

**MINUTES
BOARD OF BUILDING AND ZONING APPEALS**

February 6, 2014

MEMBERS PRESENT: Pat Zoller, Ken Suchan, Tate Emerson, Doug MacMillan, and Lukas Gaffey

MEMBERS ABSENT: Gregg McIlvaine and Adrian Eriksen

STAFF PRESENT: Andrew Dutton and Richard Benson

Prior to the regularly scheduled meeting of the Board, Mr. Benson held an open Worksession with the Board members to answer any questions they had with regard to evaluating appeals, the importance of having a record, the importance of running a meeting, to articulate the reasons, either for or against, when voting on an appeal, conflicts of interest and other general procedures.

I. ROLL CALL

II. MINUTES

Ken Suchan moved, Lukas Gaffey seconded, to approve the Minutes of January 9, 2014 as received. Motion carried by a 5-0 vote.

III. PUBLIC HEARINGS

Appeal #2013-24(a). Thomas Palecek representing Annette Palecek is requesting a modification to the approval requirements for Appeal #2013-24 regarding the substitution of a nonconforming use from a construction company to an auto detailing business in an R-T (Traditional Residential) District at 331 Lucca Street. The application was approved with a condition by the Board on November 7, 2013.

No one was present to speak in favor of the request.

Mindy Cavin, 324 Palmer Street, requested that the Board not extend the variance for the property in question. Ms. Cavin noted that not much, if anything, had been done to the property since the Board heard the request—pallets and blocks were still there and the windows were still broken. Ms. Cavin noted that the business owner did stop parking in the street, but noted that during the winter months, that was typical. Ms. Cavin stated since the Board's meeting, there was some nice weather and noted that the applicant did agree to the 90 days knowing winter was approaching. Ms. Cavin stated while she could understand not painting, the debris should have been removed and the windows could have been replaced. Ms. Cavin stated she felt the property owner had been given enough chances.

Mr. MacMillan questioned the applicant not being present. Mr. Dutton stated the applicant asked for the extension via mail and indicated he had also called Mr. Palecek, and he indicated he would be out-of-state and unavailable for the Board's meeting. Mr. Dutton noted Mr. Reese was also mailed a letter regarding the appeal as well.

Mr. MacMillan questioned if there had been any other communication received since the last appeal. Mr. Dutton indicated no.

Mr. Emerson indicated it appeared that the tenant was no longer parking vehicles in the street, but that it did not appear as though the applicant had taken any action to address the other violations. Mr. Dutton noted that Mark Nussbaum, Property Maintenance Inspector, went to the property in November and some of the violations which remained included high weeds, exterior walls were deteriorated, garage door needed painted, windows broken or missing, garbage, rubbish and tires remained, along with miscellaneous items being stored in front of the building. Mr. Dutton noted that some of the items which had been completed were: Not washing vehicles outside, obtaining commercial trash service, not as many vehicles being stored outside, parking in appropriate locations, and parking in the street had been eliminated.

Mr. Emerson stated Mr. Reese indicated at the last meeting that he sold personal vehicles now and then. Mr. Emerson stated he had driven out to the property after the last meeting, and there was a vehicle on the property for sale which had a dealer-type tag on it hanging from the rearview mirror. Mr. Emerson stated, however, he was not certain if it was Mr. Reese's personal vehicle or not.

Mr. Gaffey stated looking at how the appeal had progressed and knowing how contentious it had been, he questioned the good faith effort the applicant had made. Mr. Gaffey stated while the weather had been bad "the last few weeks", there had been a couple of months where some of the other issues could have been taken care of.

Mr. Dutton noted that the 90-day time frame the Board granted expired on February 7, so that was why the appeal was on the Board's February agenda.

Mr. Suchan stated no one anticipated the winter weather that had been occurring, and many construction projects had been delayed because of the weather. Mr. Suchan stated he wondered if the Board should consider granting a 1-month extension in order to give Mr. Palecek an opportunity to address the Board. Mr. MacMillan stated he was disappointed as to why weeds were not cut and blocks were not removed. Mr. MacMillan stated he had hoped Mr. Palecek would have given importance to the matter.

Mr. Gaffey stated some of the things could have been done and cited windows.

Mr. Suchan stated Mr. Palecek did understand it was a 90-day window to the approval.

Ms. Cavin stated there was a home being rehabbed in the neighborhood, and windows had been replaced at the home all the way up until Christmas.

Mr. MacMillan stated he felt it was explained to the applicant very clearly what needed to be done at the last Board meeting. Mr. Emerson stated the applicant had plenty of opportunity to at least start making an effort. Mr. Gaffey agreed. Mr. Gaffey stated he felt the Board had been more than lenient in terms of extending time by tabling the appeal in order for them to supply additional documentation, and felt the applicant could have provided the Board with a plan.

Doug MacMillan moved, Ken Suchan seconded, to grant the request for a modification to the approval requirements for Appeal #2013-24 regarding the substitution of a nonconforming use from a construction company to an auto detailing business in an R-T (Traditional Residential) District at 331 Lucca Street for an additional 45 day time period.

Mr. Suchan stated the 45 day time period would at least extend the appeal to the Board's March meeting, at which time the applicant could be present.

Mr. Dutton asked, for clarification, if the Board was extending the condition the Board granted for the previous appeal. Mr. Emerson stated yes—for 45 days.

Mr. Gaffey voted no. Mr. Gaffey stated he felt the appeal had been going on for five months, and the applicant had not made a concerted effort relating to the appeal. Mr. Gaffey stated everything had been like "pulling teeth", and he felt the Board had been more than accommodating in terms of giving them time and extending things. Mr. Gaffey stated between the Board's last meeting and now, he did not feel the applicant had shown good faith in terms of willingness to comply with what the Board outlined.

Mr. MacMillan voted yes, but stated 45 days but no more.

Ms. Zoller voted no. Ms. Zoller stated she was not present for the November meeting but had all of the information about it. She indicated she, too, did not feel the applicant made a good faith effort in their attempt to comply.

Mr. Suchan voted yes, primarily so that the lessee was not deprived use of the property for the next 30 days because the owner of the building was really the one the Board was dealing with. Mr. Suchan stated some of the conditions could have been taken care of already, and he did worry about their intent, but that he was willing to extend the appeal.

Mr. Emerson stated he did not feel there had been a good faith effort to come into compliance over the last 90 days and voted no.

Motion failed due to lack of majority by a 3-2 vote.

Appeal #2014-02. Michael Cush representing Wal-Mart is requesting an area variance from Planning and Zoning Code Section 1141.08(a)(4) to allow outdoor display of merchandise for sale within an existing parking lot and to Section 1169.04 to reduce the number of parking spaces to less than the minimum required in a C-5 (General Commercial) District at 3883 Burbank Road.

Michael Cush, representing Wal-Mart, stated a variance was being requested in order for a seasonal display to occur in the parking lot area at Wal-Mart. Mr. Cush noted that the display area would be 75' x 100', and would be comprised of 112 parking spaces.

Mr. MacMillan questioned how many parking spaces existed for Wal-Mart. Mr. Cush stated 912 parking existed, and Wal-Mart had seasonal sales previously and parking was not an issue. Mr. Emerson questioned if the same area had been designated for the outdoor sales area previously. Mr. Cush stated yes. Mr. Suchan stated at the time Wal-Mart was constructed, one parking space was required for every 275-sq. ft. of building. Since that time, the regulations had changed to one parking space for every 200-sq. ft. Mr. Emerson noted that, as of right now, Wal-Mart was required to have 958 parking spaces; 912 parking spaces existed. Mr. Emerson stated the Code that was in place at the time Wal-Mart was constructed required 695 parking spaces.

Mr. Emerson expressed concern with traffic flow as the area was busy and the parking area was full. Mr. Emerson stated by the structure taking up a lot of parking spaces and having people walk and drive around the area, his concern was the affect it would have on traffic flow. Mr. Cush stated it was on the garden side of Wal-Mart's building and not on the grocery side, which was where the heavier traffic occurred. Mr. Cush stated the display would be up from March until mid/end of July.

Mr. Suchan questioned if the existing garden center had any plants in it. Mr. Cush stated there were tropical plants, but it contained mostly patio furniture/chairs. Mr. Suchan stated because parking was somewhat shared with the other businesses, he did not find it to be an issue.

Ms. Zoller questioned if anyone had contacted the Planning Department regarding the appeal. Mr. Dutton stated no.

Mr. Suchan questioned if other Wal-Mart stores used a similar display system for their summer plants. Mr. Cush stated yes—other cities also had similar outdoor displays for their live plants.

Mr. Suchan questioned if the parking requirement was changed in the Zoning Code because of a problem with the prior standard. Mr. Dutton stated he was not sure as the Code was amended in 2007. Mr. Suchan stated the standard seemed more fitting for individual stores in smaller locations, but with a shopping center, shared parking would occur. Mr. Suchan stated even with the loss of the 112 parking spaces, the required parking under the previous Code would have been met. Mr. Suchan stated seasonal sales in parking lot areas was something other retailers did.

Mr. Gaffey stated he felt a time limit on the approval should be considered by the Board in order to take into account other development that might occur down the road.

Mr. Suchan questioned how many years Wal-Mart had been doing outdoor seasonal sales. Mr. Cush stated they had outdoor sales for the past 17 years. Mr. MacMillan noted MC Sports had outdoor sales, but not for the length of time Wal-Mart was proposing. Mr. Suchan questioned why the request was before the Board if it had occurred for the past 17 years. Mr. Dutton stated there was a disagreement with how the Zoning Code was being applied, and he felt the request needed to be heard by the Board.

Mr. Emerson stated he found Wal-Mart's parking area to be congested. Mr. Gaffey stated where the seasonal sales was proposed, he found parking was not as much in demand and was less congested. Mr. Suchan agreed that parking was more of an issue at the grocery entrance to Wal-Mart.

Mr. Dutton stated the Code regulations indicated that seasonal sales could not be located where there was established parking, which was why the request was before the Board.

Ms. Zoller questioned where the plants would be if the parking area was not permitted to be used for seasonal sales. Mr. Cush stated there would be no other location except for the patio area, inside the building.

Mr. Suchan questioned if permits were required to sell Christmas trees. Mr. Dutton stated Wal-Mart did obtain a permit. Mr. Suchan noted that Buehler's sold Christmas trees as well. Mr. MacMillan stated Buehler's sold their trees in the grass area; not in the parking area.

Ms. Zoller stated if the Board approved the request, she suggested that it be with a time limit so that the Board could revisit the request. Mr. Emerson noted, too, that if the Board approved the request, it was only for the size and location proposed.

Ken Suchan moved to grant the request of Wal-Mart for an area variance from Planning and Zoning Code Section 1141.08(a)(4) to allow outdoor display of merchandise for sale within an existing parking lot and to Section 1169.04 to reduce the number of parking spaces to less than the minimum required in a C-5 (General Commercial) District at 3883 Burbank Road for a period of 5 years. Mr. Suchan stated the variance could possibly be renewed after that time. Mr. Suchan stated if things changed radically within the shopping center, the Board would have an opportunity to review the request, which would also provide for an opportunity to become aware of any problems which would result from the outdoor display area.

Doug MacMillan seconded the motion.

Pat Zoller voted yes. Ms. Zoller stated Wal-Mart met the required number of parking spaces at the time the building was constructed. Ms. Zoller stated she was also in favor of the 5-year time limit on the approval.

Ken Suchan voted yes. Mr. Suchan stated the parking would still be above what the original space was designed for, which he felt seemed to be adequately serving the shopping center. Mr. Suchan stated the 5-year limitation would also not set a permanent precedent, especially knowing that the shopping center might change in character.

Mr. MacMillan voted yes and echoed Ms. Zoller's and Mr. Suchan's reasons.

Lukas Gaffey voted yes, for the same reasons outlined by Ms. Zoller and Mr. Suchan.

Mr. Emerson voted no. Mr. Emerson stated he did not feel the criteria was met and felt traffic patterns would be affected.

Motion passed by a 4-1 vote, Tate Emerson voting negatively.

Meeting adjourned at 7:00 p.m.

Tate Emerson, Chairman

Laurie Hart, Administrative Assistant