

**MINUTES  
BOARD OF BUILDING AND ZONING APPEALS**

**December 4, 2014**

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

**MEMBERS ABSENT:** Adrian Eriksen

**STAFF PRESENT:** Andrew Dutton

**I. MINUTES**

Ken Suchan moved, Lukas Gaffey seconded, to approve the Minutes of October 2, 2014 as received. Motion carried by a 6-0 vote.

**II. PUBLIC HEARINGS**

**Appeal #2014-23. David Aulger of Campbell Construction, Inc., representing Pallotta Properties,** is requesting an area variance to Section 1165.05 regarding frontage landscaping and Section 1165.06 regarding parking lot screening at 4199 Cleveland Road in a C-5 (General Commercial) District.

David Aulger, Campbell Construction, stated Pallotta Properties was seeking a variance to Section 1165.05 regarding frontage landscaping and Section 1165.06 regarding parking lot screening. Mr. Aulger stated Pallotta Properties was in the business of selling vehicles, and part of that business was displaying vehicles. Mr. Aulger stated there were many things relating to trees which were detrimental to the proper care of vehicles which Pallotta Properties had on display for sale. Mr. Aulger stated with branches, leaves, tree sap and things falling on the vehicles, trees were a detriment to their business.

Mr. Aulger stated to the north of the dealership, an addition was proposed; improvements to the new vehicle display area were also proposed. Mr. Aulger stated Pallotta Properties did not want to have the vehicle display area obscured by trees and shrubs.

Mr. Aulger submitted photographs of the existing right-of-way lines to the Board. Mr. Aulger stated there were overhead and underground utilities, which was another reason trees would not be a good idea as where they were supposed to be located, they would be underneath power lines. Mr. Aulger stated there was not a lot of room between the new building and the street.

Mr. Emerson asked for an explanation of the modifications which were planned. Mr. Aulger stated the existing showroom and sales area would be demolished and a new showroom and sales area would be constructed in front of the existing facility. Mr. Aulger further stated a smaller addition to the back would also be constructed which would extend the service area. Mr. Aulger stated improvements to the site (to the north) would also be made which was currently a graveled lot and would now be paved and made part of the vehicle display area. Mr. Aulger stated an island would be installed to help with the grade

difference from the north to the south, and trees were planned for that area to address the requirement for street trees.

Mr. Aulger noted that the Planning Commission approved the site plan at their November meeting and that they had approved the planting of the street trees in the island as proposed. Mr. Aulger stated there was not enough room for both street trees and the frontage tree requirement.

Mr. Aulger submitted a rendering to the Commission of what the new facility would look like.

Mr. Aulger stated 12 new trees would be added as part of the project. Mr. Emerson stated the plan showed 17 of the 60 required shrubs would be planted. Mr. Aulger stated that was correct, although there were trees and landscaping planned around the entrance. Mr. McIlvaine noted that there were no trees in the front of the building at the present time. Mr. Aulger stated that was correct. Mr. Emerson noted that the trees were required to be planted because the site was being expanded.

Mr. Aulger noted that Staff cited other instances where the Board granted similar variances (Family Dollar and Wooster Growth). Mr. McIlvaine noted those variances were in the downtown. Mr. Aulger stated as you traveled along Cleveland Road, there were properties both with and without landscaping. Mr. Emerson stated the properties with landscaping, however, looked better.

Mr. Emerson stated in front of the building where cars were not proposed to be parked, no landscaping was shown. Mr. Aulger stated that was correct. Mr. McIlvaine questioned the reason for not providing some improvement in landscaping. Mr. Aulger stated Pallotta wished to keep their cars clean and provide a better view to the public. Mr. Aulger stated the utilities were also an issue across the front of the property.

Mr. Suchan questioned if there was a requirement for trees to the south where no work was planned. Mr. Dutton stated that was a separate parcel.

Ms. Zoller stated, as she understood it, that in the front section, none of the required trees would be planted and only 17 of the 60 shrubs would be planted. Mr. Aulger stated that was correct. Mr. McIlvaine questioned how large the shrubs would be. Mr. Aulger stated they had yet to do a plan which identified which variety of shrubs would be installed but that they would likely be low to the ground. Mr. McIlvaine noted that 17 shrubs across 370' of frontage did not seem like many. Mr. Aulger stated the shrubs would be located in a cluster by the entrance to the vehicle display area.

Mr. Emerson stated when he drove through the area, it was "wide open with concrete and asphalt". Mr. Emerson stated there was a lot of lawn area on the south side of the property, and questioned if there was a compromise between what was required and where it could be located. Mr. Aulger stated Pallotta Properties did not have too much of an objection to the shrubs; the trees were the real issue. Mr. Aulger stated as a compromise, they would be willing to add shrubs and disburse the cluster so that there were more along the length of the frontage. Mr. McIlvaine stated he felt it would be an improvement and would aesthetically be more attractive. Mr. McIlvaine questioned if it was their intention to park vehicles along all 370' of frontage. Mr. Aulger stated yes.

Ms. Zoller questioned the distance between the street and where the vehicles would be parked. Mr. Aulger stated they were about 20' from the right-of-way/40' from the pavement.

Mr. Emerson noted that in front of the building, parking spaces were proposed and that no vehicles would be displayed in that area. Mr. Aulger stated that was correct.

Mr. MacMillan noted that other dealerships in the area did not meet the Code. Mr. Aulger stated some had landscaping and some did not, and he provided pictures to the Board.

Mr. Emerson stated where the property "stepped up", he felt shrubs could be added without blocking vehicles.

Mr. Suchan stated he could see the argument for not having screening of trees along the vehicle display area, but felt shrubs would soften the relationship between the road and the display area. Mr. Suchan stated he would have difficulty in not providing the shrubs, and felt there was flexibility in where they could be provided. Mr. Suchan stated with regard to the landscape island, that point was moot because essentially, there was no island to be landscaped.

Mr. Aulger stated there was an entrance to the building planned where the new car delivery area would be and was stripped off as a "no parking" area as opposed to a curbed island.

Mr. Emerson stated Section 1165.06 (c) required 10' wide, 3' high, landscaped buffer between parking lots and the right-of-way, and the parking area adjacent to the west side of the proposed frontage addition must be screened with a buffer. The lawn area between the proposed addition, which contained the existing Ford sign, was less than 10' in width and contained no landscaping materials; the requirement was not applied to the vehicle sales/display area. Mr. Aulger stated there were 8 parking spaces between the building and the right-of-way. Mr. Suchan suggested adding shrubbery to that area. Mr. Aulger stated he did not feel there would be a problem with that. Mr. Suchan stated he felt the customer parking area should be screened but understood not wanting to screen the vehicle display area.

Mike Pallotta, Pallotta Properties, stated with respect to the north lot from the front entrance to the road, there was a big hill. Mr. Pallotta stated the north lot down to the second level was about 7-8', so the varying levels was what created an issue. Mr. Pallotta stated they previously had lost trees which were placed close to the road. Mr. Pallotta stated shrubs would be a compromise.

Mr. Emerson questioned why the 3' x 10' screened area in front of the building could not be accommodated. Mr. Aulger stated that area was underneath the sign, and there were only eight parking spaces there. Mr. Pallotta stated the display space that currently existed by the sign would become a parking lot because the parking spaces which existed on the sign would no longer exist. Mr. Emerson questioned why they could not meet that requirement. Mr. Aulger stated they did not want to screen the building.

Mr. Suchan suggested adding a landscape buffer, 3' in height/shrubbery, which would extend between the two entrance driveways and would be similar to the new dental office

on Cleveland Road. Mr. Suchan stated he felt there should be landscaping which reflected the new development and the requirements, especially since there were newer developments in the area. Mr. Pallotta stated the high tension wires created a conflict. Mr. Emerson stated the Board was contemplating a variance which would ask the applicant to meet the requirement for shrubbery and foregoing the trees, and on the second variance meeting the 3' high requirement but foregoing the requirement for 10' width requirement. Mr. Aulger stated that would be acceptable. Mr. Dutton stated the 3' high requirement was at the time of planting and not maturity.

Mr. Emerson opened the public hearing to the public for comments.

Tate Emerson moved to grant the request of Pallotta Properties contingent upon meeting the requirement for all 60 shrubs and zero trees per Section 1165.05, and for Section 1165.06 (c) that the applicant meet the 3' height requirement and foregoing the 10' wide.

Doug MacMillan seconded the motion.

Lukas Gaffey voted yes.

Doug MacMillan voted yes. Mr. MacMillan stated he was voting yes due to the nature of the business but also because the Board granted a similar variance for Jim Moser's property. Mr. MacMillan stated up and down the street, other dealerships did not have landscaping of this nature. Mr. MacMillan further stated that because of the power lines, the trees, in a few years, would have to be "cut into" and felt it was a waste. Mr. MacMillan stated the shrubbery would help fill the need.

Gregg McIlvaine voted yes.

Ken Suchan voted yes. Mr. Suchan stated while it was not perfect, it was a step in the right direction for what the Code wanted in the general neighborhood.

Pat Zoller voted yes. Ms. Zoller stated an attempt was made with the addition of shrubbery.

Tate Emerson voted yes.

Motion carried by a 6-0 vote.

**Appeal #2014-24. David Broehl of the Wayne County Historical Society** is requesting an area variance to Section 1167.04(a) to allow lighting fixtures which are not full cut-off at 546 East Bowman Street in a C-2 (Neighborhood Business) and R-2 (Single-Family Residential) District.

David Broehl, Co-Chair of the Parking Lot Project for the Wayne County Historical Society, stated the Board had received information as part of their request (see file), and he was available to answer any questions the Board had.

Mr. Emerson questioned if the proposed LED bulbs were classified as decorative. Mr. Broehl stated he was not sure. Mr. Broehl stated their goal was for lighting to not infringe on neighbors and to, as much as possible, continue to make the Historical Society a more home-like setting. Mr. Emerson questioned if the point of the lighting was to provide

illumination or to create a decorative feel. Mr. Broehl stated the Historical Society wished to have lighting for the parking lot for safety purposes. Mr. Emerson questioned if this would be the only illumination which would be provided. Mr. Broehl stated yes.

Mr. MacMillan questioned if the lights would be on all night for security purposes. Mr. Broehl stated yes. Mr. MacMillan stated the lights seemed to match the ones that existed on Foundary Row. Mr. Broehl stated that was correct.

Mr. MacMillan questioned if Staff had received any inquiries as to the appeal. Mr. Dutton stated no. Mr. Dutton further noted that the Planning Commission also reviewed the site plan (conditional use), and no one had come forth at that meeting. Mr. Dutton stated the Design & Review Board had also approved the design.

Mr. McIlvaine questioned the number of light posts there would be. Mr. Broehl stated four.

Mr. Suchan noted that the lighting planned did not go any further than the boundaries of the property. Mr. Broehl stated that was correct. Mr. Broehl stated that was the goal of the Historical Society in providing the illumination.

Mr. Broehl indicated they hoped to have the parking lot installed in the spring.

Mr. Emerson stated the plans showed the bulbs were 19 watt, LED. Mr. Emerson noted the poles were 8' in height. Mr. Emerson further noted the maximum watt allowed was 60 watts.

Mr. Emerson opened the public hearing to the public for comments.

Ken Suchan moved to approve the variance for the Wayne County Historical Society as requested.

Doug MacMillan seconded the motion.

Pat Zoller voted yes. Ms. Zoller stated she felt the intent of the Zoning Code had been met.

Ken Suchan voted yes citing Ms. Zoller's comment.

Gregg McIlvaine voted yes.

Lukas Gaffey voted yes.

Doug MacMillan voted yes.

Tate Emerson voted no. Mr. Emerson stated he felt the light would spread out beyond the property and did not meet the intent of the Code.

Motion carried by a 5-1 vote, Tate Emerson voting negatively.

**Appeal #2014-25. Christopher Green of Greenback Properties** is requesting an area variance to Section 1169.04 to allow fewer parking spaces than required at 4687 Cleveland Road in a C-5 (General Commercial) District.

Chris Green, representing Greenback Properties, stated he purchased the former Krupp Furniture building which had been vacant, and he had a tenant interested in leasing the building. Mr. Green noted the property was annexed into the City and the building was constructed prior to annexation. Mr. Green stated the perspective tenant worked with handicapped individuals to teach them life skills; the individuals would arrive via bus. Mr. Green stated they were currently located on East Liberty Street and were moving in order for other businesses to expand. Mr. Green stated the Code required 24-25 parking spaces; 11-12 parking spaces existed. Mr. Green stated if additional parking was provided, it would never be used, would have to be maintained and would take up greenspace. There was a “park-like setting” that existed to the rear of the building.

Mr. MacMillan questioned the number of buses which would be used. Mr. Green stated one, which was more like a shuttle. Mr. Green stated the front part of the building would be offices; there would also be a workshop area within the building. Mr. MacMillan questioned if the building would be used only during regular working hours. Mr. Green stated yes—it was an 8-5:00 p.m. business.

Ms. Zoller questioned if parking could be added to the side. Mr. Green stated he could add parking, but the tenant signed a 6-year lease, and they had no need for additional parking. Mr. Dutton noted that parking on the north side of the site would be difficult to provide and meet the Code as a 10’ buffer and hedgerow would be required. Mr. Suchan stated that if another business went in after the 6-year lease expired, it would have to meet the Code or obtain another variance. Mr. Emerson noted to the applicant if there were more employees and students over the 6-year timeframe, the Board would need to rehear the appeal due to the increase and possible need for parking. Mr. Green stated it was a difficult building to market to perspective tenants, and he felt the use of the building as proposed was the best possible situation.

Mr. Emerson stated Staff recommended that the properties be combined into one parcel because the property line bisected the parking area and the building. Mr. Dutton stated the applicant was not required to combine the properties but it was Staff’s recommendation that the properties be combined.

Mr. Emerson opened the public hearing to the public for comments.

Doug MacMillan moved to grant the request of Greenback Properties as submitted.

Pat Zoller seconded the motion.

Pat Zoller voted yes.

Ken Suchan voted yes.

Gregg McIlvaine voted yes.

Doug MacMillan voted yes.

Lukas Gaffey voted yes, based upon the tenant and there being a 6-year lease. Mr. Gaffey noted that if the building went to a different use during that 6-year timeframe, the Board would reconsider the variance request.

Tate Emerson voted yes.

Motion carried by a 6-0 vote.

**Appeal #2014-26. John Long of Shaffer, Johnston Lichtenwalter & Assoc., representing the Montessori School of Wooster,** is requesting an area variance to Section 1142.04(a) to allow a building within the required front setback at 1170 Akron Road in a CPRO (Campus, Professional, Research, and Office) District.

Matthew Long, Critchfield Law Firm, stated the area variance related to a required building setback in the CPRO District. Mr. Long stated the property in question was the former Rubbermaid guest house which then became part of the College of Wooster and, subsequently was sold to the Montessori School. Mr. Long stated the Montessori School wished to expand with a second building on the site. The property was at a 90° angle and was not a traditional lot and abutted a highway/right-of-way for Highland Park where the setback was substantially further from the road than you would find in most developments. Because of that, the 100' setback which was typically required in the CPRO District became fairly tenuous. Mr. Long stated the property abutted more intensive uses both in the CF and M-2 Districts which had less restrictive setbacks. Mr. Long stated the island of CPRO zoning in question was one of the few areas where CPRO zoning existed in the City. Mr. Long stated Staff noted that the variance in question was one that was regularly asked and had been granted by the Board when practical hardships existed.

Mr. Suchan questioned if the reason for the setback from Highland Park Road was because that was considered the front yard. Mr. Dutton stated that was correct. Mr. Dutton further stated that the shorter side of the lot adjacent to a public right-of-way was considered the front of the lot. Mr. Long stated the Code said the setback was 100' from the right-of-way; the applicant was requesting a 3' setback, but the right-of-way on Highland Park was extraordinarily wide compared to most right-of-ways. Mr. Suchan further noted the difference in elevation on the site. Mr. Suchan stated while Highland Park Road was considered the front yard officially, you could not even see the home when traveling on Highland Park Road.

Mr. MacMillan questioned if it was their intention to erect flashing lights as the building would be close if kids were outside. Mr. Long stated access would remain off of Akron Road. Charles Robinson, Architect, stated there was a desire to install lights, but they were relatively expensive and were not required for the institution. At this stage, Mr. Robinson indicated there was no real plan to address that, although it would be helpful especially given the traffic along SR 585. Potentially down the road, the entrance may change, but that was not part of this project.

Mr. McIlvaine questioned if another location on the property was considered for the proposed building. Mr. Robinson stated a number of other locations were looked at, but the intent was to try to stay back as far as possible from SR 585; there was a spot on the north side which looked attractive on paper but was the current location of the playground area which would be a major rebuild to erect the building there. Mr. Robinson stated it might

also get in the way of future expansions on the site. The south side of the property had a number of advantages especially in terms of the use of the remainder of the property. Mr. Robinson stated the property had an odd shape which also made it difficult. Mr. McIlvaine questioned if the building could be moved closer to the existing house to better meet the setback. Mr. Robinson stated they did look into that, but the closer the building became to the existing home, the more it started to impact how the buildings would relate, and there were some Building Code issues that would come into play. Mr. Robinson stated that immediate area was a playground; the upper level was a toddler environment.

Mr. Long stated whenever you dealt with a narrow building envelope, it was like “robbing Peter to pay Paul”. Mr. Long stated while there were other sites available, with every action there was a reaction—having to move the playground closer to the right-of-way and decreasing the driveway area. Mr. Long stated a lot of consideration went into the location of the proposed building, and it was found to be the optimal spot on the site.

Mr. Suchan questioned if the fire lane was required. Mr. Dutton stated that lane was at the request of the Fire Department in order to get access to the rear of the building.

Mr. Robinson stated they were looking at both levels having walk-outs which was also related to Building Code issues. By placing the building in the location in question, they were able to take advantage of some of the elevation differences.

Mr. Emerson opened the public hearing to the public for comment.

Pat Zoller moved to grant the request of the Montessori School as requested.

Gregg McIlvaine seconded the motion.

Pat Zoller voted yes. Ms. Zoller stated under the circumstances, she did not think the Montessori School could do anything else.

Ken Suchan voted yes. Mr. Suchan stated the site was unusual, topographically, and it made sense that this type of setback was served by the extreme sloping of the site. Mr. Suchan stated the building would be screened from Highland Park Road.

Gregg McIlvaine voted yes citing the same reasons as other Board members.

Doug MacMillan voted yes.

Lukas Gaffey voted yes for the reasons outlined by other members.

Tate Emerson stated he felt there were special conditions that existed on the property, and he felt the spirit and intent of the Zoning Code would still be met. Mr. Emerson voted yes.

Motion carried by a 6-0 vote.

**Appeal #2014-27. Khurram Shamsi representing The Hartley Company** is requesting a use variance to Section 1141.02(d) to allow a motor vehicle rental use at 310 South Market Street in a C-4 (Central Business) District.

Khurram Shamsi, representing The Hartley Company, and David Lewis, U-Haul Company of Akron, were present. Mr. Shamsi stated earlier this year, the Gulf gas station was renovated after being vacant. Mr. Shamsi stated the proposed U-Haul business was the best option in order for the Gulf station to thrive and be profitable in offering the service to its customers. Mr. Shamsi stated a letter from an adjacent neighbor had been submitted noting that the service would be good for the downtown area (submitted to the Board). Mr. Shamsi stated customers as far away as Canton had traveled to Wooster to pick up a U-Haul for use. Mr. Shamsi stated there was more than ample space on the property to move some of the U-Hauls to another location on the site if the Board wished. There was room to the front and rear to add additional parking if needed; the alleyway behind the building was another area where the U-Hauls could possibly be stored.

Mr. MacMillan stated the gas station also contained a convenience store. Mr. Shamsi stated that was correct. Mr. MacMillan questioned if there would be a traffic problem between the businesses. Mr. Shamsi stated most of the people who came into the store parked at a pump, so traffic was not an issue. Mr. Shamsi further noted that additional parking could be provided onsite as well. Mr. Lewis stated the amount of equipment on the property could be limited by the Board. Mr. Shamsi stated there were other U-Haul locations in Wooster, but none in the downtown. Mr. MacMillan questioned how they would limit what could be placed on the site. Mr. Lewis stated they could cut off the amount of flow of equipment that they would have coming to the site. Mr. Lewis stated their largest truck was 26' and the smallest was 10'. Mr. Shamsi stated nothing larger than 14' would be on-site.

Mr. McIlvaine questioned if there was an area to the rear of the building that could be used for parking of the U-Hauls. Mr. Shamsi stated yes. Mr. McIlvaine stated he felt it would be nicer for the downtown if the U-Hauls were not on the main street. Mr. Shamsi stated he was open to that idea.

Mr. Suchan questioned if there had been U-Haul rentals on that property in the past. Mr. Lewis stated he was not aware of any. Mr. Suchan questioned if there had been any on the street. Mr. Lewis stated he believed there had been some at the 300 Tire Center previously. Mr. McIlvaine questioned how many other U-Haul dealers there were in Wooster. Mr. Lewis stated there were four other locations (Silver Brothers, Columbus Avenue Extension, and two on East Lincoln Way) but none in the downtown.

Mr. McIlvaine questioned if the bus terminal still operated (on Henry Street). Mr. Shamsi stated yes. Mr. McIlvaine questioned how many times a day the buses stopped. Mr. Shamsi stated twice: 4:30 p.m. and 8:30 p.m.

Mr. McIlvaine questioned if gas was currently being sold from the site. Mr. Shamsi stated yes—there were 8 pumps.

Mr. MacMillan questioned how many vehicles could be parked to the rear of the building. Mr. Shamsi stated two trailers and possibly three U-Hauls. Mr. Emerson noted the applicant in his submittal indicated that they would have three U-Haul vehicles, not greater than 14', and two trailers at any one time.

Mr. McIlvaine questioned how many parcels comprised the site. Mr. Dutton stated there were four parcels. Mr. Dutton stated it would be ideal if the parcels were replatted into one parcel.

Mr. Shamsi stated there was a monetary hardship on the business and it needed to provide a service that could be profitable. Mr. Shamsi stated if the U-Haul business was not approved, they would have to shut down the gas station business. Mr. Lewis stated the U-Haul operation would be a second source of income for the business owner.

Mr. Emerson questioned how long he had been operating the U-Haul business from the site. Mr. Lewis stated approximately 2-3 months. Mr. Lewis stated the U-Haul business would be convenient in the downtown and would provide a service. Mr. McIlvaine questioned how many rentals they typically experienced. Mr. Lewis stated the business fluctuated, but indicated there could be 6-7 rentals during the weekend.

Mr. Emerson questioned what was causing the hardship that necessitated the variance. Mr. Shamsi stated the competitive nature in the area and the revitalization of the downtown which brought patrons to the area.

Mr. MacMillan questioned if Staff had received any comments from anyone regarding the variance request. Mr. Dutton stated no.

Mr. Emerson questioned Mr. Shamsi if he saw any potential problems for traffic coming in/out of the site with the U-Haul rentals. Mr. Shamsi stated the rentals were typically early in the morning, and the rentals were returned typically in the evening. Mr. Shamsi stated he would make the people who rented the vehicles aware of where they should return the vehicles by designating areas on the site. Mr. Shamsi stated the gas station was open from 6:00 a.m. until 10:00 p.m., and there were scheduled pick-up and return hours, although there were occasions when the vehicles were returned when the gas station was not open.

Mr. MacMillan stated having the vehicles out near the street bothered him. Mr. Emerson further noted that if the U-Haul vehicles were placed to the rear of the property, none of the existing parking spaces would need to be used for the U-Haul business.

Mr. Dutton questioned if there were plans to erect permanent signage for the U-Haul business. Mr. Shamsi stated there was one temporary sign for the U-Haul business. Mr. Emerson stated it was his understanding he had received a violation notice from the City for the bus terminal, the U-Haul, and number of signs. Mr. Shamsi stated he planned to remove the temporary sign on the property; Mr. Lewis stated he would remove the sign. Mr. Emerson questioned the use of the property for the bus terminal. Mr. Dutton stated a conditional use request would be heard by the Planning Commission at its December meeting. Mr. Emerson questioned what signage needed to be removed in order for there to be no violation. Mr. Dutton stated there were a number of signs on the building and there was at least one U-Haul sign that still existed, all of which needed to be removed.

Mr. Suchan noted that the minimum number of parking spaces was seven for the other uses, so those spaces had to remain in order for parking to be legal for those uses. Mr. Emerson stated if the U-Haul vehicles were parked to the rear, the seven parking spaces would still exist for the other businesses. Mr. Emerson questioned if there were any issues with parking to the rear. Mr. Shamsi stated the area was graveled. Mr. MacMillan questioned if there was ample space available for the U-Haul vehicles. Mr. Shamsi stated yes.

Mr. MacMillan questioned if the Board should consider granting the variance with a specific timeframe in order to prove that it would work on the site without any issues. Mr. Shamsi stated he would be agreeable to that.

Ms. Zoller expressed concern as to whether the use variance criteria had been met. Mr. Suchan stated in the downtown/C-4 District, there were very few properties that existed that had space around them, and the one in question had some “elbow room” to allow the use which he found to be a unique circumstance. Mr. Dutton noted that the U-Haul use was not permitted in any “C” District, even the C-5 District which was the most intense.

Mr. McIlvaine expressed concern with other gas stations who might want to provide the same service. Mr. Lewis stated typically, a lot of company-owned stores/gas stations made it a company policy to not provide the service.

Mr. Emerson questioned how the U-Haul vehicles were cleaned. Mr. Lewis indicated that Mr. Shamsi would check a vehicle which was returned for proper fuel and mileage. If the truck was not clean, he could call the customer and give them the option to clean it. Mr. Emerson questioned the cleaning of the exterior of the vehicle. Mr. Lewis stated the vehicles did need to be cleaned “once in awhile”. Mr. Emerson questioned if vehicles would be washed onsite. Mr. Lewis stated typically, they were taken to a car wash. Mr. Lewis stated he could not see where they would wash vehicles onsite because of the water and the area.

Mr. MacMillan questioned what size vehicle was the most commonly rented. Mr. Lewis stated the most common size was 14’ or 17’ units.

Mr. Emerson opened the public hearing to the public for comment.

Lukas Gaffey moved to grant the request of Khurram Shamsi, on behalf of The Hartley Company, on the condition that the variance be granted for a 2-year period, that all U-Haul parking be to the rear of the building, and that no major washing of the rental vehicle exteriors occur on site.

Ken Suchan seconded the motion.

Pat Zoller voted yes.

Ken Suchan voted yes.

Gregg McIlvaine voted yes.

Doug MacMillan voted yes.

Lukas Gaffey voted yes.

Tate Emerson voted yes. Mr. Emerson stated he believed the criteria had been met.

**Appeal #2014-28. Doug Drushal representing Primal Fitness, LLC dba Crossfit Wooster** is appealing the interpretation of the Planning and Zoning Code by the Planning and Zoning Manager concerning the classification of a crossfit business as a Health Club use as defined in Section 1103.02(b)(101).

Mr. Dutton stated a Crossfit use was proposed on Akron Road, and he indicated it was his determination that the Crossfit use fell within the definition of “health club”. Mr. Dutton stated that as Zoning Inspector, the Code allowed him to place uses not specifically defined in the Zoning Code into a similar use, and it was his contention that Crossfit fell into a health club use. Mr. Dutton indicated Mr. Drushal was appealing his determination that the health club use was the correct classification and that he believed it fell into “service establishment, personal”. Mr. Dutton stated if the Board agreed with the applicant, then Appeal #2014-29 was moot.

Doug Drushal, Critchfield Law Firm, stated one of the things the Board of Zoning Appeals was allowed to do was to interpret a determination made by the Planning and Zoning Manager when something was not completely clear under the Code. Mr. Drushal stated the question was whether Crossfit was a “health club” or whether it was “service establishment, personal” under the Zoning Code. Mr. Drushal stated the definition of “service establishment, personal” was, *“An establishment providing services that are of a recurring and personal nature to individuals”*, and that was exactly what Crossfit was. Mr. Drushal stated you could not come into a Crossfit facility by yourself and just do something; there was no individual usage of it, and it did not fit the definition of a health club. Mr. Drushal stated the Crossfit facility was a perfect fit under the definition of “service establishment, personal”. Mr. Drushal stated a health club was defined as, *“An establishment for the conduct of indoor sports and exercise activities, along with related locker and shower rooms, offices and classrooms, where use of such establishment is offered on a membership basis”*. Mr. Drushal stated it was not totally crazy to say Crossfit was sort of like a health club in that you are exercising, but it did not meet the definition. Mr. Drushal stated Crossfit was not an indoor sport—they were not competing in racquetball which was an indoor sport, it did not have locker rooms, shower rooms, offices or classrooms. Mr. Drushal stated you had to stretch to make it a “health club”, but you did not have to stretch a bit to make it a “service establishment, personal”. Mr. Emerson questioned if a membership was required. Mr. Drushal stated yes. Mr. Drushal stated the Court was very clear that if you had two possible interpretations, and one was exactly on point and the other you had to put a square peg in a round hole, they would question why you would try to put a square peg in a round hole when it did not meet some of the key features of a health club by not providing locker rooms, showers, offices or classrooms. Mr. Drushal stated that in his view, it was not an indoor sport. Mr. Drushal stated it was not a health club and was clearly “service establishment, personal”.

Mr. Drushal stated Mr. Dutton was misreading the part about “similar use”, because while it was correct that the Zoning Administrator had the authority to rule something as a similar use, that was to make something permitted and was not to deny it. Mr. Drushal stated the section read, *“...procedure by which the Zoning Administrator may make a determination that a new use is similar to a use permitted in the district”*. Mr. Drushal stated that was not what they were talking about here as this was a use permitted in the district if the Board said it was “service establishment, personal”. Mr. Dutton was trying to use the “similar use” section of the Code to deny something, and by the language of that section itself, it was not allowed and was not what it was there for.

Craig Noletti, Crossfit, was present. Mr. MacMillan stated as he understood Crossfit, members rallied around that person when they were undertaking something. Mr. Noletti stated there were Certified Crossfit Instructors who did personal training with people who came into the gym. Mr. Noletti stated there was a trainer there for every class and it was not always 1:1. Mr. Noletti stated that no one was ever there without an instructor there—no one had a key to get into the building. Mr. Noletti stated classes lasted usually an hour, and included stretching and exercises. Mr. Noletti stated there was a schedule every week/every day.

Mr. McIlvaine questioned if it was more on an instructional basis. Mr. Noletti stated yes—it was personal training. Mr. Noletti stated with a health club, you came in whenever you wanted and did whatever you wanted to do, and Crossfit was more training oriented by working with people 1:1 or in small groups. Mr. Drushal stated all training would be conducted inside the building.

Mr. McIlvaine questioned if there was ever an instance where someone would come to the site and exercise on their own. Mr. Noletti stated no—his insurance would not allow it.

Mr. McIlvaine questioned what kind of exercise equipment was within the building. Mr. Noletti stated there were free weights; no machines. People were trained by gymnastic movements, body weights, functional training—there were no machines like a health club. Mr. Noletti stated the area was a big open space with rubber flooring. Mr. Noletti stated it did not look anything like a normal health club.

Mr. Emerson questioned how many buildings would be utilized as there appeared there were four buildings on the site. Mr. Drushal stated Primal Fitness would only be in the front section of the building outlined in yellow on the drawing which was provided; the other three buildings were storage units.

Mr. Suchan stated the definition of “service establishment, personal” included examples such as beauty salon, shoe repair shop, seamstress, and tailor. Mr. Suchan stated the building was 5,000-sq. ft. in size which was much larger than would be typical of those other businesses. Mr. Suchan stated there were exclusions that included portrait studios, dry cleaning establishments and laundromats, which he felt were larger in nature and would generate more traffic. Mr. Suchan further noted that the other Crossfit business which existed on Cleveland Road went into the building as a health club/permitted use in the C-1 District. Mr. Suchan stated in the C-1 District, outside activities were not allowed which was the only reason they came before the Board.

Ms. Zoller questioned how the Board could consider one Crossfit a health club (on Cleveland Road) and not consider it a health club on Akron Road. Mr. Drushal stated the issue before the Board was the outside activities and not whether it was a health club establishment or not.

Mr. Gaffey stated he had a tendency of getting “hung up” on the language in the Code and the definition of “health club” because it talked about conduct of indoor sports and exercising, which could be argued that Crossfit was, but then it went on to say “locker rooms and showers” which was not the case with the Crossfit operation. Mr. Suchan stated the definition did not require a health club to have a locker room. Mr. Dutton stated that would

mean that every health club had to have locker rooms, showers, offices and classrooms, but felt it meant more that you *could* have those things, but that they were not essential to the health club definition.

Mr. Dutton stated he felt, as Zoning Inspector, he had the ability to deem a health club as a similar use, and that Mr. Drushal was reading that section incorrectly. Mr. Dutton stated Crossfit did not exist 10 years ago when the Code was written, so it was not specifically addressed.

Mr. Noletti stated if they found a class was getting too large, another class was added to the schedule so that there was not a huge surge of people at any one time. Mr. Noletti stated the physical training area was 2,000-sq. ft.; the rest of it was seating. Mr. McIlvaine questioned if a Karate class being taught would be considered a health club. Mr. Dutton stated the examples of “service establishment, personal” were clearly examples of what it was meaning, and he did not see Crossfit as being similar to any of the uses mentioned.

Mr. Emerson stated Crossfit was about exercise and personal health which put it, for him, into the health club category and felt it most closely recognized the use of exercising which fell under a health club. Mr. Drushal stated it would not be irrational to call Crossfit a health club if that was the only thing you had to choose from, but when you had two to choose from and one was “right on point” and the other you had to say “what about this”...the Courts were very clear on how you did that.

Mr. Emerson questioned why a health club would not be determined as a service establishment. Mr. MacMillan questioned why it would not be allowed in this kind of neighborhood. Mr. Emerson stated health club was not a service establishment because it was more specific than the general service establishment. Mr. Drushal stated the City did not write the Code—a consulting firm, from out-of-town wrote it, and they had a cookie cutter plan. Mr. Emerson stated, however, that the Board could not dismiss the Code.

Mr. Noletti stated Crossfit was very new, and was different than any other gym. Mr. Noletti stated with a health club, you were in the facility, by yourself, with no personal touch but with Crossfit, it was very personal and you worked 1:1 with somebody that was teaching you things. Mr. Emerson stated under the health club definition, it specified classes and teaching, and with Crossfit, the whole thing was a classroom which was more in line with a health club.

Mr. Noletti noted the Crossfit facility he was associated with was currently located outside the City on Hillcrest Drive.

Mr. Emerson opened the public hearing to the public for comment.

Ken Suchan moved that the appeal be sustained.

Pat Zoller seconded the motion.

Pat Zoller voted no. Ms. Zoller she felt that Crossfit was a health club.

Ken Suchan voted no.

Gregg McIlvaine voted yes. Mr. McIlvaine stated it was a close call, but because of the personal services and lack of other facilities, he felt it was not a health club.

Doug MacMillan stated he understood both arguments and could see how Crossfit could fit either definition. Mr. MacMillan voted yes.

Lukas Gaffey stated he felt as Mr. MacMillan did and had a tendency to call it a health club because of the term "sports and exercise activities, classrooms and membership". Mr. Gaffey stated he felt, however, it was different in a lot of respects because there were no locker and shower rooms, and there was more personal attention paid to the individual versus a health club where it was an option to have a personal trainer and have the personal attention, but it was not a requirement. Mr. Gaffey stated because having personal attention was a requirement, it was different than a health club where you could just "hop on a piece of equipment and leave without even talking with anyone". Mr. Gaffey voted yes.

Tate Emerson voted no.

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

**Appeal #2014-29. Doug Drushal representing Primal Fitness, LLC dba Crossfit Wooster** is requesting a use variance to Section 1143.02 to allow a health club use at 2708 Akron Road in an M-1 (Office/Limited Manufacturing) District.

Ken Suchan moved to approve the variance request of Primal Fitness.

Doug MacMillan seconded the motion.

Mr. Suchan stated he felt the location in question was ideal.

Mr. Drushal stated the use variance was within the spirit of the Zoning Code. There was a lot of parking onsite, and no one would be bothered by the use.

Mr. Emerson opened the public hearing up to the public for comment.

Lukas Gaffey voted yes.

Doug MacMillan voted yes.

Gregg McIlvaine voted yes.

Ken Suchan voted yes.

Pat Zoller voted yes.

Tate Emerson voted yes.

Motion carried by a 6-0 vote.

### III. MISCELLANEOUS

**Meeting Dates.** The setting of Board of Building and Zoning Appeals meeting dates for 2015, per the proposed schedule.

Mr. Dutton noted that the meeting dates in January and July, 2015 were the second Thursday of the month due to holidays.

Ken Suchan moved to approve the meeting scheduled for 2015 as submitted with the exception of the meeting times occurring at 5:30 p.m. (no worksession).

Pat Zoller seconded the motion.

Pat Zoller voted yes.

Ken Suchan voted yes.

Gregg McIlvaine voted yes.

Doug MacMillan voted yes.

Lukas Gaffey voted yes.

Tate Emerson voted yes.

Motion carried by a 6-0 vote.

**Board Elections.** The election of chairman and vice chairman of the Board of Building and Zoning Appeals for 2015.

Pat Zoller moved to elect Tate Emerson as Chairman and Lukas Gaffey as Vice Chairman of the Board of Building and Zoning Appeals for 2015.

Doug MacMillan seconded the motion.

Pat Zoller voted yes.

Ken Suchan voted yes.

Gregg McIlvaine voted yes.

Doug MacMillan voted yes.

Lukas Gaffey voted yes.

Tate Emerson voted yes.

Motion carried by a 6-0 vote.

**Work Session.** Discussion regarding the necessity of a formal work session prior to meetings.

Mr. Dutton stated it was brought to his attention that if the Board held Work sessions and that the Work session was officially shown on the Board's agenda, it needed to be open to the public, recorded and treated as a formal Work session. Mr. Emerson stated if it was a formal Work session, members should be in attendance. Mr. Dutton stated it could be made less formal by not noting it on the agenda, but that members, if they had questions, could see him prior to the meeting between 5:00 p.m. and 5:30 p.m.

Mr. Emerson stated he was fine not having the Work session formally appear on their agendas. Ms. Zoller agreed.

Meeting adjourned at 8:03 p.m.

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**Tate Emerson, Chairman**

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**Laurie Hart, Administrative Assistant**