

**MINUTES  
BOARD OF BUILDING AND ZONING APPEALS**

**February 5, 2015**

**MEMBERS PRESENT:** Ken Suchan, Doug MacMillan, Lukas Gaffey, Stewart Fitz Gibbon, Adrian Eriksen and Tate Emerson

**MEMBERS ABSENT:** Gregg McIlvaine

**STAFF PRESENT:** Andrew Dutton

**I. MINUTES**

Ken Suchan moved, Lukas Gaffey seconded, to approve the Minutes of December 4, 2014 as received. Motion carried by a 4-0-2 vote, Stewart Fitz Gibbon and Adrian Eriksen abstaining.

**II. PUBLIC HEARINGS**

**Appeal #2015-01. James Carpenter of Goodwill Industries of Wayne and Holmes Counties** requesting an area variance to Section 1133.07(h)(1) to allow a fence in the front setback taller than four feet in height at 524 Palmer Street in an R-T (Traditional Residential) District.

Mr. Emerson indicated the appeal had been withdrawn.

**Appeal #2015-02. Doug Drushal representing Chase Properties Ltd.** requesting a use variance to Section 1141.02(d) to allow an accessory use (parking) without a principal use and an area variance to Section 1141.06 regarding parking setbacks, Section 1165.06(b) regarding perimeter landscaping and Section 1171.04(c) regarding sign size and setback at 4369 Burbank Road in a C-3 (Community Commercial) District.

Doug Drushal, representing Chase Properties, stated all that was really in question was the “drawing of lines on a piece of paper”. Mr. Drushal stated creating the lots would not have an impact on the nature of the development or the location of anything but would allow the outlots for the shopping center development to be owned separately.

Mr. Drushal stated the first variance request was a use variance. He indicated that where “future building” was noted, parking spaces were shown on the lot which were parking spaces for the entire shopping center. Mr. Drushal stated the parking on the outlot was part of the required parking needed for the center as a whole. Until there was a building on the lot, the use variance for parking was required because parking lots were not an approved use by themselves. When the building was built, it would have its own parking and the variance would not be needed. Mr. Emerson questioned why the parking could not go in when the building was constructed. Mr. Drushal stated the parking was required as part of the remainder of the shopping center development.

Mr. Drushal stated the area variances were only needed because of the creation of the outlots. Mr. Drushal stated by creating the outlots, parking then became too close to the lot line. If the property were left as a whole, then the area variances would not be needed. The

outlots were being created so that they could be owned separately. Mr. Drushal stated to put the property to a viable economic use, they needed to have the ability to sell the outlots.

Mr. Emerson questioned if a plan had been made that met all of the Code requirements. Mr. Drushal stated the plan before the Board did meet all of the Code requirements if left as one parcel. Mr. Drushal stated if the development were laid out with the outlots, it would not meet the Code requirements for parking. Mr. Emerson stated that instead of going for a variance for number of required parking spaces, the applicant was requesting a variance for setbacks and less landscaping. Mr. Drushal stated that was correct. Mr. Drushal stated it did not make sense to put in a tree and take up parking spaces when you needed the parking spaces to comply with the parking regulations for the center as a whole. Mr. Drushal stated he did not feel outlots could be created on the parcel whereby variances would not be needed.

Mr. Emerson stated one of the variance criteria was that the "hardship condition was not created by the applicant's actions". Mr. Drushal stated he did not feel that criteria was applicable and felt the Code was creating the hardship. Mr. Emerson stated the plan that the applicant was proposing was creating the hardship because of the desired amount of retail space and by the creation of the outlots.

Mr. Emerson opened the hearing up for public comment.

Mr. Emerson questioned if Staff had received any inquiries with regard to the appeal. Mr. Dutton stated yes--he had received inquiries with respect to what the variances were about.

Tate Emerson moved to adjourn to executive session to discuss the appeal.

Ken Suchan seconded the motion.

Ken Suchan voted yes.

Doug MacMillan voted yes.

Lukas Gaffey voted yes.

Stewart Fitz Gibbon voted yes.

Adrian Eriksen voted yes.

Tate Emerson voted yes.

Motion carried by a 6-0 vote.

Ken Suchan moved to come out of executive session.

Lukas Gaffey seconded the motion.

Ken Suchan voted yes.

Doug MacMillan voted yes.

Lukas Gaffey voted yes.

Stewart Fitz Gibbon voted yes.

Adrian Eriksen voted yes.

Tate Emerson voted yes.

Motion carried by a 6-0 vote.

Mr. Emerson asked if anyone wished to speak to the appeal.

Mr. Emerson stated the Board members received an e-mail in opposition to the variances citing pedestrian-friendliness and cramming the development into the parcel.

Mr. Emerson noted that the variances would all be voted on separately.

Tate Emerson moved to vote in the affirmative on Appeal #2015-02.

Adrian Eriksen seconded the motion.

**Variance from Section 1141.02(d), Accessory use (parking) without a principal use.**

Adrian Eriksen voted yes.

Stewart Fitz Gibbon voted yes.

Lukas Gaffey voted yes.

Ken Suchan voted yes.

Doug MacMillan voted yes.

Tate Emerson voted no. He stated he did not feel the criteria was met. Mr. Emerson stated he worried about creating parking on property that essentially had not yet been developed.

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

**Variance from Section 1141.06, Parking Setbacks.**

Ken Suchan voted yes. Mr. Suchan stated the Board had done the reverse by creating the outlots afterwards. Mr. Suchan stated the artificial lines between the outlots did not reflect the reality on the ground of the coordinated development.

Doug MacMillan voted yes and indicated he agreed with Mr. Suchan.

Adrian Eriksen voted yes.

Stewart Fitz Gibbon voted yes.

Lukas Gaffey voted yes.

Tate Emerson voted no. Mr. Emerson stated he did not believe that it met the intent of the Zoning Code.

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

**Variance from Section 1165.06 (b), Perimeter Landscaping.**

Ken Suchan voted yes noting the landscaping went with the parking setback requirements and, in his mind, it was a coordinate development.

Doug MacMillan voted yes and indicated he agreed with Mr. Suchan.

Lukas Gaffey voted yes.

Stewart Fitz Gibbon voted yes.

Adrian Eriksen voted yes.

Tate Emerson voted no. Mr. Emerson stated he did not believe it met the intent of the Zoning Code.

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

**Variance from Section 1171.04(c), Sign Size and Setback.**

Ken Suchan voted yes. Mr. Suchan stated he felt it was actually an improvement with what the applicant could do with a 20' sign.

Doug MacMillan voted yes. He indicated he liked this kind of sign better.

Adrian Eriksen voted yes, agreeing with Mr. MacMillan.

Stewart Fitz Gibbon voted yes.

Lukas Gaffey voted yes.

Tate Emerson voted yes.

Motion carried by a 6-0 vote.

**Appeal #2015-03. Jamie Klingelhoef** requesting a use variance to Section 1141.02 to allow a four unit multi-family residential use at 431 North Market Street in a C-1 (Office/Institutional) District.

Lukas Gaffey stated he would recuse himself because he lived close to the property and felt it was a conflict of interest.

Jamie Klingelhofer, 1192 Hedgecliff Drive, stated she purchased the property at public auction on January 17, and it had formerly been owned by Jeffrey Slusser. Ms. Klingelhofer stated the property had been used as a 4-unit dwelling for quite some time. Ms. Klingelhofer stated she wished to bring the property “up to Code” and continue to use the home for four apartments. Ms. Klingelhofer stated the property was zoned C-1 and could not be used for residential purposes without the variance being obtained because the home had not been used as a rental property in the past year. Ms. Klingelhofer stated the way the building was currently, there was no way it could be used for offices.

Mr. Suchan stated the home was constructed as a single family home. Ms. Klingelhofer stated that was correct—the home was constructed in the 1800’s, and in the 1970’s, it was turned into apartments and had not been maintained very well. Mr. Suchan noted there were other residential properties in the area, also zoned C-1, that could remain as they were grandfathered. Mr. Suchan stated he was surprised residential uses were not permitted in the C-1 District. Mr. Dutton stated the C-1 District was comprised primarily of properties on North Market Street.

Mr. Emerson questioned at the time of the auction, if there was any mention of the zoning district regulations. Ms. Klingelhofer stated yes, and it was mentioned that a variance would be needed to continue the use.

Ms. Klingelhofer stated there was plenty of parking to the rear for the 4-unit dwelling.

Mr. Fitz Gibbon questioned what her plans were should the variance not be granted. Ms. Klingelhofer stated she was not certain. Mr. Fitz Gibbon stated he felt it would be difficult to find a commercial use for the property. Mr. Suchan stated he felt the whole purpose of the district was to maintain the look of that section, and noted that the Design & Review Board would have to review anything done to the exterior of the property. Ms. Klingelhofer stated she had no plans for the exterior, other than to the porch and railing. Ms. Klingelhofer stated she was not sure if the roof would need to be replaced. Mr. Emerson stated the district was meant to act as a buffer zone to residential districts. Mr. Suchan noted that everything behind it on Buckeye Street was residential.

Mindy Roberts indicated the Sloane House at 439 North Market Street, adjacent to the property in question, was formerly owned by Mr. Slusser and was in bad shaped and being used as a rental. Ms. Roberts stated even though the property had not been vacant for a year, they were told that the home could not be used as a residential rental property. Ms. Roberts stated the home was therefore converted into office space and the rear addition was demolished. Ms. Roberts stated they were before the Design & Review Board several times. Ms. Roberts stated there was an opportunity to bring 431 North Market Street into compliance with the C-1 zoning and, if the variance was granted, the opportunity may not be eligible for a long time. Ms. Roberts stated she was concerned with the type of tenants there might be if the property were allowed to be used residentially, especially being adjacent to their commercial property. Ms. Roberts asked that the variance not be granted. Mr. Emerson questioned if the commercial uses they had for their building was a profitable business. Ms. Roberts stated they had two tenants in the building and a vacant space for a third tenant.

Amanda Gaffey, 438 North Buckeye Street, stated she was not in favor of the variance request. The house was zoned C-1, and a 4-unit was not permitted nor was it a conditional use. She stated she lived behind the home in a single family dwelling, and indicated the home had been vacant for more than a year and, because of that, it needed to conform to the current regulations. Ms. Gaffey stated she did not feel there would be a legitimate argument for a hardship condition, and indicated the applicant purchased the property that she did not need to purchase. Ms. Gaffey stated with a little homework, she would have known the 4-unit house was not in compliance. Ms. Gaffey stated the former owner's refusal or inability to maintain and secure the property did not constitute a hardship for the new owner. Ms. Gaffey stated she did not feel that much of the criteria the Board was asked to consider when evaluating a variance was met. Ms. Gaffey stated the property could be put to an economically viable use under the permitted uses as witnessed by the three properties directly to the north: The Sloane House, the Terra building and Long, Cook & Samsa. These three examples illustrated that the condition was not unique to this property. Ms. Gaffey stated the house had historically been a major problem as a rental property and noted there was no guarantee the problems would not continue if the property were permitted to remain an active rental. Ms. Gaffey stated the Terra building and the Sloane House had made positive changes for this section of Market Street and allowing the house in question to stay amongst them would have a negative impact on the businesses and future growth and progress in this particular area. Ms. Gaffey stated she did not believe that would be in the spirit or intent of the Code for the C-1 District.

Dave Griffith, 411 North Buckeye Street, stated he headed up the Buckeye Street Association, neighborhood group. Mr. Griffith stated on North Buckeye/Market Street, the area had seen a revitalization with young families moving into the area. Ms. Griffith stated some homes which had once been carved up into multi-family units were now being converted back into single family uses; Market Street had been designated for only commercial uses. Because of these designations, there had been an improvement in the area. Mr. Griffith stated he did not feel there was any reason the home in question should not be used commercially and felt it was an excellent opportunity to use it for that purpose. Mr. Griffith stated he did not feel there was enough parking to the rear for four units.

Sherry Grande, 446 North Buckeye Street, stated the home had been a problem for the residents in the area in terms of the tenants and parking. Ms. Grande stated there were the north/south alley on Sloane had been closed because of traffic. If a 4-unit were approved, the alley onto Buckeye would be used which would increase traffic. Ms. Grande stated in 1976, the home in question was being used as a library. Ms. Grande stated the Muirs did a lot of work to the Sloane House after they purchased the property and made it into offices which was nearly completely rented out. The Terra building did a lot of work to their building and Mr. Long kept his property impeccable. Ms. Grande stated she felt the property should conform to the C-1 District regulations.

Ms. Klingelhofer stated she would not make the property a "slum place" and would make it into a nice family home. Ms. Klingelhofer stated she did not do anything "slum".

Mr. Suchan questioned if it was her intent to use the property for 4-units. Ms. Klingelhofer stated she was not absolutely certain, but thought 2-3 units depending on the structure of the home; the home currently had 4 units, each having 1 bedroom. Ms. Klingelhofer stated she had previously renovated the Schaffter Home (across the street).

Mr. Suchan questioned parking. Ms. Klingelhofer stated there was parking to the rear.

Stewart Fitz Gibbon moved, Adrian Eriksen seconded, to adjourn into executive session.

Adrian Eriksen voted yes.

Stewart Fitz Gibbon voted yes.

Doug MacMillan voted yes.

Ken Suchan voted yes.

Tate Emerson voted yes.

Motion carried by a 5-0 vote.

Adrian Eriksen moved, Ken Suchan seconded, to come out of executive session.

Ken Suchan voted yes.

Doug MacMillan voted yes.

Stewart Fitz Gibbon voted yes.

Adrian Eriksen voted yes.

Tate Emerson voted yes.

Motion carried by a 5-0 vote.

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

Sandra Hull, Main Street Wooster, stated she would like the Board to consider the fact that multi-family did not conform to the C-1 District. Ms. Hull noted the property was located in a historic district and was an entry and gateway to the downtown historic district. Ms. Hull stated people had worked hard and long to make sure that everything was doing well and was successful, and zoning was a huge part of that. Ms. Hull noted that the property had been vacant for nearly two years. Ms. Hull stated the property could easily fit into the current zoning and be converted to businesses. Ms. Hull stated most of the older, larger homes on the street had been converted to businesses, and most had done it well. Ms. Hull asked that the home be used for C-1 purposes.

Mr. Dutton stated the application was for a 4-unit multi-family residential use. Mr. Dutton stated the Board needed to be specific as to the number of units.

Adrian Eriksen moved to vote in the affirmative for Appeal #2015-03 for either a 2 or 4-unit multi-family residential use.

Doug MacMillan seconded to the motion.

Adrian Eriksen voted no. Mr. Eriksen stated being in a C-1 District, he felt the property should be kept as such.

Stewart Fitz Gibbon voted no. Mr. Fitz Gibbon stated in order to approve a variance, there needed to be a demonstrated hardship.

Ken Suchan voted no. Mr. Suchan stated he would have voted yes if only a duplex were proposed.

Doug MacMillan voted no. Mr. MacMillan stated he struggled with criteria "a" and "b": That the property could not be put to any other economically viable use as he felt it could be offices, and the variance request stemmed from conditions that were unique and noted the other homes in the area had been converted to business uses.

Mr. Emerson stated he supported what other Board members said. Mr. Emerson stated he believed the intent may be well, but if the variance were granted, it would open it up for a future owner which may not have the best intentions. Mr. Emerson stated he did not feel the criteria had been met. Mr. Emerson voted no.

Motion failed by a 0-6 vote.

**Appeal #2015-04. Ed Butdorf of Gochdorf LLC** requesting a use variance to Section 1131.02 to allow a retail use at 602 East Bowman Street in an R-2 (Single-Family Residential) District.

(Mr. Gaffey rejoined other Board members for the hearing of this request.)

Ed Butdorf stated a use variance was being requested at the former K-D pizza building. Mr. Butdorf stated the property had been used for commercial purposes "as long as he could remember". Mr. Butdorf stated he wished to use the building to sell hydraulic hoses which would cut back on some of the traffic activity from pizza pick-up/delivery and felt it would be better for the residential neighborhood. Mr. Butdorf stated because of how the building was constructed, it would be nearly impossible to convert it for a residential use.

Mr. Emerson questioned when he purchased the property. Mr. Butdorf stated in the fall, 2014.

Mr. Suchan questioned traffic as a result of the business. Mr. Butdorf stated there would not be a lot and would be more like traffic from an auto-parts business.

Mr. Gaffey questioned storage, other than what existed. Mr. Butdorf stated there would be no change in storage.

Mr. MacMillan questioned the equipment involved. Mr. Butdorf stated there would be a press to crimp and customize the hoses.

Mr. Emerson questioned if there would be a lot of outside activity. Mr. Butdorf stated no.

Mr. Suchan questioned if the building would be used "exactly as it was". Mr. Butdorf stated yes.

Mr. Emerson questioned if he was aware of how the property was zoned when he purchased the property. Mr. Butdorf stated yes.

Mr. MacMillan noted the business “right across the street” which was now a hair salon. Mr. Butdorf stated there was another business across the alley to the east which was also a hair salon.

Mr. MacMillan questioned if there would be much noise from the business. Mr. Butdorf stated no.

Mr. Suchan questioned if the business closed at 5:00 p.m. Mr. Butdorf stated yes—normal business hours. Mr. Suchan stated with there being no evening hours, the business hours would be different than with a pizza restaurant, especially during the summer months.

Mr. Dutton noted that the correct variance section was 1133.02.

Mr. Emerson questioned if Staff had received any correspondence/calls from the surrounding neighbors. Mr. Dutton stated he had a few phone calls/inquiries but noted that they “all seemed fine with it” once he provided them with additional details about the business.

Mr. Suchan questioned the hours of operation. Mr. Butdorf stated 7:00 a.m. - 5:00 p.m.

Mr. MacMillan stated if traffic increased, it may require the Board’s approval. Mr. Butdorf stated he understood that.

Mr. Fitz Gibbon questioned if the variance ran with the property or under Mr. Butdorf’s ownership. Mr. Dutton stated the variance ran with the property. Mr. Dutton stated the ice cream/pizza shop was a grandfathered use and had never been formally approved by the Board. Mr. Dutton stated the request was before the Board because the property had been vacant for more than one year, and the non-conforming use was gone.

Mr. Emerson questioned if anyone was present to speak for/against the appeal.

Doug MacMillan moved to grant the request with the stipulation that the business be that of a hydraulic hose shop as outlined by the documents associated with the application with normal business hours.

Ken Suchan seconded the motion.

Ken Suchan voted yes. Mr. Suchan stated he felt the use was much, much less intensive than the previous use which should be a benefit to the neighborhood.

Doug MacMillan voted yes. Mr. MacMillan stated that end of Bowman had little businesses within it, and he did not feel the building could be converted into a residential use.

Lukas Gaffey voted yes, specifically because the property had always been used as a business and should stay a business. Mr. Gaffey stated there were other businesses in the

area of similar fashion, and felt the business would be a low intensity use and would not negatively affect the residential area or properties in the area.

Stewart Fitz Gibbon voted yes. Mr. Fitz Gibbon stated he felt the criteria had been complied with.

Adrian Eriksen abstained. Mr. Eriksen stated he was affiliated with one of the parties involved.

Tate Emerson stated the use was a less intense use and indicated the Board had approved a similar use "right across the street". Mr. Emerson voted no, however, as he did not feel the criteria had been met.

Motion carried by a 4-1-1 vote, Tate Emerson voting negatively and Adrian Eriksen abstaining.

### **III. MISCELLANEOUS**

Discussion regarding the possible location of a self-storage use on the west side of Lucca Street.

Mr. Dutton stated the Zoning Code required that applications which required Planning Commission approval go before the Commission prior to being reviewed by the Board. Mr. Dutton stated before the perspective owner had plans prepared for the project and had it reviewed by the Planning Commission, Mr. Dutton stated he first wanted the Board's input.

Chris McNichols stated he wished to purchase the property and to construct storage units on the property. Mr. McNichols stated he was asking for the Board's input as he would not proceed if it was likely the Board would deny the request.

Mr. Dutton stated storage units in a residential district would require a use variance. Mr. Gaffey noted the zoning was R-T.

Mr. Suchan questioned the size of the lots. Mr. McNichols stated each lot was 70' x 160' (two lots).

Mr. Suchan questioned if the R-T District allowed for duplexes. Mr. Dutton stated no.

Mr. Emerson noted that the intent of the R-T District was, *"To preserve and protect neighborhoods with traditional urban character. Traditional Residential areas are the oldest, close-to-downtown residential areas in the city. Small, dense lots were generally developed before 1940 in a regular grid street pattern with houses constructed with detached garages. As set forth in the Wooster Comprehensive Plan, traditional residential development will encourage historic preservation and construction/reconstruction that is similar in nature to the established pattern and character of development."*

Mr. MacMillan stated he felt the residents in the area would play a huge part in the Board's review of the appeal. Mr. Emerson stated there was a history with the residents in the area relating to an appeal the Board heard on Lucca Street. Mr. MacMillan stated for that appeal, the residents expressed concern with increased traffic and how the property was maintained.

Mr. McNichols stated he wanted to construct two storage buildings on the land. Mr. Emerson stated it was his gut feeling that it would be an “uphill battle” potentially with the Code and the neighborhood. Mr. Gaffey and Mr. MacMillan agreed. Mr. Suchan noted that the building on Lucca Street was an existing building but starting from scratch, he felt it would be different. Mr. Suchan stated he felt he could expect something residential in nature to be constructed on the property.

Mr. Gaffey stated he felt there would be a pretty big turn-out from the residents in the area for the request should he wish to proceed.

Meeting adjourned 7:30 p.m.

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**Tate Emerson, Chairman**

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**Laurie Hart, Administrative Assistant**