

**MINUTES
BOARD OF BUILDING AND ZONING APPEALS**

June 6, 2013

MEMBERS PRESENT: Pat Zoller, Clinton Sanders, Tate Emerson, Gregg McIlvaine, Doug MacMillan and Adrian Eriksen

STAFF PRESENT: Andrew Dutton

I. MINUTES

Pat Zoller moved, Doug MacMillan seconded, to approve the Minutes of May 2, 2013 as received. Motion carried by a 6-0 vote.

II. PUBLIC HEARINGS

A. Appeal #2013-8. Eric Brooks is requesting an area variance from Planning and Zoning Code Section 1133.03(c) to allow lot coverage exceeding the maximum in an R-1 (Suburban Single Family Residential) District at 1425 Logan Lane.

Eric Brooks, 1425 Logan Lane, stated the rear of his home was a walk-out basement and, above it, was the master bedroom with a sliding glass door. Mr. Brooks indicated that he wished to construct a deck onto the rear of the home from the sliding glass door. Mr. Brooks stated when he purchased the home a couple of years ago, he was not aware that there would be an issue in constructing the deck. Mr. Brooks further stated he felt that, aesthetically, it would look better to have the deck which would be 14' x 16' in size. Mr. Brooks stated other properties in the development likely exceeded the coverage regulations. Mr. Brooks noted there was an existing concrete pad to the rear of the deck, off of the walk-out basement, so the deck would merely cover an area which already existed.

Mr. Emerson noted that coverage would increase from 35.8% to 38%, an increase of 2.2%. Mr. Brooks stated that was correct.

Mr. Brooks stated he spoke with many of the immediate neighbors with regard to the deck, and he indicated that "everyone was o'kay with it".

Mr. Emerson questioned whether Staff had received any comments/objections regarding the proposed deck. Mr. Dutton indicated he had responded to a couple of people who had questions regarding the variance.

Pat Zoller moved, Doug MacMillan seconded, to grant the request of Eric Brooks for property located at 1425 Logan Lane as requested.

Ms. Zoller voted yes. She stated she felt special conditions existed.

Mr. Sanders voted yes and indicated that he agreed with Ms. Zoller.

Mr. MacMillan voted yes. He indicated that the proposed deck would not affect water runoff as it would be located above ground.

Mr. Eriksen voted yes for reasons outlined by the Board members.

Mr. Emerson voted yes. Mr. Emerson stated he did not feel the circumstances were caused by the homeowner and that the essential character of the neighborhood would be maintained.

Motion carried by a 6-0 vote.

- B. Appeal #2013-9. Jeremiah Swartzentruber of MBS Real Estate LLC** is requesting an area variance from Planning and Zoning Code Section 1171.06(c) to allow an off-premise sign in an M-1 (Office/Limited Manufacturing) District on Akron Road (State Route 585) across from Vinton Woods Drive.

Jeremiah Swartzentruber, MBS Real Estate, stated the variance requested was for the continued use of a sign which promoted Tartan Ridge development located along State Route 585. Mr. Swartzentruber noted that the property owner, Jerry Baker, did consent to the continued use of the sign on his property.

Mr. Emerson questioned if the existing sign would remain/no changes to it. Mr. Swartzentruber stated that was correct.

Mr. MacMillan noted that the Board previously granted the variance for a two year period. Mr. Swartzentruber noted that the economy was down the past couple of years but indicated they had experienced a busy winter/spring so it was looking promising and they had “a lot of interest” in the development. Mr. Swartzentruber stated the advertising was needed for the development because it was “tucked away”. Mr. Swartzentruber asked that the Board grant the variance for an additional 2-year period. Mr. Swartzentruber noted that inside the development, there would also be a sign at the entrance. Mr. Swartzentruber indicated that there were a lot of people who lived in the City that were not aware that the development existed; the signage would help advertise the development to both City residents and to potential people who did not live in the City.

Mr. MacMillan asked if Staff had received any inquiries with respect to the variance. Mr. Dutton indicated he had not.

Mr. Emerson noted for the record that the Board would be voting on a 2-year extension for the proposed sign. Mr. Emerson further stated the Board also wished to receive a signed approval from the existing property owner with respect to the sign.

Adrian Eriksen moved, Clinton Sanders seconded, to grant the request of MBS Real Estate for property on Akron Road (State Route 585) across from Vinton Woods Drive with the stipulation that the variance be granted for an additional 2- year time period (extension) and that a signed copy from the landowner granting permission for the sign to be placed on the property be submitted.

Pat Zoller voted yes.

Clinton Sanders voted yes.

Gregg McIlvaine voted yes.

Doug MacMillan voted yes.

Adrian Eriksen voted yes.

Tate Emerson voted yes, based on the granting of the previous appeal.

Motion carried by a 6-0 vote.

- C. Appeal #2013-10. Daniel Fagert** is requesting a use variance from Planning and Zoning Code Section 1133.02(d) to allow a personal service commercial use and an office use in an R-T (Traditional Residential) District at 607 East Bowman Street.

Dan Fagert, 2037 Canterbury Lane, stated the property in question had always been a commercial use; in the late 1990's, it was remodeled into a legal professional building who sold the property to another attorney. In 2002, Mr. Fagert indicated he purchased the property and operated his own financial planning business from the location after having obtained a variance from the Board. Mr. Fagert stated due to growth, he moved out of the building as he needed more office space and noted the building had sat empty for the past two years. Mr. Fagert stated he currently had two businesses who were interested in the property, and he would like to make the decision as to who would ultimately occupy the property. Mr. Fagert indicated the two parties interested were a dentist and a beautician. Mr. Fagert stated other uses of the building had been an auto parts store and a gasoline station.

Mr. MacMillan questioned if the building would be altered/footprint changed. Mr. Fagert stated no. Mr. MacMillan questioned if there was ample parking for the proposed businesses. Mr. Fagert stated yes.

Mr. Emerson questioned if Staff had received any inquiries regarding the appeal. Mr. Dutton indicated no objections but he did receive inquiries.

Mr. Emerson noted KD Pizza and a beauty salon also existed in the area and questioned whether variances had been granted for those uses. Mr. Dutton stated those uses were also non-conforming.

Mr. Emerson noted that for a use variance to be granted, there were strict guidelines, the first of which was that the property could not be put to a profitable use permitted in the zoning district (R-T District). Mr. Fagert stated major remodeling would be necessary in order for the building to be used for residential purposes (bathroom, kitchen, bedrooms). Mr. Fagert further noted that the building was on a slab.

Mr. MacMillan noted that the property was smaller than most residential properties. Mr. Fagert stated that was correct—it was less than 1,200-sq. ft. in size.

Mr. Emerson stated one of the other criteria was that a hardship condition was not created by your actions. Mr. Emerson noted that he (Mr. Fagert) purchased a commercial building in a residential district, knowing that it was located in a residential district. Mr. Fagert stated prior to purchasing the building, it was his understanding that the property was only to be used for a commercial use. The attorney that occupied the building prior to his ownership had obtained a variance from the Board also, and he had also obtained a variance from the Board for his financial planning office use. Mr. Fagert stated the building had never been used for any type of residential space, and it would take a lot of work to convert it, and he was not even sure it was possible to do. Mr. Fagert stated he had tried to keep the building and landscaping in good condition, even though the property had been unoccupied for the past two years, noting that some of his neighbors were not as eager to do that with their properties. Mr. Fagert noted that he felt the dentist or beautician would maintain the property as well.

Mr. Emerson questioned whether the variance could be granted without confirmation of which use would occupy the building. Mr. Dutton stated if the Board granted the approval, the new use would need to be established by one of the interested parties within a year of the approval.

Mr. Emerson stated the Board had not granted a similar variance without first knowing the proposed use. Mr. Fagert stated if the Board was asking that he choose the tenant, he would ask that the Board grant the use variance to the dentist.

Ed Gasbarre, 428 Spink Street, stated as far back as he could remember (1960's), the building had been used for commercial purposes. Mr. Gasbarre stated the building was presently maintained nicely. Mr. Gasbarre stated it only made sense to continue the commercial use of the property.

Bret Defibaugh, 4595 Wells Road, Shreve, stated he owned property in the area/within the same district (Bowman Beverage). Mr. Defibaugh noted that nearly the entire lot was pavement, and it would make no sense for the property to be anything but commercial. Mr. Defibaugh noted that the interior was set up as a commercial use and it would not be cost effective to use the building residentially.

Adrian Eriksen moved, Clinton Sanders, seconded, to grant approval to Daniel Fagert of a use variance for personal service or office use for property located at 607 East Bowman Street.

Adrian Eriksen voted yes.

Doug MacMillan voted yes. Mr. MacMillan noted that the lot size was not conducive for a home, the existing building was small, and there were other businesses scattered along Bowman Street as well.

Adrian Eriksen voted yes. Mr. Eriksen noted that the existing use and proposed use were similar in nature.

Clinton Sanders voted yes.

Pat Zoller voted yes.

Tate Emerson voted no. Mr. Emerson indicated that he did not believe clear proof had been established that the property could not be put to a viable/profitable use in the zoning district in which it was located. Mr. Emerson stated the hardship conditions were created by actions of the owner based on the fact that he purchased the property as a commercial use in a residential district.

Motion carried by a 5-1 vote.

- D. Appeal #2013-11. Bret Defibaugh** is requesting a use variance from Planning and Zoning Code Section 1133.02(d) to allow a haunted barn use in an R-1 (Suburban Single Family Residential) District at 1618 Portage Road.

Mr. Emerson stated the appeal was previously heard and granted by the Board but was subsequently appealed to the Court of Common Pleas. The Board must now determine whether substantially new evidence was submitted by way of application or supporting testimony or documentation.

Bob Reynolds, attorney representing Bret Defibaugh, stated he felt there was new evidence and facts relating to the request. Mr. Reynolds stated the Board did grant the variance previously; however, as pointed out by Judge Wiest, testimony and materials

presented to the Board did not address the required factors which the Board was required to consider.

Mr. Reynolds stated the property in question was the site of the former Melrose Orchard. Mr. Reynolds stated the property was bordered on the east by the former National Guard Armory which, at the time of the initial appeal before the Board, was owned by the Wooster City School District. Mr. Reynolds stated at that time, the applicants had verbal permission to use the parcel for parking for the proposed haunted house use. Mr. Reynolds indicated that, in the past year, Mr. Defibaugh had since purchased the former Armory property. Mr. Reynolds stated in 2012, because of litigation before the Courts, Mr. Defibaugh did operate the haunted house as an “invitation only type of event” for friends and family as opposed to a commercial enterprise which would have been open to the public. Mr. Reynolds stated a “dry run” of the event did occur which did not cause any traffic or noise problems to the residents in the area.

Mr. Emerson questioned whether the attendance was similar to what it would have been had it operated as a commercial use. Mr. Reynolds stated probably not as it occurred over fewer nights. Mr. Reynolds stated the applicant was requesting approval for Thursday, Friday and Saturday nights in October, and in 2012, the facility operated for six nights. Mr. Reynolds stated because it was by invitation only, the events were relatively small.

Doug MacMillan moved, Adrian Eriksen seconded, to hear the additional presentation/information offered by the applicant relating to the request.

Adrian Eriksen voted yes.

Doug MacMillan voted yes.

Gregg McIlvaine voted yes.

Clinton Sanders voted yes.

Pat Zoller voted yes.

Tate Emerson voted yes.

Motion carried by a 6-0 vote.

Mr. Reynolds indicated Mr. Defibaugh acquired the former Melrose Orchard property on which a 2-story commercial barn was located in addition to two residences. Mr. Reynolds noted that the property was 10 acres in size. Mr. Reynolds stated two members of the Exchange Club were Halloween enthusiasts and had the equipment needed to set up a haunted house and approached Mr. Defibaugh about using the barn for that purpose.

Mr. Reynolds stated the first criteria for the granting of a use variance was that the property could not be put to a profitable use permitted in the R-1 District. Mr. Reynolds stated the two houses were used as rental properties, and the appeal related only to the commercial barn/building. Mr. Reynolds stated he was unsure what residential use could even be made of the commercial barn in a residential district. Mr. Reynolds stated in the past, the barn was used by Melrose Orchard and was a commercial use. Mr. Reynolds stated there was no reasonable use of that property for residential use.

Mr. Reynolds stated the second criteria necessary for the granting of a use variance was that there was a condition which was unique to the property and not normally found in the same zoning district. Mr. Reynolds stated the 2-story barn was located in a residential district and was not something commonly found in the R-1 District.

Mr. Reynolds stated the third criteria was that the condition was not created by his/her actions. Mr. Reynolds stated Mr. Defibaugh did not construct the barn/structure in question and it was on the property at the time Mr. Defibaugh purchased the property. Mr. Reynolds indicated that just because a property changed hands, it did not change the hardship nature. Mr. Reynolds noted that at the time the barn was built on the property in question, it was located outside the City limits and pre-dated the zoning code and homes that existed in the area.

Mr. Reynolds stated the third criteria was that the request would not adversely affect the rights of adjacent property owners or residents. Mr. Reynolds noted that Mr. Defibaugh owned the property to the east. The property was about ¼ mile away from Melrose Elementary to the north which would be out of session during the time that the haunted house would be open. Mr. Reynolds stated that with respect to the property owners along Armstrong Drive to the west, the driveway entrance to the property was to the south; the property owners to the west did not see anything but the back side of the barn, and that would not change no matter what went on inside the barn. Mr. Reynolds noted that all of the activities would occur within the building, but noted the neighbors would notice increased traffic but would not be nearly the amount of traffic those residents would see when Melrose Elementary was in session or when Melrose Orchard was operating from the property. Mr. Reynolds stated the haunted barn use would not block traffic or create a safety concern, and noted that Mr. Defibaugh had arranged for auxiliary officers to be on hand should the use be approved.

Mr. Emerson noted that the last time the appeal was before the Board, a homeowner (Mark Russell) did object to the proposed use and questioned whether that homeowner had been contacted about the present appeal. Mr. Dutton indicated that property owners within 200' of the property were notified. Mr. Dutton indicated he had received a couple of inquiries about the appeal as well in addition to a letter from the Evangel Assembly of God (copy attached to the minutes).

Mr. McIlvaine questioned the number of parking spaces which would be available. Mr. Reynolds stated on site, there was room for at least 20-25 parking spaces (Melrose Orchard property in the gravel); there were additional parking areas in the grass. At the Armory, there were spaces for 50-60 vehicles. Mr. Reynolds stated thought was also given to operating a shuttle service from Melrose Elementary to the haunted barn if there was a need.

Mr. Reynolds stated another requirement as to the granting of a use variance was that it would not adversely affect the public health, safety or general welfare. Mr. Reynolds stated within the property, Mr. Defibaugh had the barn inspected by the City Building and Fire Departments to ensure that the facility met the Code requirements. Mr. Reynolds stated there would be lit walkways and volunteers which would help direct traffic as well as off-duty police officers.

Mr. Emerson questioned how many evenings the haunted house would operate. Mr. Defibaugh stated every Thursday, Friday and Saturday, the haunted house would be in operation; never on a Sunday. Mr. Defibaugh stated last year, they had nearly 900 people attend the haunted house, and they never had a problem. Mr. Defibaugh stated they never had more than 25 – 30 cars at a time, and people were only there for approximately 15 – 20 minutes. Mr. Defibaugh indicated last year, there was never more than 45 - 50 people at the site at any one time. Mr. Defibaugh stated even though 900 people seemed like a lot, it was over a 5-hour span, for 4 nights. Mr. Reynolds stated for 2013, there would be a total of 12 nights (use would not operate on Halloween).

Mr. MacMillan questioned if they were requesting the variance for 1 year or longer. Mr. Reynolds stated if the Board so chose, it could grant the variance for 2013 but that he felt the “trial run” had actually occurred in 2012. Mr. Defibaugh indicated if there was a problem, the event would not occur again at the Orchard. Mr. Reynolds indicated that Mr. Defibaugh wanted to be a good neighbor and had put a lot of effort into cleaning up the property and took pride in the property. Mr. Reynolds indicated Mr. Defibaugh wanted the event to be an asset to the community.

Mr. Reynolds indicated that the 6th criteria in granting a use variance was whether the spirit and intent of the zoning code would still be observed. Mr. Reynolds stated the Armory property specifically prohibited the use of the building for residential purposes because of asbestos and lead paint. Mr. Reynolds indicated the US Government gave the property to the City, and the City gave the property to Wooster City Schools. Mr. Reynolds indicated there was an “odd mix of properties” at the corner of Melrose/Portage, and the proposed use would not violate the spirit or intent of the Zoning Code.

Mr. Reynolds indicated the final requirement for the granting of a use variance was that the request was the minimum necessary to afford the applicant relief. Mr. Reynolds indicated the applicant was not asking for a “full blown commercial use” of the property but rather for 12 evenings during the fall. Mr. Reynolds stated to some extent, once you

do the effort to set up the haunted house, to advertise the event, to man the event, there was a certain amount of time which was needed to make the investment of time/effort worthwhile.

Mr. McIlvaine questioned whether when Mr. Defibaugh purchased the property, it was zoned R-1. Mr. Reynolds stated yes. Mr. Reynolds stated at the time Mr. Defibaugh purchased the property, the use of the barn as a haunted house had not yet been discussed. Mr. Reynolds further indicated in the three years since Mr. Defibaugh purchased the property, this was the first use that had any economic viability.

Mr. Emerson questioned whether the applicant would lose the property if he could not make use of the barn. Mr. Reynolds stated no.

Mr. Emerson stated it was his understanding that the profits from the haunted house would be donated. Mr. Reynolds stated how Mr. Defibaugh would use the profits should not be considered in determining the validity of the project.

Mr. Defibaugh stated he felt it would be a detriment to the neighborhood if he would tear down the existing barn in order to develop the property for residential purposes. Mr. Defibaugh noted there was no viable use for a commercial barn in a residential area.

Mr. Emerson stated he was still trying to identify the hardship that existed. Mr. Reynolds stated he felt Mr. Emerson was reading too narrow of the reading of a hardship. Mr. Reynolds stated the financial condition of the owner should not have any bearing on the variance. Mr. Reynolds stated the hardship was having a piece of property – a commercial building that Mr. Defibaugh was unable to make use of.

Mr. Eriksen questioned the age of the barn. Mr. Emerson stated he thought the barn was constructed in 1955. Mr. Eriksen questioned the structural integrity of the barn and whether or not it could safely be used for the use proposed. Mr. Defibaugh noted that City Inspectors and the Fire Chief went through and inspected the barn. Mr. Defibaugh noted the barn had been completely rewired and a new electrical panel had been installed.

Mr. Emerson stated that should the Board approve the use variance, he would like to add a stipulation that it be used as a haunted house during the month of October during 2013 as opposed to a complete variance to “see how things would go”.

Tate Emerson moved, Adrian Eriksen seconded, to grant the request of Bret Defibaugh for a use variance to allow a haunted barn at 1618 Portage Road during the month of October, 2013.

Adrian Eriksen voted yes.

Doug MacMillan voted yes. He stated he felt the property was unique and noted housing only existed on the one side of the property citing a bar, a restaurant, K-Mart, etc. all within the neighborhood. Mr. MacMillan also felt it was the minimum use of the property since the haunted barn would only operate 13 days a year.

Gregg McIlvaine voted yes. Mr. McIlvaine stated he opposed the use variance in 2012 based on the strong concerns of a neighboring resident. Mr. McIlvaine noted that presently, there were no objections to the use variance.

Clinton Sanders voted yes.

Pat Zoller voted yes.

Tate Emerson voted yes. Mr. Emerson stated he did question some of the criteria but based his vote on the temporary use being granted only for October, 2013.

Motion carried by a 6-0 vote.

- E. Appeal #2013-12(a). William Taylor** is requesting an area variance from Planning and Zoning Code Section 1133.04(g) to allow a reduced rear yard setback in an R-1 (Suburban Single Family Residential) District at 2691 Burbank Road.

Appeal #2013-12(b). William Taylor is requesting a use variance from Planning and Zoning Code Section 1133.07 to allow an accessory use on a lot without a permitted principal use in an R-1 (Suburban Single Family Residential) District at 2691 Burbank Road.

The Board agreed to hear both requests (use and area variances) jointly but to vote on them separately.

Bill Taylor, 2692 Taylor Street, and Jane Taylor (same address) were present. Mr. Taylor stated he purchased his mother's lot and property "next door" and after a family meeting, it was decided to put his mother's home on the market. Mr. Taylor stated in doing that, he would then be able to purchase the blacksmith's shop he had constructed on his mother's property. Mr. Taylor stated the property line that existed initially was "quite close" to his backyard and did not provide a functional, comfortable or pleasurable back yard. Mr. Taylor stated he lived in a remodeled barn, and the west side of the barn had a barn bank which was not very usable. Mr. Taylor stated the property line was at the base of the barn bank, and by adding an additional 10', that would give them a back yard which would be more comfortable and pleasurable to use. Ms. Taylor stated that would bring the property line from the existing 2691 Burbank Road garage to 10' away from it. Anyone who would purchase that property would likely destroy the existing garage which was in disrepair. Mr. Taylor stated there would also be a potential for a mutual driveway with whomever the next land owner might be of his mother's home.

Mr. MacMillan questioned why they would not remove the garage now, before selling the property, which would alleviate the need for a variance. Mr. Taylor stated not knowing who might end up next door and what they would want, there may be a possibility they would want the garage as it existed (3-car garage) once restructured.

Mr. Emerson questioned who the current landowner was. Mr. Taylor indicated the land was currently part of a trust. Mr. Emerson stated he was concerned with other family members who had interest in the property and whether they were in agreement with the proposal. Mr. Taylor stated everyone was “quite comfortable” with nearly everything proposed. Mr. Taylor indicated he was the co-executor of the estate; his sister was the other co-executor.

Mr. Emerson questioned, with respect to the blacksmith shop, why he was making that its own property as opposed to making it part of his current property. Mr. Emerson noted that if the lots were one, then a variance would not be needed. Mr. Dutton stated an area variance would be needed either way because by combining the lots, the lot would then have frontage on Taylor and on Burbank Road which would necessitate the need for a variance. Ed Gasbarre, land surveyor, stated given the double frontage situation, it made sense to put the blacksmith shop on its own city lot as there was plenty of frontage and room on the newly created parcel.

Mr. MacMillan questioned the use of the blacksmith shop. Mr. Taylor noted it was used as a hobby shop.

Mr. Emerson questioned if Staff had received any inquiries regarding the appeals. Mr. Dutton indicated no.

Mr. Emerson questioned if Section 1109 (c)(2), primary/secondary use of land, was a new section implemented to the Code in 2007. Mr. Dutton stated he was not certain but noted that was a fairly standard Code regulation.

Mr. Emerson stated that in the unnecessary hardship criteria, one of the requirements was if the property could not be put to a probable use permitted in my zoning district. Mr. Taylor stated he did not feel that criteria was applicable to the situation. Mr. Gasbarre stated he was not certain where “probable use” would be applicable when a city lot was being subdivided.

Doug MacMillan moved, Pat Zoller seconded, to grant the request of William Taylor for a use and area variance for property located at 2691 Burbank Road.

Pat Zoller voted yes. Ms. Zoller stated she felt the applicant met the criteria.

Clinton Sanders voted yes.

Gregg McIlvaine voted yes.

Doug MacMillan voted yes. Mr. MacMillan stated the use in question was a hobby shop and was not commercial in nature.

Adrian Eriksen voted yes.

Tate Emerson voted yes. Mr. Emerson stated he believed the criteria for granting the area variance was established. Mr. Emerson stated with respect to the use variance, he felt the situation was unique because of the lay of the land and that it was part of an original farmstead parcel. Mr. Emerson stated he did not feel that by granting the use variance it would pose any problems in the future.

Motion carried by a 6-0 vote.

- F. Appeal #2013-13. Norman “Bing” Miller on behalf of Stephen Fox** is appealing the determination of the Chief Building Official of the City of Wooster that a home at 129 East Vine Street is dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy.

Mr. Emerson noted that this appeal would be considered at the Board’s meeting on July 11, 2013 (per the applicant’s request).

- G. Appeal #2013-14. The College of Wooster** is requesting a use variance from Planning and Zoning Code Section 1133.02(d) to allow a student housing use in an R-2 (Single Family Residential) District at 716 Beall Avenue.

Matt Long, Critchfield Law Firm, stated he was acting as the agent for both the College of Wooster and the Family Learning & Development Center. Grant Cornwell, College President; Jackie Middleton, Associate Vice President of Facilities, Projects and Auxiliaries; John Hopkins, Vice President for College Relations; Kurt Holmes, Dean of Students; Ron Holtman, Trustee for the Gault Family Learning & Development Center; and Doug Drushal from Critchfield Law Firm, were also present.

Mr. Long stated the property in question was the former location of the Beall Avenue School which a few years ago was converted to the Gault Family Learning Center. Mr. Long indicated the “Gault Schoolhouse” was the name the College would use if the use proposed was approved by the Board.

Mr. Holmes stated he joined the College 12 years ago when it had 100 – 120 students living in the community. Mr. Holmes stated needs had been established with the College campus master plan which included the need for more suite-styles rooms as opposed to the traditional dorm room setting. Mr. Holmes stated the classrooms would be converted into semi-private suites with a common area, private/semi-private 2-person bedrooms,

and bathroom. Mr. Holmes stated the building would not be used as a first year residence hall but rather would be used by junior and senior students.

Mr. Holmes stated there were no plans to change the exterior of the building. Mr. Holmes stated there was ample parking onsite, and the College had the ability to control how many student cars would be there.

Mr. Long stated the information provided to the Board outlined in detail the criteria needed to grant a use variance (see file).

Mr. Long stated the building was constructed in 1901 and had been used as an elementary school or a community facility since it was constructed and since the inception of zoning. Mr. Long stated before 2007, the property was a community facility property and when the Zoning Code was amended/zoning map was redrawn, the property became zoned R-2. Mr. Long stated the Gault Family Learning Center was a unique facility which was an extremely large structure not typically found in such districts. Mr. Long stated in the R-2 District, the uses were fairly restrictive to residential or small family dwellings. Mr. Long noted that schools were permitted in the R-2 District, but noted that Wooster City Schools were retracting rather than expanding their footprint of schools. Mr. Long stated there were few groups who could make any use of the building, and the College was not only the most likely candidate, but the candidate that had the greatest need to make use of the facility. Mr. Long stated the property was unique, and other uses were really not available.

Mr. Long stated prior to 2007, the Gault Family Learning Center was a permitted use and since that time was a permitted, non-conforming use. Mr. Long stated the situation was not created by the applicants, and stated the size/structure of the building created the hardship.

Mr. Long stated the College was only three lots away (to the north) from being contiguous with the property. To the east was Drug Mart; to the south was the First Presbyterian Church and People to People. Mr. Long stated the College held community meetings and listened to the opinions of community members in forming the vision the college had for the Gault Schoolhouse. Mr. Long noted that Beall Avenue School, at its peak, held upwards of 300 students. Mr. Long stated the Gault Family Learning Center averaged 200 – 220 daily occupants which included 180 full time students/staff; at its maximum use, it exceeded 300 – 400 people during the day. Mr. Long stated the College had already been maintaining the building grounds since the Gault Family Learning Center came into existence and regularly provided safety and security. Mr. Long stated as a dormitory, there would be at least one full time professional staff member from the college as well as several RA's at the student level to manage and supervise the building.

Mr. Long stated educational institutions were to the benefit of the health, safety and general welfare of the community and, as such, educational uses were not necessarily

limited to what you would see in the classroom but rather all of the ancillary uses of an educational institution fell under that educational umbrella. The use by the college as a dormitory facility was part and parcel to the delivery of a liberal arts education to their students. Mr. Long stated the proposed student housing would be of benefit to the upper class students who were interested in a certain type of lifestyle which allowed them to focus more heavily on the rigorous tasks that fell under senior year at the College and the time leading up to that.

Mr. Long stated there were two purposes in the Comprehensive Plan outlined in the district in which the Gault School was located: To further the expansion of the College as reasonably necessary, and to foster residential development and use of the area. Mr. Long stated it was clear that when the Comprehensive Plan was put into place, the expansion of the College campus into adjoining areas was contemplated.

Mr. Long stated the college's number one need at this time was associated with a residential use, and the use proposed had the lowest intensity in the use of the building. Mr. Long stated the use as an academic classroom would generate people in/out of the building throughout the day; the use of the building as an office would generate a density level "two to three fold" compared to what was proposed. Mr. Long stated the proposed use was not only the minimum contemplated by the applicant but was also less intensive compared to the current use of the building.

Mr. Holmes stated the College anticipated they would lose some of the parking closest to the residential side. Mr. Holmes stated the College was dedicated to retaining the greenspace, so adding to the facility was clearly not in the College's plan. A Board member questioned if the gymnasium would remain. Mr. Holmes stated yes—it would be used by the students as a gathering area.

Mr. Emerson questioned if 80 residents would exist for the entire structure. Mr. Long noted 90 residents was shown on the application, but that the number would be between 80 and 90.

Mr. Eriksen questioned if the parking lot was used by the church. Mr. Long stated yes—the parking lot was shared with a variety of the neighbors. Mr. Long stated parking was an issue which was separately addressed as part of the review by the City administration to whether the actual number of spots met the ultimate occupancy or whether Planning Commission approval would be required to pull that into the College's comprehensive parking plan.

Mr. Eriksen questioned how many parking spaces existed. Mr. Holmes stated it exceeded the request for occupancy of the building. Mr. Long indicated that the total number of students at the College would not change, so it would likely be a net positive outcome in parking. Mr. Emerson stated that by removing parking spaces, if the greenspace would be

expanded. Mr. Long stated yes. Mr. Long further indicated that some of the existing parking spaces would be replaced with handicapped spaces as well.

Ruth Haynes, 419 Pearl Street, stated that currently, 77 parking spaces existed on the south lot; there were 14 spaces on the west, 6 of which were handicapped spaces.

Mr. Emerson questioned if Staff had received any objections relating to the appeal. Mr. Dutton stated he received some inquiries but nothing directly against the appeal.

Mr. McIlvaine questioned if there was any attempt to market the property. Mr. Long stated he did not believe the marketing of the property was relevant to whether an economic use could be achieved. Mr. Long stated by nature of the zoning being residential that made an inherent hardship. Ron Holtman indicated there was no attempt to market the property and indicated it was his understanding that there was no market for large, institutional buildings that went up for sale, especially with this type of specialized building.

Kathy Bean, 437 Pearl Street, stated she had a letter she was asked to read by her brother, John Bean (see file and attachment to Minutes) who was in opposition to the appeal. Mr. Long stated the person presenting the expert testimony was not duly sworn before the group, and the testimony therefore was not admissible for purposes of providing evidence as to psychological expertise. Mr. Long stated the letter unnecessarily prejudicially grouped all college students into the same category—whether located at the College of Wooster or any other institution and did not make a fact specific analysis of College of Wooster students.

Mr. Long stated the proposed student housing was not an off campus situation as it owned houses just a few properties away from the property in question. Mr. McIlvaine questioned whether the College had considered other uses for the building, i.e. classrooms or office space. Mr. Holmes stated classroom space across campus was assessed, and it was determined the College had more than it needed currently. With regard to office space, to use that level of office space to relocate offices would create a monumental renovation and would result in existing office space being less viable for housing.

Ms. Bean stated that the Gault Family & Learning Center did not have nighttime and weekend activity but that using the building for student housing, would generate nighttime and weekend activity at the property.

Mr. Holmes stated because of concerns of the residents in the neighborhood, the parking area along College Avenue would be changed by removing some of the existing parking spots and providing a full buffer; students would also be using the Beall Avenue side for parking. Mr. Holmes stated with regard to the alley on the north side, 18" concrete walls would be constructed.

Ms. Bean stated she did not see how this was defined as “on campus housing” given that the property was in a residential area and that there were homes between the campus and the building in question. Mr. Long stated the Code did not define the concept of a campus, and noted the College’s campus was not naturally perfectly contiguous which was the case with most educational institutions. Mr. Long stated in the maintenance and security of the property for the last 10 years, it has been treated by the College as if it were part of the campus. Mr. Emerson questioned why John Bean was not present to represent himself. Ms. Bean stated her brother was currently in New York City and unable to attend but could be reached on his cell phone.

Yvonne Williams, owner of property at 659 and 662 College Avenue, stated the property at 659 College Avenue abutted the Gault Learning Center. Ms. Williams stated she was told a few years ago that the College was not interested in acquiring property that was not contiguous to the property it owned. Ms. Williams stated she was concerned with the density of the use. Ms. Williams stated faculty offices would not be equivalent to the density which would be generated from dormitory space. Ms. Williams stated she was opposed to the use variance and was concerned with property values. Ms. Williams stated no one could completely control the behavior or noise from students no matter how well intentioned the College was. Ms. Williams stated she was disappointed that the College was not being a good community neighbor in this situation. Ms. Williams stated she had spent the bulk of her professional career as a member of the faculty at the College of Wooster, and despite long years of close association, respect and admiration with the College, she strongly opposed the zoning variance as she felt it would adversely affect numbers of people not only in terms of quality of life, but monetarily as well. Ms. Williams stated she felt the building could be used in a different way by the College and cited office use. Ms. Williams stated the building was already fashioned in some respect for use as offices or classrooms to a much greater extent than for a residential use. Ms. Williams stated if this property was part of the College campus as had been pointed out, then it was not that far for students to come for classroom use.

Grant Cornwell, 433 East University Street, stated the College did not have a need for offices or classrooms, and it would not be putting the Gault Learning Center to that use. Mr. Cornwell stated the College had a need for high quality student housing that was transitional in nature. Mr. Cornwell stated the College was in a competitive market, and peer institutions offered the ability for senior students to live in more adult, apartment like settings. Mr. Cornwell noted all of the College’s existing resident halls were dormitory in nature. Mr. Cornwell stated that should the variance be denied, the College would have to go back and talk with the Gault Family & Learning Center owners and reconsider accepting the building, and the question with what would become of the building would be a completely open question.

Mr. Holmes indicated that when the College learned of the availability of the Gault Family & Learning Center, it first approached the neighbors. Mr. Holmes stated after the College

determined the use it wished to propose, the College went back to those residents with a plan and with responses to the concerns the residents had expressed to the College. Mr. Emerson questioned how many neighbors the College made contact with over the course of the meetings. Mr. Holmes stated he believed there to be approximately 30 residents.

Mr. Emerson questioned if the residents north of the property would continue to have access through the College property/alley. Mr. Holmes stated yes.

Mr. Long stated Lincoln Way Elementary was vacant; Layton Elementary was vacant/recently purchased for the sole purpose of constructing a water tower; Wayne Elementary was vacant; the Armory had an adjacent economic use as a haunted house. Mr. Long stated this was a hardship that the community was facing, and should not turn a blind eye to the fact that there was a viable, sustainable, beneficial use for the property in question.

Adrian Eriksen moved, Tate Emerson seconded, to adjourn into Executive Session. Motion carried by a 6-0 vote.

Pat Zoller moved, Doug MacMillan seconded, to come out of Executive Session. Motion carried by a 6-0 vote.

Adrian Eriksen moved, Pat Zoller seconded, to grant the request of the College of Wooster at 716 Beall Avenue as submitted.

Adrian Eriksen voted yes. Mr. Eriksen stated the request did not adversely affect the rights of adjacent property owners or residents. Mr. Eriksen stated the College did a great job monitoring students and keeping them safe and secure. Mr. Eriksen noted that more mature students would occupy the facility.

Doug MacMillan voted yes. He stated the property was unique. Mr. MacMillan also noted that the gasoline station to the north remained vacant for quite some time and became an eyesore to the community before being purchased. Mr. MacMillan stated he was concerned the building in question would be like many of the other buildings in town that sat empty and were boarded up. Mr. MacMillan stated the value of the property and neighborhood would then deteriorate as well. Mr. MacMillan stated the cost of tearing down the building and constructing a home on the property was not viable.

Gregg McIlvaine voted yes. Mr. McIlvaine stated he felt the use proposed was the best use for the property given there were no other viable alternatives.

Pat Zoller voted yes. Ms. Zoller stated the building would be occupied and maintained by the College, and would have Staff on site to keep the students in line. Ms. Zoller stated she felt it was a very good use of the building.

Clinton Sanders voted yes. Mr. Sanders stated the proposed purpose was less intensive than other uses, and the building was fitting for the use proposed.

Mr. Emerson voted yes. Mr. Emerson stated from a hardship condition standpoint, he felt the use would benefit not only the College, but the community. Mr. Emerson stated he felt an unoccupied building would lead to decreased property values. Mr. Emerson also noted the unique nature of the building.

Motion carried by a 6-0 vote.

Meeting adjourned at 8:25 p.m.

Tate Emerson, Chairman

Laurie Hart, Administrative Assistant