

MINUTES
BOARD OF BUILDING AND ZONING APPEALS

August 1, 2013

MEMBERS PRESENT: Gregg McIlvaine, Doug MacMillan, Adrian Eriksen and Tate Emerson

MEMBERS ABSENT: Patricia Zoller

I. MINUTES

Adrian Eriksen moved, Doug MacMillan seconded, to approve the Minutes of July 11, 2013 as received. Motion carried by a 4-0 vote.

II. PUBLIC HEARINGS

Appeal #2013-18. Robert Reynolds representing Bret Defibaugh is requesting a use variance from Planning and Zoning Code Section 1147.09(k)(3) to operate a daycare facility not located in a school, church or other place of worship in an R-1 (Suburban Single-Family) District at 1676 Portage Road.

Robert Reynolds, attorney representing Bret Defibaugh, stated the property was located at the northwest corner of Portage Road and Melrose Drive. Mr. Reynolds indicated the City Planning Commission granted conditional use approval for the daycare use and the applicant was now before the Board requesting a variance. Mr. Reynolds indicated that daycare facilities were to be located in schools, churches or other places of worship, and he felt that Zoning Code regulation was put into place so that they would not operate out of homes. Mr. Reynolds noted that the building was brick and mortar and was suited for a commercial use. Mr. Reynolds noted the building was the former location of both the Armory and Wooster City Schools, and the building had been vacant for the last few years. Mr. Reynolds noted the building was very well suited to the proposed daycare facility. Mr. Reynolds noted that when the federal government gave the building to the City, a deed covenant was placed on the property that the building could not be used for residential purposes. Mr. Reynolds noted there was a steep embankment on the east side of the property which provided a buffer for the residents on the east side of Melrose and the existing parking area; to the west was a church; to the southeast was K-Mart. Mr. Reynolds noted that Mr. Defibaugh owned the property to the north and to the west of the property in question. Mr. Reynolds noted that the daycare would operate 24-hours a day and would have cars coming to/from the site at all times but that the times would be staggered. Mr. Reynolds noted that Mr. Defibaugh also had a curb cut available on Melrose Drive so that if traffic did turn out to be a problem, the drive along Portage would be extended to Melrose.

Mr. McIlvaine stated with there being known asbestos in the building if it was a good idea to operate a daycare out of the building. Mr. Reynolds stated asbestos was the nature of any building of that generation, and paint that was put on a building in the 70's had lead in it.

Mr. Emerson questioned when Mr. Defibaugh purchased the property. Bret Defibaugh stated he purchased the property in the spring. Mr. Defibaugh noted that when he purchased the property, he had no intended use for the building. Mr. Defibaugh stated the property abutted 12 acres of land

which he owned (former Melrose Orchard) which he purchased a few years ago, so it made sense that he also purchase the Armory when the building became available. Mr. Reynolds indicated Mr. Defibaugh had a vested interest in purchasing the building so that the building would not sit idle and deteriorate. Mr. Reynolds noted that the proposed tenant currently operated a daycare facility on Old Columbus Road, and she felt there was a definite need for a 24 hour daycare facility.

Mr. Emerson questioned if there was anything which needed to be done to the structure of the building. Mr. Defibaugh stated no. Mr. Defibaugh further indicated that Wooster City Schools had maintained the building very well and noted that he may reduce some of the exterior lighting which existed as it was "lit up like a Christmas tree". Mr. Reynolds noted that a fence would be added around the exterior play area which was a requirement for the operation of the daycare.

Mr. Emerson questioned how long the Wooster City Schools had owned the building. Mr. Reynolds stated Tri County Educational Service Center operated a county wide opportunity school from the school for approximately two years.

Mr. Emerson questioned whether Staff had received any feedback from residents in the area. Mr. Dutton stated he did for the conditional use who expressed concern with the hours of operation. Mr. Dutton noted that the Planning Commission did consider that when it evaluated the request.

Doug MacMillan moved, Adrian Eriksen seconded, to grant the request of Bret Defibaugh of a use variance from Planning and Zoning Code Section 1147.09(k)(3) to operate a daycare facility not located in a school, church or other place of worship in an R-1 (Suburban Single Family) District at 1676 Portage Road.

Mr. McIlvaine voted yes. He indicated he felt it was a good use for the property.

Mr. MacMillan voted yes. Mr. MacMillan stated the property was well buffered and was an exceptional use for the building.

Mr. Eriksen voted yes. He stated he felt it was a great use of the property and that the applicant met the criteria for the granting of the variance.

Mr. Emerson voted yes. Mr. Emerson stated he, too, felt the criteria had been met and it would be a good use for the property. Mr. Emerson stated the use fit the design of the property.

Motion carried by a 4-0 vote.

Appeal #2013-19. Richard Berner of SKB Properties LLC is requesting a use variance from Planning and Zoning Code Section 1149.02(c)(2) to construct an accessory structure in conjunction with an existing nonconforming use in an R-T (Traditional Residential) District at 337 Palmer Street.

Richard Berner stated he was the President of AC Electric and owner of SKB Properties. Mr. Berner stated he wished to construct a 1,344-sq. ft. storage building; there would be security lighting on the building. Mr. Berner stated his business was as a heavy commercial/industrial contractor, and if the variance were granted, he would remove a couple of job trailers which currently existed on the property and store the equipment in the proposed building. Mr. Berner stated he felt the existing trailers were unsightly. Mr. Berner noted that the two lots he owned comprised 1.9 acres of land,

much of which was greenspace. Mr. Berner noted that the property was located in a residentially zoned area, but he felt he had been a good neighbor since he began his operation at that location in 1999 and had blacktopped the driveway, added landscaping, and a 1,200-sq. ft. office was added. Mr. Berner stated the new building would allow him to purchase materials and store it in the building; the building would not have water or heat. Mr. Berner noted that the two lots would be combined into one, and that RG Rudolph Surveying would be preparing a new survey to be filed with the City.

Mr. Emerson questioned what was unique to his property for the granting of the variance. Mr. Berner stated he did not have the room to store what he needed to be competitive. Mr. Berner stated it was difficult to function and work efficiently under the current situation.

Mindy Cavin stated she lived directly across from AC Electric and noted that the R-T zoning did not become effective until 2007. Ms. Cavin stated AC Electric was an exceptional neighbor and she could not imagine how the proposed storage building would be detrimental to the neighborhood. Ms. Cavin stated that while the business was in a residential neighborhood, the business sat back far off of the street and was well landscaped. Ms. Cavin stated it was not often that there was traffic in/out of the business in the evening and mostly occurred during business hours. Ms. Cavin stated the business was quiet, and she was in favor of the variance.

Jon Ansel stated he wished to endorse the request for a variance. Mr. Ansel noted that 50% of the property was greenspace and not being utilized in a functional manner. Mr. Ansel stated Mr. Berner did need space as the business had grown. Mr. Ansel stated he felt it was a hardship when a local business person had to go out and subcontract storage space and not utilize his own empty land to construct a building. Mr. Ansel stated the existing trailers were eyesores and with the construction of the building, the trailers would be removed. Mr. Ansel further noted that the expansion would occur to the rear of the property and would be less visible.

Mr. Emerson questioned if the trailers would be removed. Mr. Berner stated yes. Mr. Berner noted that his property was 570' deep. Mr. Berner noted he had two, well developed tree lines which existed to the rear of the property.

Mr. Berner noted that the building proposed was not overly large but would fill their need.

Mr. Emerson questioned how the property was zoned prior to 2007. Mr. Dutton stated the property was zoned R-2. Mr. Dutton stated in 1999, Mr. Berner received a variance from the Board for the substitution of a non-conforming use. The previous use of the property, prior to Mr. Berner, was Easterday Painting.

Mr. Eriksen questioned whether Staff had received any comments from the neighbors regarding the variance. Mr. Dutton indicated he had not.

Adrian Eriksen moved, Gregg McIlvaine seconded, to grant the request of Richard Berner of SKB Properties of a use variance from Planning and Zoning Code Section 1149.02(c)(2) to construct an accessory structure in conjunction with an existing nonconforming use in an R-T (Traditional Residential) District at 337 Palmer Street.

Mr. McIlvaine voted yes.

Mr. MacMillan stated the Board was not supposed to consider economics when evaluating a variance but stated the business was established in the neighborhood and felt the addition of the building would further improve the area. Mr. MacMillan stated the lot was a good size, was well maintained and buffered. Mr. MacMillan stated he would like for there to be additional landscaping. Mr. MacMillan voted yes.

Mr. Eriksen voted yes.

Mr. Emerson voted yes. Mr. Emerson stated he believed the criteria was met. Mr. Emerson stated he took into account the history of the property, previous variances and that the business was an established, commercial business which had operated from the site for several years.

Motion carried by a 4-0 vote.

Appeal #2013-20. Lou Belknap representing Wayne Real Estate LLC is requesting an area variance from Planning and Zoning Code Section 1171.04(c) to construct a freestanding sign taller than permitted in an M-2 (General Manufacturing) District at 1423 West Old Lincoln Way.

Appeal #2013-21. Lou Belknap representing Wayne Real Estate LLC is requesting an area variance from Planning and Zoning Code Section 1171.04(c) to construct a freestanding sign taller than permitted in an M-2 (General Manufacturing) District at 1363 West Old Lincoln Way.

Board members agreed to hear both variance requests (Appeal #2013-20 and #2013-21) as one.

Lou Belknap, Agile Sign & Lighting, stated the Volkswagon/Toyota dealership currently had signs on their property, and the dealerships were switching locations from one lot to the other. Mr. Belknap stated the request was to take the current signs and merely switch them from one lot to the other; the existing foundations and signs would be utilized. Mr. Belknap stated the reason for the change was because one location had a larger showroom area which would now be used for the Toyota dealership. Mr. Belknap stated the Code did require landscaping and indicated that would be done as part of the project. Mr. Belknap stated the asphalt would remain as it existed, and dirt and plantings would be added on top of it. Mr. Belknap noted that the height of the Toyota sign was 15'; the Volkswagon sign was 21' in height. Mr. Belknap noted that the square footage of the signs as they existed met the Sign Code; only the logo and not the entire background of the signs were illuminated.

Mr. McIlvaine questioned if the existing signs received variances. Mr. Belknap stated to his knowledge, they had not and were erected prior to the Code change in 2007. Mr. Dutton indicated that the Board had granted previous variances on signage.

Mr. Emerson questioned if traffic visibility would change. Mr. Belknap stated there should be no problem since the signs would be located on the existing foundations and the height of the signs would not change.

Mr. Emerson questioned if Staff had received any inquiries regarding the variances. Mr. Dutton stated no.

Mr. MacMillan questioned if the signs could be lowered. Mr. Belknap stated you would end up having to "chop everything all apart" and was a cost factor. Mr. Belknap stated he was also unsure how it was

fabricated and whether the body could even be cut without distorting the rest of the materials of the sign. Mr. Emerson noted that the VW sign was a post sign. Mr. Belknap stated it was a metal clad sign.

The Board agreed to vote on both appeals under one motion.

Gregg McIlvaine moved, Doug MacMillan seconded, to grant the requests of Wayne Real Estate for area variances from Planning and Zoning Code Section 1171.04(c) to construct a freestanding sign taller than permitted in an M-2 (General Manufacturing) District at 1423 West Old Lincoln Way (Appeal #2013-20) and 1363 West Old Lincoln Way (Appeal #2013-21).

Mr. Eriksen voted yes.

Mr. MacMillan stated he was again struggling with the variance because it was being done as a matter of cost savings, and the Board was not supposed to consider that in evaluating requests. Mr. MacMillan stated because the Board had granted previous variances, he would vote in favor of the variances. Mr. MacMillan noted that the increased height might be advantageous to traffic.

Mr. McIlvaine voted yes.

Mr. Emerson voted yes. Mr. Emerson stated the signs would not affect the essential character of the neighborhood and was within the spirit and intent of the Zoning Code.

Motion carried by a 4-0 vote.

Appeal #2013-22. Jon McGuire of Village Services Inc. is requesting a use variance from Planning and Zoning Code Section 1149.02(c)(2) to expand a nonconforming use outside of the existing building in an M-2 (General Manufacturing) District at 611 West Liberty Street.

The applicant requested that the appeal be tabled until the Board's September meeting.

Meeting adjourned at 6:30 p.m.

Tate Emerson, Chairman

Laurie Hart, Administrative Assistant