

## MINUTES

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

November 3, 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, Doug MacMillan, Brad Gowins, Lukas Gaffey, and Stewart Fitz Gibbon 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

Lukas Gaffey moved to approve the October 6, 2016, regular meeting minutes. Stewart Fitz Gibbon seconded the motion. The motion passed 5-0-1 with Tate Emerson abstaining.

#### III. PUBLIC HEARINGS

##### Appeal #2016-38.

Robert Reynolds of Reynolds Law Office representing Dannan Properties Ltd. requested an area variance from Planning and Zoning Code Section 1141.04(b)(1) regarding the minimum building setback from the street right of way, Section 1141.06(a) regarding the minimum parking setback from the street right of way and a nonresidential property, Section 1165.06(c) regarding landscape buffering and screening of a parking lot from the street right of way, Section 1169.04(c)(1) regarding the minimum required number of off-street parking spaces, and Section 1169.12 regarding minimum parking aisle width at 1821 and 1827 Cleveland Road in a C-2 (Neighborhood Business) District.

Robert Reynolds, 839 Forest Drive, stated he represented Dannan Properties, which was the holding company for Dan Wakefield Insurance. Mr. Reynolds stated that Mr. Wakefield acquired the lot to the north and would combine the two lots into one parcel. Mr. Reynolds indicated the property needed variances for setbacks, parking, a landscaping buffer, and the minimum required off-street parking spaces. Mr. Reynolds noted the property was a small and shallow lot. Mr. Reynolds continued the lot had streets on two sides and narrowed to a point, which provided a challenge to meet the setback requirements. Mr. Reynolds discussed the variances in relation to the staff report. Mr. Reynolds noted that by combining the parcels, the property was moving toward compliance and improvement.

Ken Suchan asked Mr. Reynolds to elaborate on the need for a variance to parking requirements. Mr. Reynolds responded that 10 parking spaces were required and 9 spaces were provided.

Tate Emerson suggested that the size of the building was causing the reason for the variances. Mr. Emerson asked if the applicant considered a smaller building to fit the space. Mr. Reynolds replied that the size of the building was dictated by the needs of the business. Mr. Emerson stated concerns with the lack of landscaping.

Mr. Suchan asked Mr. Reynolds to elaborate on landscaping requirements. Mr. Reynolds indicated that landscaping was required on the Beall Avenue side of the building as well as the Cleveland Road side. Mr. Dutton indicated that the landscaping needed to be substantial

due to the road frontage on both sides of the site. Mr. Suchan discussed the buffer landscaping requirement along Cleveland Road for the parking lot.

Mr. Emerson and Mr. Reynolds discussed the number of parking spaces needed. Mr. Reynolds indicated that most of the parking needed was for employee parking. Mr. Emerson stated that if 9 ft. wide parking spaces were provided, 4 ft. of screening would be possible along both streets.

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

Tate Emerson moved to approve the variance with the conditions that a variance to Section 1169.12 would no longer be needed as the aisle width would be increased from 22 ft. to 24 ft. and the parking space depth will be decreased from 20 ft. to 18 ft. and 8 of the 9 parking spaces would be reduced in width from 10 ft. to 9 ft. providing a 4 ft. landscaped buffer on the east and west sides of the parking spaces. Stewart Fitz Gibbon seconded the motion.

Ken Suchan voted yes and stated that the lot was unique and it would be very difficult to meet every detail of the code. He continued that the applicant was proposing a reasonable use of the property and accommodated of as much of the code as possible.

Doug MacMillian voted yes and stated the development of the property was a vast improvement over the current site and the project was similar to a project done by Chrysler Jeep.

Lukas Gaffey voted yes and indicated that his vote was based on stipulations outlined in the initial motion.

Stewart Fitz Gibbon voted yes and stated the existing business had an excellent track record and the project would continue to improve the neighborhood.

Brad Gowins voted yes and stated that the lot was unique, the business owner was willing to submit a plan that fit with the code as much as possible and the project would be an improvement to the area.

Tate Emerson voted yes.

The motion passed unanimously, 6-0.

***Appeal #2016-39.***

Paul Sommers of Hartzler Dairy representing Clover Crest LLC requested a use variance from Planning and Zoning Code Section 1141.02 to allow a manufacturing use at 5382 Cleveland Road in a C-5 (General Commercial) District.

Paul Sommers, 2565 E. Tolbert Road, stated Hartzler Dairy the current location on Cleveland Road bottled milk, made butter, made ice cream, and sold the ice cream at the retail store. Mr. Sommers noted that Hartzler Dairy distribute 25,000 gallons of milk a month in delivery routes. Mr. Sommers stated that the current building did not have enough space and the manufacturing/processing area of the plant was very crowded with no room for expansion. Mr. Sommers stated the property to the south of the dairy would be

utilized to increase ice cream and butter production and to add a cooler to distribute more milk.

Mr. Sommers stated that there may be an addition of a silo and a chiller on the proposed site. Mr. Emerson asked Mr. Sommers to elaborate on the possible silo. Mr. Sommers stated the silo would be for storing raw milk and cream, would possibly hold approximately 6,000 gallons and could be put inside of the building. Mr. Emerson asked what the height limitation was for silos. Andrew Dutton stated the maximum height of a silo was 45 feet.

Mr. Suchan asked what the uses were of the buildings across the street from the dairy. Mr. Emerson replied that the building directly across the street to the east was a vacant commercial building.

Mr. Emerson asked if the dairy was proposing exterior changes to the building or site. Mr. Sommers stated no changes were proposed at the time, though an addition was possible in the future.

Mr. Emerson asked why the subject property could not be utilized for a profitable use. Mr. Sommers replied that they could produce more milk there, had limited storage and the cooler was very small and inside. Mr. Sommers explained the need for a larger cooler and facility and stated the new building would free up space for manufacturing to make the process easier and allow for growth.

Mr. Emerson asked if there would be an increase in traffic. Mr. Sommers stated that possibly five milk trucks and four delivery trucks would arrive on a daily basis. Mr. Sommers stated the dairy employed 45 people and with the expansion, they would hire 5 more full-time employees.

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

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

Lukas Gaffey voted yes and stated that the use didn't seem any difference from the permitted micro distillery use. He further stated that there were no exterior changes currently planned, so essentially the building would look the same. Mr. Gaffey continued that there would not be a large increase in traffic, especially since the site was located around retail, which produced more traffic. He also stated that the indicated silo would not be a large structure which would cause an issue.

Stewart Fitz Gibbon voted yes and stated that the project was just an extension of an existing activity that had performed well in the neighborhood.

Brad Gowins voted yes.

Ken Suchan voted yes and stated the application was a reasonable expansion of the dairy and the applicant demonstrated that the building met their modern needs for production.

Doug MacMillian voted yes and stated that the current business operations were nicely maintained.

Tate Emerson voted yes and stated the property was unique as it was an extension of the existing business with production and the retail services. He further stated that the existing business was annexed with a manufacturing use and the proposal was an extension of the business. Mr. Emerson continued that he believed the application maintained the spirit of the Zoning Code.

The motion passed unanimously, 6-0.

***Appeal #2016-40.***

Dave Wengerd of Wootown Properties LLC requested a use variance from Planning and Zoning Code Section 1141.02 to allow a first-floor residential unit at 236 South Market Street in a C-4 (Central Business) District.

Dave Wengerd, 5732 TR 264, Millersburg stated that the variance was for residential use in the C-4 district. Mr. Wengerd explained the building included commercial space on the first level of the property and a permitted residential unit on the second floor. Mr. Wengerd explained the property consisted of two separate buildings with a detached duplex to the rear. Mr. Wengerd stated that a 20 in. offset in the floor on the first level of the building required a handicap ramp. He continued that the ramp would cause a substantial loss of floor space for a commercial tenant utilizing the entire first floor.

Mr. Wengerd stated a suitable tenant for the building could not be found due to the long narrow configuration. Mr. Wengerd indicated that a tenant was found and wanted a commercial space in the front portion and a residential one bedroom unit in the rear portion of the first floor. Mr. Wengerd stated that the building was vacant for almost three years.

Mr. Emerson asked how the tenant was utilizing the space. Mr. Wengerd stated the tenant was a State Farm Insurance Company that was located in the front and he was going to live in the back of the building. Mr. Fitz Gibbon and Mr. Wengerd discussed the layout of the building and the floor offset. Mr. Wengerd stated that access to the proposed first floor residence would be in the rear of the building.

Stewart Fitz Gibbon made a motion to approve the application. Brad Gowins seconded the motion.

Lukas Gaffey voted yes and stated that based on the unique situation, the proposed plans made sense to create a viable space. He continued that putting in a ramp to accommodate the front section would result in a significant loss of usable space.

Stewart Fitz Gibbon voted yes and stated that the applicant had made a good faith effort to comply with a viable use.

Brad Gowins voted yes.

Ken Suchan voted yes and stated that having a modern apartment in the downtown was a plus.

Doug MacMillan voted yes and stated he felt the proposal was a viable option and the rear apartment and would not be visible from the front.

Tate Emerson voted yes.

The motion passed unanimously, 6-0.

***Appeal #2016-41.***

Robert Reynolds of Reynolds Law Office representing 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.

Robert Reynolds, 839 Forest Drive, stated that Mr. Swartzentruber was present to answer any questions from the Board. Mr. Reynolds stated the application was the same application that the Board heard at their September 1, 2016, meeting to allow a commercial storage and workshop use in the R-T District. Mr. Reynolds stated that the code required that a resubmission may be made if the applicant has substantial new evidence to submit. Mr. Reynolds indicated that he contacted a local realtor to find out what the economically viable options were for this property. Mr. Reynolds continued that the property consisted of two 80 ft. by 130 ft. deep lots with an existing block building. Mr. Reynolds stated the building ran the width of the two properties, was 40 ft. wide, consisted of about 30% of the lot, and was built in 1965 as a commercial use building. Mr. Reynolds explained that the building was clearly a commercial building and not a residence.

Mr. Reynolds stated the property could not be used for an economically viable use as a residence. Mr. Reynolds continued to review the permitted uses of the property and the permitted uses of the R-T District. Mr. Reynolds stated that if a home was built on the lot, the existing building would be an accessory building.

Mr. Emerson asked that Mr. Reynolds addresses the concerns of the nearby property owners. Mr. Reynolds said the concerns were varied and he indicated that Mr. Swartzentruber cleaned up the property and maintained it. Mr. Reynolds stated the issues about parking could be addressed and could be limited. Mr. Reynolds continued that Mr. Swartzentruber's intended use of the property was minimally invasive.

Mr. Emerson asked why it was not economically viable to turn the building into a house. Jack Gant, 240 W. Liberty Street, responded that the building was built as a commercial block building and it would be almost impossible to renovate it current code due to the cost involved. Mr. Gant noted that with such a renovation, the owner would not get a return on the investment. Mr. Gant explained that the building would have to be gutted the concrete floor, plumbing, and electric would need to be torn out. Mr. Gant said it was not possible to make the building residential, in his opinion.

Mr. Emerson questioned the possibility of building a new home on the property and using the building as an accessory building or garage. Mr. Gant replied that it would be almost impossible to put a house on the lot because the site consisted of two lots and setback requirements could not be met. Mr. Emerson asked why building a 960 sq. ft. house 30 ft. by 32 ft. would not be possible. Mr. Gant noted that the site was located with a manufacturing use across the street.

Mr. Dutton clarified that the building coverage in the R-T District was 25% and the existing building was presently over the building coverage. Mr. Dutton continued that to build a house on the lot, a variance to lot coverage would be required.

Mr. Reynolds stated the applicant examined building a house on the lot. Mr. Gaffey asked what the cost would be to convert the building into a single family home. Mr. Gant stated he could not give the Board a price.

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

Mindy Cavin, 324 Palmer Street, stated she had concerns with the property and the Planning and Zoning Code. Mrs. Cavin stated the purpose and the spirit of the code were very clear and intended the R-T district to gravitate to single family homes. Mrs. Cavin stated the purpose of the Planning and Zoning Code was not to resurrect the area to commercial.

Mrs. Cavin stated the building had been vacant a long time and was a commercial building. Mrs. Cavin continued that the property had an economically viable use and could be built on. Mrs. Cavin noted that there had been several commercial use buildings converted into single family residences. Mrs. Cavin stated the area was not zoned commercial and she did not want a commercial use at the proposed location. Mrs. Cavin stated the Code did not support the variance for the property.

Mr. Emerson asked why the building wasn't taken down when the house was demolished. Mr. Dutton answered that the block building was not in a condition that needed to be torn down.

Mrs. Cavin continued that if the building was torn down, a 1200 sq. ft. to 1300 sq. ft. home could be built on each lot, not including a garage. Mrs. Cavin stated the owner could turn the building into a viable single family home.

Mr. Emerson asked Mrs. Cavin what she felt was the best scenario for the property. Mrs. Cavin replied she felt that building two new homes on the lots was the most cost effective. Mrs. Cavin stated an area variance was a lot easier to get with fewer criteria to meet.

Tim Giauque, 331 Maiden Lane, stated he lived across from the subject building. Mr. Giauque stated the doors of the building were located right out to the street. Mr. Giauque continued that the building had been vacant for 30 plus years. Mr. Giauque stated his concerns with the building being commercial were with children in the area and the nearby park.

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. Mr. Emerson continued that if the use were more intense, an addition variance would be needed.

Clayton Wyatt, 539 East Henry Street, stated the property hadn't been a business for a long time, and he felt that was nice. Mr. Wyatt continued that there were a lot of children in the area and a commercial use would make it dangerous for children. Mr. Wyatt stated he was against the commercial use of the property.

Ross Barbera, 529 East Henry Street, stated a lot of children go to Schellin Park and he always feared for them because of the amount of traffic due to commercial trucks.

Amanda Gaffey, 438 N. Buckeye Street, asked why the building had to be changed to commercial if it was going to be used for storage for lawn equipment. Mr. Emerson replied that the building had to be an accessory building to a residence, so without the residence, a use variance was required. Mrs. Gaffey stated she felt that all the criteria should be met for the approval in the R-T District.

Mr. Reynolds clarified that the zoning classification would remain the same for the property and the request was for a variance. Mr. Reynolds stated the variance was needed because the building had not been used commercially in 20 years. Mr. Reynolds stated the owner would not be using the property every day, therefore, there would be less traffic than that of a residence.

Mr. Gaffey stated the R-T zoning existed before the property was purchased, which should be considered when examining the economic viability component of the Board's review. Mr. Gaffey continued that he was concerned that the application did not meet the intent of the R-T district to gradually bring all buildings into conformance.

Mr. Reynolds stated the variance should be granted according to the criteria set out in the Zoning Code. Mr. Reynolds stated the hardship was due to the nature and configuration of the property. Mr. Reynolds continued that there was a 40 ft. by 80 ft. building on the property and the question was what the owner should be allowed to do with that building.

Mr. Emerson stated the owner purchased the property with the intent to use it as a commercial building. Mr. Reynolds stated the hardship was that the building did not fit into the zoning district. Mr. Emerson stated other than an opinion, there were no facts brought to the economic viability of the site.

Mr. Reynolds stated Mr. Gant was qualified and experienced in the real estate field in the community. Mr. Reynolds continued that he had the ability and experience of looking at properties and determining viable uses. Mr. Reynolds also stated that the property had been vacant for an extended period of time. Mr. Reynolds stated that since 2007, there had been zero new residential construction south of Liberty Street in the R-T District. Mr. Emerson asked what the cost was for the city to demolish a building. Mr. Dutton stated an estimate of approximately \$10,000, though he noted the uniqueness of the building made it difficult to estimate.

Mr. Gaffey stated that applicants often apply for variances before purchasing a property with the sale contingent upon variance approval. Mr. Gaffey stated the application would extend the commercial use which did not fit into the R-T District.

Mr. Suchan stated the building was proposed as a nonresidential storage use. He continued that throughout the city, people often have large buildings or extra garages in their back yard. Mr. Gaffey indicated those buildings would be accessory buildings.

Mr. Reynolds stated the hardship on the property was not because of the owner, but of a property that was not suitable for the use permitted in that district.

Jack Gant stated he has been in the real estate business for 34 years lived and grew up in the area. Mr. Gant briefly gave a description of his experience as a predominantly commercial realtor. Mr. Gant continued that he conducted many estate appraisals and was well respected as a realtor in the area.

Mr. Fitz Gibbon asked Mr. Gant if zoning concerns were addressed considering during purchase negotiations. Mr. Gant answered that the purchase was not handled that way and the true issue was that there was a building on the site before zoning.

Mr. Fitz Gibbon asked if a property could become unmarketable if there is a nonconforming building in a particular zoning area. Mr. Gant replied the building could be very unmarketable. Mr. Fitz Gibbon asked if a property could become worthless. Mr. Gant replied a property could become worthless.

Mr. Emerson asked if the zoning classification was indicated in the real estate listing. Mr. Gant responded that the zoning classification was indicated on the website. Mr. Gant stated that the class of zoning had an effect on the price. Mr. Emerson asked what the property values were in the adjacent residential properties. Mr. Gant answered that the information was on the Auditor's website, which was the option of the Auditor. Mr. Gant stated that his report was based on the building remaining and the owner's intended use of the building.

Amanda Gaffey stated that Habitat For Humanity had been building in the R-T District and there was a waiting list for residential homes.

Jeanette Holtree, 432 Henry Street, questioned how the property was presented to Mr. Swartzentruber.

E.W. Swartzentruber, 9110 TR 552, stated the property was presented as a commercial property and was told that it had grandfathered status. Mr. Swartzentruber continued that he intended on cleaning up the property, make improvements and use the building for personal storage. Mr. Swartzentruber stated there was not going to be any parking on the outside of the building. Mr. Swartzentruber indicated that the only vehicle on the site would be a pickup truck with a short trailer. Mr. Swartzentruber continued that the equipment was for residential use for his rental properties. Mr. Swartzentruber stated he owned approximately 30 apartments in the area on different properties.

Mindy Cavin commented that this was not the first time Mr. Swartzentruber disregarded the Building Codes. Mrs. Cavin stated Mr. Swartzentruber had brought in a dump truck load of gravel in and out of the driveway of the property. Mr. Emerson mentioned that there was a small window of time when he was moving gravel around the building to look nicer. Mrs. Cavin stated that equipment had been running up and down the alley. Mrs. Cavin continued that she had demolished a 3000 sq. ft. house in 2012 and the cost was about \$6,500. Mrs. Cavin indicated that if they were going to grant a variance, then all the criteria that the Zoning Code required needed to be met.

Doug MacMillian moved to adjourn to Executive Session. Stewart Fitz Gibbon seconded the motion. The motion passed unanimously, 6-0, at 8:18 pm.

Doug MacMillian moved to come out of Executive Session. Stewart Fitz Gibbon seconded the motion. The motion passed unanimously, 6-0, at 8:38 pm.

Ken Suchan made a motion to approve the use variance to allow a storage use associated with rental properties in the neighborhood to include landscape and maintenance equipment to maintain rental properties. Doug MacMillan seconded the motion.

Ken Suchan voted yes. He stated that his vote was primarily because the use was similar to individual property owners having accessory buildings on their property to maintain a workshop or store equipment. Mr. Suchan stated that it was an extension for a land owner that own multiple properties in the area to have the same possibilities. Mr. Suchan also stated that he saw the application as an extension of a related residential use.

Doug MacMillan voted yes. He indicated his vote was based on Mr. Suchan's comments.

Lukas Gaffey voted no. He stated he appreciated the improvements, but he had concerns of making an exception for an accessory use without a home. Mr. Gaffey stated approval would potentially open the door for other things in the future. He indicated there were a lot of these types of buildings in Wooster and he was concerned with setting a precedent. Mr. Gaffey continued that he did not feel the request met the variance requirements.

Stewart Fitz Gibbon voted yes. He stated that he was concerned with setting a precedent, however, he continued that facts and circumstances of the application were particular to the situation. He noted that the Board was aware of the requirements of the Zoning Code and the R-T district. Mr. Fitz Gibbon stated he did not feel the application inhibited the eventual gradual return of the property to the intended use. He stated that the unique fact of the case, such as the City demolishing the home, produce a hardship. Mr. Fitz Gibbon noted that not granting relief in this instance essentially make the property worthless and create an unrealistic bar for properties to conform to the Zoning Code.

Brad Gowins voted no and stated all of the qualifications had not been met.

Tate Emerson voted no. He stated he believed the intent of the owner was an improvement over an abandoned building. He continued that use variances could be subjective of whether all the criteria have been met. Mr. Emerson continued that he did not believe all variance criteria were met and believed that the property could be put to a use in the zoning district. Mr. Emerson explained hesitation that the hardship was created as the owner purchased the property without correlating the use and the zoning together. Mr. Emerson stated that often with use variances, the criteria may be considered to have been met because of the intent of the owner. He continued that comments from citizens opposing the variance were a factor in his decision.

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

***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 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.

**IV. ADJOURNMENT**

Doug MacMillian made a motion to adjourn. Ken Suchan seconded the motion. The motion passed unanimously, 6-0.

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**Tate Emerson, Chairman**

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**Carla Jessie, Administrative Assistant**