue and Gasche Street, south of Wilson Avenue on the east side. Mr. Maynard stated that when the alley was abandoned, the alley was bought by adjacent lots. Mr. Maynard stated he was in favor of the in-law suite and he noted if deed restrictions were placed on the lot, the home would stay with the lot and would not be separated.

Amanda Gaffey, 438 N. Buckeye Street, voiced her concerns about the precedent that would be set for other R-T neighborhoods. Mrs. Gaffey continued that in her neighborhood, there were whole houses that were rented out that have not been maintained.

Mindy Cavin, 324 Palmer Street, stated she had concerns with density as the area of town had many houses on small lots. Mrs. Cavin asked if there could be conditions put on the application stating that once the current owner's situation was concluded, the building would become an auxiliary building. Mrs. Cavin said approval by the Board would result in the creation of a multi-family property.

Sherry Grande, 446 N. Buckeye Street, stated her largest concern was with the precedent that approval would set in relation to other situations in the other R-T Districts.

Brenda Maynard, 441 Gasche Street, stated the subject lot was large and she would not even know that the in-law suite was even there. She added that an addition on the existing home would not be possible. Mrs. Maynard stated she had mixed feelings about the application and she did not have an issue with a separate in-law suite.

Stewart Fitz Gibbon moved to adjourn to Executive Session. Tate Emerson seconded the motion. The motion passed unanimously, 5-0, at 6:27 pm.

Lukas Gaffey moved to come out of Executive Session. Stewart Fitz Gibbon seconded the motion. The motion passed unanimously, 5-0, at 6:47 pm.

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

Ken Suchan voted yes and stated that the lot was originally two lots, the lot was large in size and the proposal would keep in character with the area.

Doug MacMillian voted yes.

Lukas Gaffey voted no noting the precedent set with a second detached dwelling unit.

Stewart Fitz Gibbon voted yes and indicated he did not feel a precedent would be set due to the specific situation.

Tate Emerson voted no and indicated he did not feel the situation was unique enough to set a precedent and he did not feel all the variance criteria were met.

The motion failed, 3-2.

Appeal #2016-31.

Nick Corp requested a use variance from Planning and Zoning Code Section 1143.02 to allow a motor vehicle sales use at 2708 Akron Road in an M-1 (Office/Limited Manufacturing) District.

Nick Corp, 219 East Paradise, stated he was requesting a use variance to sell classic cars at the location. Mr. Corp explained that the use would consist of one or two cars at a time displayed on the lot. Mr. Corp continued that all of the sales would happen inside the building. Mr. Corp stated that the business was strictly classic car sales.

Mr. Gaffey inquired how sales would transpire. Mr. Corp responded that vehicles would be posted online for sale and interested parties would visit the site to view the car.

Mr. Suchan asked how large the tenant space would be. Mr. Corp responded that the building was about 2,000 square feet.

The Board discussed area uses and zoning with Mr. Corp.

Mr. Gaffey asked what work would be done on vehicles. Mr. Corp responded that minor repairs and detail work would be done on vehicles in the building.

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

Ken Suchan made a motion to approve the application. Doug MacMillan seconded the motion.

Ken Suchan voted yes and noted that he felt the vehicle sales were incidental to the repair and detailing use and he noted that the use was compatible with M-1 zoning.

Doug MacMillan voted yes noting the location was appropriate for the use.

Lukas Gaffey voted yes.

Stewart Fitz Gibbon voted yes.

Tate Emerson voted yes.

The motion passed unanimously, 5-0.

Appeal #2016-32.

Doug Drushal of Critchfield, Critchfield and Johnston, Ltd representing Benadamer, Ltd. requested a use variance from Planning and Zoning Code Section 1133.02(d) to allow a two family dwelling at 318 West Larwill Street in an R-T (Traditional Residential) District.

Doug Drushal, 225 North Market Street, stated the property was previously owned by Jeff Slusser and was sold at auction in April 2015 for \$6,700. Mr. Drushal stated the owner put new siding and new windows in the home then later found out that the property lost its nonconforming duplex status. Mr. Drushal continued that the structure had been a duplex for a long time, had two entrances and had two water meters. Mr. Drushal indicated that

after the Slusser sale, the home was vacant and the owners were trying to renovate it. Mr. Drushal stated the lot was under contract and the new owner wanted to finish work and rent the units. Mr. Drushal addressed each of the use variance criteria and noted a previous use variance approval of a two unit dwelling on Bloomington Avenue.

Tate Emerson stated the home was originally constructed as a single-family dwelling and noted that no documentation was on file indicating the conversion of the home into a two family dwelling. Mr. Emerson continued that city records classified the home as a two family residence before this year and there were two water accounts for the property.

Lukas Gaffey stated he had been to homes in this R-T area which had been converted to multi-family units. Mr. Gaffey continued that a lot of these homes were not up to code and noted the opportunity to convert the building back to a single-family unit. Mr. Drushal responded that he did not believe a conversion back to single family residential was economically feasible.

Mr. Gaffey noted that the staff report indicated the property was not officially designated as a grandfathered use. Mr. Drushal responded that the U.S. Constitution granted the grandfathered use of the property.

Mr. Gaffey noted that he felt that a precedent would be set by granting the variance as the situation would apply to many other properties in the R-T district.

Mr. Emerson and Mr. Drushal discussed the application in relation to the criteria for approval.

Mr. Suchan asked the square footage of the units. Mr. Drushal responded he did not know the area of the units.

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

Tim Giauque, 331 Maiden Lane, stated that there were a lot of vacant homes in the area that were made into apartments which were originally single family homes. Mr. Giauque indicated that the homes have been vacant for five to ten years. Mr. Giauque stated there were enough apartments in the area and he would like to clean up the area.

Mindy Cavin, 324 Palmer Street, stated the reason why the R-T District was put in place was to remove some of the multi-family homes which were poorly converted and were not built to code. Mrs. Cavin continued that renting the building as a single unit would be economically feasible. Mrs. Cavin also stated the purpose of the R-T zoning was to reduce the multi-family homes and the application should be denied.

Brenda Maynard, 441 Gasche Street, stated that the property was long past the one-year grandfather clause. Mr. Drushal responded it was four months over the one year vacancy. Mrs. Maynard asked who the applicant was for the variance. Mr. Drushal responded he was representing a potential buyer. He noted the current owner paid \$6,700 for the property and put new siding and new windows in the home.

Amanda Gaffey, 438 N. Buckeye Street, stated there had been several homes bought and converted back to single family homes. Mrs. Gaffey stated the home next to hers was a single family home being rented for 850 dollars a month and it was in poor condition.

Sherry Grande, 446 N. Buckeye Street, stated she felt that if the variance was granted the Board would be setting a precedent for the R-T district.

Doug MacMillian moved to adjourn to Executive Session. Stewart Fitz Gibbon seconded the motion. Mr. Dutton stated that the square footage of the building was 1,500 square feet per the County Auditor and clarified staff's interpretation of the absence of a nonconforming use designation for the property. The motion passed unanimously, 5-0, at 7:30 pm.

Lukas Gaffey moved to come out of Executive Session. Stewart Fitz Gibbon seconded the motion. The motion passed unanimously, 5-0, at 7:43 pm.

Lukas Gaffey made a motion to approve the application. Doug MacMillian seconded the motion.

Lukas Gaffey voted no and indicated he felt the application was in direct conflict of regulation, was not within the intent of the R-T district and the situation was not unique.

Stewart Fitz Gibbon voted no. He acknowledged that the situation was poor, though it did not result in the application meeting the qualifications for a variance.

Doug MacMillan voted no.

Ken Suchan voted no and noted the size of the house was not large.

Tate Emerson voted no.

The motion failed to receive the required votes for approval and was denied, 0-5.

Appeal #2016-33.

E.W. Swartzentruber 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.

Mike Buytendyk, 111 South Buckeye Street Suite 270, stated he was representing E.W. Swartzentruber for a use variance application to allow commercial storage and workshop. Mr. Buytendyk stated the property was located in the R-T District, contained an industrial building and a vacant lot and provided a description of the area. Mr. Buytendyk noted that Mr. Swartzentruber wanted to use the building for storage for his rental properties and include a small workshop. Mr. Buytendyk indicated that the property was used to repair oil rigs and equipment at one time, though it had been vacant for over a year. Mr. Buytendyk stated the property was useless without approval of the use variance request.

Ken Suchan asked if Mr. Swartzentruber's rental properties were near the property. Mr. Swartzentruber, TWP Road 552, Shreve, stated that most of the rental properties were three to four blocks from the building.

Mr. Buytendyk stated that Mr. Swartztruber wasn't going to see customers out of the property. Mr. Dutton indicated that there was previously a single family home on the property, which was torn down. Lukas Gaffey stated that, since there was not a residence on the property any longer, there was not an acceptable use for the subject building.

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

Mindy Cavin, 324 Palmer Street, stated there was a use for the property, just not a commercial use. Mrs. Cavin stated the building had been there for 25 years and now there were trailers, equipment and a dump truck stored outside.

Tim Giauque, 331 Maiden Lane, stated he lived right across from the building. Mr. Giauque stated there were two houses that were taken down on the property. Mr. Giauque stated he didn't want any business there. Mr. Giauque asked if the commercial status would remain in the event the property was sold. Mr. Dutton stated that if the variance was approved, any future use would have to be the same, or very similar, to the approved use.

Megan Kennedy, 613 E. Henry Street, asked how loud the use would be, as she worked on third shift. Mr. Swartztruber stated employees would only be there about three times per week and noise would not be a problem.

Clayton Wyatt, 539 East Henry Street, stated the property had been residential for a long time and he did not want it to be changed to commercial.

Gary Maynard, 441 Gasche Street, stated he lived on Callowhill for 30 years and was very familiar with the building. Mr. Maynard stated the owners did not take care of the property. He continued that the property had been empty for 25 years and before that it was a warehouse for Wooster Products.

Les Kennedy, 1191 Applecreek Road, stated he owned the house on 613 East Henry Street. Mr. Kennedy indicated that he was concerned with the property being turned into commercial and asked what was going to be stored on the property. Mr. Swartztruber stated lawnmowers, snow removal equipment and some other items would be stored. Mr. Swartztruber continued that nothing would be stored on the outside of the building and everything will be stored inside of the building.

Mindy Cavin, 324 Palmer Street, stated this property was R-T and she wanted it to stay that way. Mrs. Cavin continued that the property had been a residential property for a long time and she felt the proposed use would disrupt the neighborhood.

Brenda Maynard, 441 Gasche Street, stated she felt a building with some activity and use would be better in the neighborhood than an abandoned empty building. Mrs. Maynard stated that since the garage door was replaced, the building was less of an eyesore.

Mindy Cavin, 324 Palmer Street, stated the windows in the back of the building were covered with plywood and painted the same color as the building. Mrs. Cavin continued that the building was an eyesore, but a quiet eyesore.

Stewart Fitz Gibbon moved to adjourn to Executive Session. Lukas Gaffey seconded the motion. The motion passed unanimously, 5-0, at 8:22 pm.

Ken Suchan moved to come out of Executive Session. Lukas Gaffey seconded the motion. The motion passed unanimously, 5-0, at 8:34 pm.

Doug MacMillian asked if Mr. Swartzentruber if all operations would be done inside the building. Mr. Swartzentruber confirmed that everything would be done inside of the building. Doug MacMillian reiterated that only lawnmower and snow removal equipment would be stored.

Mr. Emerson asked how many employees Mr. Swartzentruber employs. Mr. Swartzentruber stated he had two that work for him on a regular basis, but they would not use the storage building every day. Mr. Swartzentruber indicated that he used two pickup trucks, a van and two trailers. Mr. Swartzentruber stated that one of the trailers would be stored on the property.

Stewart Fitz Gibbon made a motion to approve the application. Ken Suchan seconded the motion.

Ken Suchan voted yes and stated that he felt there was no other valid use for the building and the proposed use was not very intensive.

Doug MacMillan voted yes.

Stewart Fitz Gibbon voted yes and indicated that, given the circumstances and the proposed use, he felt the granting of the variance was warranted.

Lukas Gaffey voted no and stated he felt there was a difference between the proposed application and the previously approved commercial use on Lucca Street and there was not a hardship on the property.

Tate Emerson voted no and indicated that he agreed that there was a difference between the application and the Lucca Street application as the nonconformance clearly lapsed on the subject property and homes could be built on the subject lots.

The motion failed to receive the required votes for approval and was denied, 3-2.

Appeal #2016-34.

David Aulger of Campbell Construction, Inc. for LUK USA, LLC requested an area variance from Planning and Zoning Code Section 1165.06(a) to allow a parking lot without the minimum percentage of internal landscaping, without landscaped island defining drive aisles, with parking rows spanning more than 100 ft. without a landscape island, and without the required number of shade trees at 3401 Old Airport Road in an M-2 (General Manufacturing) District.

John Campbell, 719 Woodmere Drive, stated that he was requesting an area variance to allow a parking lot without the landscaping requirements for a 166 space parking lot. Mr. Campbell continued that the parking lot would be hidden in the back of the property and

would not be seen. Mr. Campbell stated that the islands would take up about 21 parking spaces and the business continued to run out of space.

Ken Suchan stated one reason for landscaping in parking lots was for shade, which would keep cars from overheating and have other benefits. Mr. Campbell stated that he disagreed because the trees never reach a mature height. Mr. Suchan suggested a line of trees on the one side of the lot to shade the parking spaces. Mr. Campbell responded that he didn't object to planting the trees, LUK just didn't want to lose the parking spaces. Mr. Campbell stated the trees could be planted on the North and South front sides of the parking lot.

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

Gary Maynard, 441 Gasche Street, asked if the new road would change the frontage of the lot. Mr. Campbell stated that the parking lot was 1,000 feet from the new road and would not be affected.

Brenda Maynard, 441 Gasche Street, stated the outside of the building looked respectful, pretty and nice. Mrs. Maynard continued that the interior parking lot was not going to change that.

Mr. Campbell stated the new parking lot was not close to State Route 585 or the new road.

Lukas Gaffey made a motion to approve the application. Stewart Fitz Gibbon seconded the motion. Tate Emerson added the condition that the required shade trees be added to the perimeter of the parking lot.

Lukas Gaffey voted yes and noted that the parking lot was unique due to its setback from roads and its relation to industrial buildings.

Stewart Fitz Gibbon voted yes.

Doug MacMillan voted yes.

Ken Suchan voted yes.

Tate Emerson voted yes.

The motion passed unanimously, 5-0.

Appeal #2016-35.

Jerry Hershberger of Lieben Wooster, LP requested an area variance from Planning and Zoning Code Section 1141.05(a) to allow a building taller than permitted at 965 Dover Road in a C_5 (General Commercial District).

Andrew Dutton stated that the applicant, Jerry Hershberger, asked that the application be tabled.

Doug MacMillan made a motion to table the application until next month. Lukas Gaffey seconded the motion. The motion passed unanimously, 5-0.

Appeal #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.

Appeal #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 bulk outdoor storage of materials without an 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.

IV. ADJOURNMENT

Doug MacMillian made a motion to adjourn. Lukas Gaffey seconded the motion. The motion passed unanimously, 5-0.

Tate Emerson, Chairman

Carla Jessie, Administrative Assistant