

**MINUTES
BOARD OF BUILDING AND ZONING APPEALS**

May 7, 2015

MEMBERS PRESENT: Ken Suchan, Gregg McIlvaine, Doug MacMillan, Stewart Fitz Gibbon, Lukas Gaffey and Tate Emerson

MEMBERS ABSENT: Adrian Eriksen

STAFF PRESENT: Andrew Dutton

I. MINUTES

Lukas Gaffey moved, Ken Suchan seconded, to approve the Minutes of April 2, 2015 as submitted. Motion carried by a 5-0-1 vote, Tate Emerson abstaining.

II. PUBLIC HEARINGS

Appeal #2015-09. Charles Steinman of Illusions Screenprinting requesting a use variance to Section 1141.02(d) to allow an unpermitted custom print shop use at 350 East Liberty Street in a C-4 (Downtown Business) District.

Charles Steinman, Illusions Screenprinting, stated he was requesting a use variance for property located at 350 East Liberty Street. Mr. Steinman stated he had been in business for 25 years and wished to expand into a retail setting. Mr. Steinman stated his business currently operated at 334 East South Street. Mr. Steinman stated he wished to expand the retail section of the business, and the current business location had no frontage (located along an alley). Mr. Steinman stated they currently serviced 14 companies in three counties and they serviced many businesses which had employees of 10 or fewer. Mr. Steinman stated he also served many local and parochial schools through wholesale which constituted about 80% of his business. Mr. Steinman stated the location on East Liberty Street would increase the retail portion of his business and would include items that would be in stock for athletic programs. Mr. Steinman stated the product would be customer based and would be for walk-in customers which his current location did not serve. Mr. Steinman stated he moved into Wooster 8 years ago, and his sales had increased from 8-11% each year.

Mr. Fitz Gibbon questioned if the retail portion of the business would be similar to what Pierce's had done previously. Mr. Steinman stated yes, although they would not sell sporting equipment (baseballs, shoes, gloves, etc.).

Mr. McIlvaine questioned the use of the building. Mr. Steinman stated 2/3 of the front building would be retail/workspace, and the back building would be for storage as it was non-usable (had electric but was not heated). Mr. Steinman stated approximately 1,000-sq. ft. would be used for the retail portion of the business. Mr. Steinman stated from the street, the business would very much look like a store.

Mr. McIlvaine questioned the hours for the business. Mr. Steinman stated his current business hours were 7:30 a.m. until 5:00 p.m.; the business would likely be open on Saturday until noon.

Mr. Emerson questioned the noise from the business. Mr. Steinman stated there was no smell, light or noise generated from the business.

Mr. Steinman indicated that Pierce's had a similar business on the second floor of their building, and no one even really knew. Mr. Steinman further indicated that Sprosty Bag used the basement of their building for printing (formerly on East Liberty Street). Mr. Steinman stated he believed the building in question had been vacant for the past 4-5 years. Mr. Steinman stated he would clean up the building, not make it such an eyesore and have a quality business there.

Mr. McIlvaine questioned if he would be purchasing the building. Mr. Steinman stated he intended to, pending the outcome of the variance request.

Mr. Fitz Gibbon stated that while the business was permitted in the C-5 District, the fact that the business had the retail element would make it more compatible with other downtown businesses.

Mr. Emerson stated he could not think of another business in the downtown that had both production and retail in the same building. Mr. MacMillan noted that the JAFB Brewery had been before the Board with what he felt was a similar request.

Mr. Gaffey stated screenprinting was "low impact" in terms of noise and the manufacturing process itself.

Mr. Dutton noted that in a Zoning Code amendment in 2012, a new definition of "custom print shop" was added as a permitted use in the C-5 District.

Mr. Emerson questioned if they did internet sales. Mr. Steinman stated less than 1% of his business came from internet sales. Mr. Emerson questioned if he would expand his business to accommodate more of that. Mr. Steinman stated unless one of his employees wanted to take that on, he probably would not.

Jim Noletti stated he was in favor of the variance and indicated that he felt it was a positive move for a vacant building within the Downtown.

Mr. MacMillan stated he was concerned with setting a precedent.

Mr. McIlvaine stated he felt a hardship existed within the Code given the vagueness of the classification of whether it was "light manufacturing" or if it was "retail".

Mr. Suchan stated he felt the property was unique in that it was at the end of the C-4 District and in a transitional situation. Mr. Suchan noted that at the end of the street was a former auto business, so he felt it was a transitional zone that had experienced a different kind of retail at one time.

Mr. Steinman noted that the issue of parking had been met and indicated a revised plan had been submitted.

Mr. Suchan indicated he felt that on either end of Liberty Street, it was a transitional area citing Smetzer Tire on West Liberty Street.

Mr. Fitz Gibbon stated the building was likely larger than a retail establishment would typically want to acquire unless you had a production element to the business.

Gregg McIlvaine moved to approve the request based on the uniqueness of the property.

Mr. Emerson questioned the process should the use change. Mr. Dutton stated the variance was for the specific use currently before the Board, so any future use would have to conform to the C-4 regulations or another variance would need to be obtained from the Board.

Mr. McIlvaine stated he felt it was a good use of the property and felt that the current definition in the Code really did not address this type of use to the degree which would exist with the use.

Doug MacMillan seconded the motion.

Ken Suchan voted yes. Mr. Suchan stated he felt the business would be a real asset to the Downtown, especially in the location in question which was continually developing.

Gregg McIlvaine voted yes.

Doug MacMillan voted yes.

Stewart Fitz Gibbon voted yes. Mr. Fitz Gibbon stated he felt the retail element was a plus for the business and for the Downtown.

Lukas Gaffey voted yes, citing similar reasons mentioned by Mr. Fitz Gibbon. Mr. Gaffey stated he felt the manufacturing aspect would be very low impact and would likely go unnoticed.

Tate Emerson voted yes and noted that the current business location (on South Street) was also in a C-4 District and that the building in question had been vacant for four years.

Motion carried by a 7-0 vote.

Appeal # 2015-10. Jim Briola of North Coast Sign and Lighting Services Inc., representing SCP 2003D 51 (CVS Caremark), requesting an area variance from Planning and Zoning Code Section 1171.04(a) and (b) to allow building signs larger than permitted at 2284 Back Orrville Road in a C-5 (General Commercial) District.

Jim Briola, North Coast Sign and Lighting, stated changes were made to reduce the number of signs on the property. Mr. Briola stated on the SR 585 side, there were three signs on that side of the building, and the proposal was for one sign. The sign would be 18" in height and would read "drive thru/pharmacy"; the sign would be illuminated, channel letters and on

rails which would match the brick on the building. Mr. Briola stated there would not be any lettering on the awning. On the Back Orrville Road side, Mr. Briola stated there were two signs and only one sign was proposed and would read "Minute Clinic". The "Minute Clinic" sign would be 13 ½" in height, illuminated, LED channel letters on rails painted to match the building. On the drive-thru canopy, Mr. Briola stated signs had been proposed on all three sides of the canopy and that was reduced to two signs: One said "exit" and would be 9" in height, acrylic letters, mounted to the fascia, non-illuminated, and 9" letters reading "drive thru pharmacy" on the entrance through the canopy to let people know it was a drive thru pharmacy. There would be a 1' 8" x 2' 6" sign which would go on the brick pier as you would enter the drive thru (flat/aluminum) which would read "full service available both lanes". There would be a 2' ¾" by 7' ¾" sign mounted on the piers of the pylon sign. The panel would be non-illuminated and would read "Minute Clinic". The signage was designed to let people know that CVS had a small clinic inside which was a new service offered by CVS. There were four exit/entrance signs (15" tall by 30" wide) which would read "drive thru pharmacy enter/exit" to help direct traffic to the drive thru pharmacy. The directional signs would not be illuminated and would be aluminum, post signs. There would be a 4' x 8', temporary "Minute Clinic Coming Soon" sign to let people know the service was available.

Mr. MacMillan questioned how long the temporary signs would be up. Mr. Briola stated the temporary signs would be up for about 30 days. Mr. Briola stated they would like to place a "Minute Clinic Now Open" sign applied directly to that sign and would become a permanent sign.

Mr. Briola stated 225-sq. ft. was the maximum allowed based on a 2007 Zoning Code change. Mr. Emerson stated CVS was allowed 150-sq. ft. of primary frontage signage, and then 75-sq. ft. of secondary frontage signage. Mr. Emerson stated CVS was requesting 140-sq. ft. for the primary signage (150-sq. ft. permitted), but for the secondary frontage signage, 138-sq. ft. was being requested (75-sq. ft. permitted). Mr. Briola stated the signage, however, was "quite a bit less" than what was originally requested and because of the new service being offered by CVS, more signage was needed. Mr. Dutton stated that because CVS was 10 sq. ft. under the maximum on signage for the primary sign, they could carry that 10-sq. ft. over to the secondary sign (total of 85-sq. ft. permitted). Mr. Dutton noted that the primary frontage was considered to be on Back Orrville Road (which was the address of CVS pharmacy).

Mr. McIlvaine questioned when the building was constructed. Mr. Briola stated he was not certain.

Mr. Emerson questioned if CVS had considered signage which would meet the Code. Mr. Briola stated they looked at what was existing, and it was determined that it was not enough signage for the new Minute Clinic.

Mr. Emerson stated the intent of the Code was to "not have that much signage", and CVS was proposing words all over the building. Mr. Briola stated they had reduced signage from what had been originally proposed.

Mr. McIlvaine stated if the Board approved the request, the signage would need to be brought into compliance in 2022 per the current Zoning Code. Mr. Briola stated he would make CVS aware. Mr. McIlvaine stated CVS would be going through the changes/expense

now knowing that it would need to come into compliance in 7 years and meet the current Code.

Mr. Emerson noted that the Board had received a letter in opposition to the granting of the variance. Mr. Emerson noted that the letter stated, *"At this time, we do not see a reason for the area variance based on the goal of providing service to the community. Moreover, we are supporters of the current city's ordinances as they stand with the planning and zoning commission"*.

Mr. Emerson asked if there was anyone present to speak to the appeal.

Stewart Fitz Gibbon moved to adjourn to Executive Session. Ken Suchan seconded the motion.

Ken Suchan voted yes.

Gregg McIlvaine voted yes.

Doug MacMillan voted yes.

Stewart Fitz Gibbon voted yes.

Lukas Gaffey voted yes.

Tate Emerson voted yes.

Motion carried by a 6-0 vote.

Stewart Fitz Gibbon moved to come out of Executive Session. Ken Suchan seconded the motion.

Lukas Gaffey voted yes.

Stewart Fitz Gibbon voted yes.

Doug MacMillan voted yes.

Gregg McIlvaine voted yes.

Ken Suchan voted yes.

Tate Emerson voted yes.

Motion carried by a 6-0 vote.

Lukas Gaffey moved to approve signage as proposed for CVS, with the stipulation that signage must come into compliance in 2022. Mr. Gaffey stated even though CVS was still above the current allowable amount of signage, they were reducing the amount of signage from what currently existed.

Stewart Fitz Gibbon seconded the motion.

Lukas Gaffey voted yes for the reasons he stated previously.

Stewart Fitz Gibbon voted yes citing Mr. Gaffey's statement. Mr. Fitz Gibbon stated what the Board was really desiring was compliance with the Code in 2022.

Doug MacMillan stated if CVS had taken the big sign and "squeezed it down a little bit", they would have been in compliance. Mr. MacMillan stated, however, that he, too, would vote yes based on the signs being brought into compliance in 2022.

Gregg McIlvaine voted yes. Mr. McIlvaine stated he felt CVS should have better considered bringing the signs into compliance now, but it was their choice if they wanted to proceed knowing they would need to bring the signs into compliance in 2022.

Ken Suchan voted yes. Mr. Suchan stated he realized there had been a substantial reduction in signage, but there was still another 50-sq. ft. to go to be in compliance in 2022, and the larger signs on the property may be the place to go to make the reduction. (Mr. Suchan later clarified signage would need to be reduced by 53-sq. ft. to be in compliance.)

Tate Emerson voted no. Mr. Emerson stated he felt the signs should be brought into compliance and felt it was important to bring them into compliance now as part of adjusting the signs.

Motion carried by a 5-1 vote.

Appeal #2015-11. Ben and Susan Hibbitts requesting an area variance from Planning and Zoning Code Section 1133.03(c)(5) to allow the property to exceed the maximum lot coverage and Section 1133.07(b) to allow an accessory building, parking spaces and a driveway within the required side and rear setbacks at 938 Palmer Street in a R-2 (Single Family Residential) District.

Ben Hibbitts, 938 Palmer Street, stated he lived at the home the past two years and the original garage on the property was in disrepair and was removed and the area was used for parking. Mr. Hibbitts stated there was no off-street parking on Palmer, so anytime you had more than one vehicle on the property, you had to back out onto Palmer Street. Mr. Hibbitts stated he wished to construct a garage on the property and a parking pad would safely allow for a turnaround area for vehicles on the property instead of backing out onto Palmer. Mr. Hibbitts stated there was currently a fence on the north and west sides of the property which would be removed. On the north side, there was an existing flowerbed. Mr. Hibbitts stated he was asking for a 2' setback off the property line. Mr. Hibbitts stated he tried to put the garage in line with the current driveway to make it easier to access. Mr. Hibbitts stated the proposed building would be either steel or aluminum siding.

Mr. Emerson questioned if a 2-car garage was proposed. Mr. Hibbitts stated the garage was 32' x 24'. Mr. Emerson questioned why he could not meet the rear yard setback by moving the proposed garage forward 3'. Mr. Hibbitts stated he was trying to place the garage where he would still have a nice grass area/rear yard.

Mr. McIlvaine questioned what existed to the rear of the property. Mr. Hibbitts stated it was a rental property.

Mr. MacMillan stated he noticed another larger garage in the neighborhood. Mr. Hibbitts stated he thought that it was a 24' x 24' garage.

Mr. Suchan questioned if the adjacent lot was vacant or part of his property. Mr. Hibbitts stated it was vacant and was owned by the people he purchased the home from. Mr. Hibbitts stated it was not a buildable lot, and he would likely move forward in trying to purchase the lot at some point. Mr. Emerson noted that the lot coverage was nearly double what was permitted. Mr. Fitz Gibbon stated he if were to purchase the adjacent lot, it would solve a lot of the issues.

Mr. MacMillan questioned if the pad area could be reduced. Mr. Hibbitts stated whatever would be workable, but he would like to move forward with the request now as it was not a 100% guarantee he would get the property next door. Mr. MacMillan stated by moving the garage 3', he would then comply with the rear yard setback and would also reduce the distance to the driveway. Mr. Emerson noted the driveway was 17' wide which was why it was the same width as the parking pad was deep. Mr. MacMillan questioned why the driveway was 17' wide. Mr. Hibbitts stated the width of the proposed driveway and garage pad was the same as the one which currently existed. Mr. Fitz Gibbon stated in looking at the survey, the existing driveway looked to be 11' wide. Mr. Fitz Gibbon questioned the standard parking space size. Mr. Dutton stated 10' x 20'. Mr. Hibbitts stated it was tough to back out of the driveway, especially when it was dark.

Mr. Emerson questioned where the garage door would be located. Mr. Hibbitts stated it would be on the right hand side, facing the drive.

Mr. Fitz Gibbon stated it appeared that cars could back out onto the pad and go out front ways.

Mr. Fitz Gibbon questioned the general thinking behind coverage criteria and whether it related to drainage. Mr. Dutton stated it was a combination of drainage and aesthetics.

Mr. Emerson noted that the existing lot coverage was 1,924-sq. ft. which equaled 34% coverage which met the Code. Mr. Emerson stated the garage would add an additional 1,532-sq. ft. which would increase the lot coverage to 61%. Mr. Suchan noted that the 1,924-sq. ft. did not include the garage which had been removed. Mr. Suchan stated the old garage was 12' x 21'. Mr. McIlvaine questioned if he had reconstructed a garage on the former foundation if it would have been grandfathered. Mr. Dutton stated no.

Mr. Emerson questioned whether any trees on the lot would have to be removed in order to construct the garage. Mr. Hibbitts stated no.

Mr. Emerson questioned if Staff had received any calls/e-mails regarding the appeal. Mr. Dutton stated he received one call for information, but that he did not indicate whether he was for or against the appeal.

Mr. McIlvaine stated he was concerned with approving 61% lot coverage which was higher than what the Board had approved previously. Mr. Hibbitts stated he would be willing to do

what was needed to make it work. Mr. Hibbitts stated he could reduce the size of the garage to 24' x 24'. Mr. Suchan questioned if the pad needed to be squared off as proposed. Mr. Suchan stated there was a lot of concrete proposed and wondered if he would consider just providing a turnaround. Mr. Dutton stated a 24' x 24' garage would reduce the coverage to 57%. Mr. Hibbitts stated a 24' x 24' garage was workable, and if he purchased the adjacent lot, he could come back before the Board should he wish to make the garage larger.

Mr. Suchan stated the rear yard setback variance could be eliminated by putting the garage 5' off the property line and the garage could also be reduced to 24' x 24'; aligning the garage and the driveway with the old made sense. Mr. Suchan stated he would be in favor of having the driveway include a turnaround, but not necessarily having a huge pad in front. Mr. Hibbitts stated he was fine with the adjustments and wished to move forward. Mr. Emerson noted that by moving the garage to meet the rear yard setback, the driveway would be shorter which would also reduce the lot coverage.

Lukas Gaffey moved to approve the request with the stipulations that the 5' rear yard setback be met, that the garage be reduced to 24' x 24', and that the pad be reduced to 17' x 24' to be in compliance with the width of the garage.

Ken Suchan seconded the motion.

Ken Suchan voted yes.

Gregg McIlvaine voted yes.

Doug MacMillan voted yes.

Stewart Fitz Gibbon voted yes.

Lukas Gaffey voted yes.

Tate Emerson voted yes.

Motion carried by a 6-0 vote.

Appeal #2015-12. Linda Brenner requesting a use variance from Section 1133.02 of the Planning and Zoning Code to allow an unpermitted commercial use and an area variance from Section 1169.04(d)(1) to allow less off street parking than required at 817 East Bowman Street in a R-T (Traditional Residential) District.

Josette Momchilov, 2447 Wetherington Lane, Unit 112, was present. Linda Brenner, 817 East Bowman Street, stated she rented the property to use for a resale store with the understanding the property was still commercial. Ms. Brenner stated she now understood the property was zoned residential and was before the Board for approval. Mr. Fitz Gibbon stated the property was a non-conforming use which had lost its status.

Mr. Emerson stated the Board had received a letter in opposition to the granting of the variance.

Ms. Momchilov stated when she purchased the property, Bob's Meat Market was operating a business from the building. Jim Noletti stated Ms. Momchilov purchased the building in 2007 for her son who was killed. After some time, Ms. Momchilov decided she wanted to sell the building. The equipment she purchased from Bob Workman (Bob's Meat Market) was being used to operate the meat market by her son, but the tragedy created a number of issues for Ms. Momchilov. Mr. Noletti stated whenever he had someone interested in using the building, he would contact the City Planning Department as to viable possibilities. Mr. Noletti stated he tried to find potential tenants for the property that would be retail in nature.

Ms. Brenner noted that the main level was basically one open area. Ms. Momchilov stated there were two apartments located upstairs.

Mr. MacMillan questioned if the seven off-street parking spaces were to the east of the property. Mr. Dutton stated yes. Mr. Dutton stated the seven parking spaces, however, belonged to the property next door. Ms. Brenner stated the property owner next door said she could use the parking area. Mr. MacMillan stated when he went by the property, the parking area was full. Ms. Brenner stated that was because the tenants upstairs were home. Ms. Brenner stated there was parking available on the street in front of the building.

Bob Workman, the previous owner of 817 East Bowman Street and current owner of 825 East Bowman Street, stated the 7 parking spaces belonged to 825 East Bowman Street. Mr. Workman stated no one had contacted him about using the seven parking spaces in question. Mr. Noletti stated there was a recorded easement on record with respect to the parking. Mr. Noletti stated he had been marketing the property for the past 7+ years to get someone viable in to use the property. Mr. Emerson stated because there had not been a business at the property for the past year, by default the previous non-conforming status of the property was alleviated. Ms. Momchilov stated she purchased the building for her son who planned to use it for retail purposes, but he passed away about 10 days after she purchased the property. Ms. Momchilov stated since that time, she had been unsuccessful in selling the property. Mr. Suchan stated because the property had been vacant for quite some time, a use variance was now required since the non-conforming use status of the property was no longer valid. Mr. Noletti stated they needed to keep the building active to help sell the property.

Mr. Suchan questioned if the apartments were both accessible from the rear. Ms. Momchilov stated yes—via an outside staircase; both apartments were on the second floor. Mr. Suchan noted that the entire first floor was retail. Ms. Momchilov stated that was correct.

Mr. MacMillan questioned Mr. Workman as to whether he would consider allowing the retail business to use the parking on the property he owned (817 East Bowman Street). Mr. Workman stated no one had approached him about using that parking area, although people had been using it. Mr. MacMillan questioned where his tenants parked. Mr. Workman stated there was a small driveway that went to the home, but that they also had use of the parking area in question. Mr. Emerson noted that there was an alley separating the two properties. Mr. Emerson further noted it appeared as though the property in question was actually located in the alley. Mr. Noletti stated that was correct—that had been the case for about 60-70 years. Mr. Noletti stated a former owner, Mr. Eicher, owned both parcels, so it was not an issue but now the parcels are under separate ownership.

Mr. McIlvaine noted that the Board had received a letter regarding the property which indicated that the property was not kept up/was not very well maintained. Mr. McIlvaine further noted that the letter indicated that merchandise was being located outside as well. Ms. Brenner stated merchandise would not be located outside. Ms. Brenner further noted she would clean up the property—grass, leaves, dirt, etc.

Mr. Emerson questioned when the property was rented to Ms. Brenner. Ms. Brenner stated in January, 2015.

Sarah Meshew, 531 Gasche Street, stated her property backed up to the property in question along the alley. Ms. Meshew read a letter to the Board noting that there was trash collecting along the side of the building, there was a broken down vehicle with no license plates parked in the rear, and a seat from an automobile was sitting outside. Ms. Meshew noted that the items were visible from the alley next to the building which was not helping property owners in the neighborhood in maintaining the value of their homes. Ms. Meshew stated occupants of the building oftentimes parked in the alleyway making it, in some cases, impossible to access the alleyway. Ms. Meshew stated it was already difficult to exit the alleyway onto Bowman Street, and she expressed safety concerns in allowing additional vehicles to be parked in the proposed parking area for the business which would cause more blind spots and difficulty in exiting/entering the alleyway. Ms. Meshew stated a U-Haul had even been parked half on the sidewalk/half on Bowman Street in front of the building making it virtually impossible to turn west onto Bowman Street. Ms. Meshew stated the maintenance of the alley was in poor shape as well. Ms. Meshew stated she suspected Ms. Brenner was living in the property in the retail portion of the building. Ms. Brenner stated she oftentimes worked late into the evening. Ms. Brenner stated there was only one instance of the U-Haul being on the property and that was for unloading purposes; parking was not allowed on the west side of the alley. Ms. Brenner stated garbage was placed in garbage cans. Ms. Meshew stated it was now, but only after she had approached Ms. Brenner.

Mr. MacMillan again questioned Mr. Workman about the use of the parking spaces. Mr. Workman stated he had not been approached and because he had to maintain the parking area, he would like for someone to discuss that with him. Mr. Noletti stated when Ms. Momchilov purchased the property, she was told the parking spaces were available to be used for the business. Mr. Emerson stated it appeared the parking easement was no longer in place. Ms. Brenner noted that two houses up from where the store was (east) was a bar; another block past that was Bowman Beverage. Ms. Brenner noted there was also a barber shop and (inaudible). Mr. Noletti stated there were other businesses in that stretch of Bowman Street.

Doug MacMillan moved to adjourn to executive session. Lukas Gaffey seconded the motion.

Ken Suchan voted yes.

Gregg McIlvaine voted yes.

Doug MacMillan voted yes.

Stewart Fitz Gibbon voted yes.

Lukas Gaffey voted yes.

Tate Emerson voted yes.

Motion carried by a 6-0 vote.

Stewart Fitz Gibbon moved to come out of executive session. Ken Suchan seconded the motion.

Lukas Gaffey voted yes.

Stewart Fitz Gibbon voted yes.

Doug MacMillan voted yes.

Gregg McIlvaine voted yes.

Ken Suchan voted yes.

Tate Emerson voted yes.

Motion carried by a 6-0 vote.

Gregg McIlvaine moved to deny the appeal. Mr. McIlvaine stated the Board wanted to see a less intense use of the property when considering appeals such as this and that it be an improvement to the neighborhood, especially based on the complaints voiced by the residents. Mr. McIlvaine stated the needed parking was not provided. Mr. Dutton stated motions should be made in the affirmative.

Gregg McIlvaine moved to grant the appeal citing the comments that he previously noted.

Lukas Gaffey seconded the motion.

Lukas Gaffey stated in looking at the area and the building, the fact that it had been vacant for 8 years, that there was no parking and given the complaints from neighbors, he would vote no.

Stewart Fitz Gibbon voted no. Mr. Fitz Gibbon stated the criteria on the use variance worksheet had not been met, particularly about the use "adversely affecting rights of adjacent property owners".

Doug MacMillan voted no citing Mr. Fitz Gibbon's comments.

Gregg McIlvaine voted no.

Ken Suchan voted no. Mr. Suchan stated he did not feel the retail business could have the amount of parking that was required as there was no parking agreement. Mr. Suchan stated the use had ceased for many years.

Tate Emerson voted no. Mr. Emerson stated the criteria had not been met such as the “public safety and general welfare of the neighborhood” and the “intent of the Zoning Code”.

Motion failed by a 0-6 vote.

Ms. Momchilov expressed interest in demolishing the building.

Appeal #2015-13. Matthew Long of Critchfield, Critchfield and Johnston, Ltd. representing Milltown Pointe LLC, requesting an area variance from Planning and Zoning Code Section 1135.04(e) to allow principle buildings within required setbacks and within building separation requirements and to Section 1149.04(b) to allow nonconforming buildings to be reconstructed in the event they incur damage exceeding 50% at 3574 Melrose Drive in an R-4 (Multi-Family Residential) District.

Matthew Long, 225 North Market Street, agent for the owner Redwood Living, stated the buildings in question were permitted, non-conforming in their distances as they were built at a time when the Code was different. Mr. Long stated the property owners were in the process of refinancing through one of the Federal home programs for the apartment complex, and one of the criteria was verifying income for the project into the future. Because the Code had changed since it was originally built, absent a variance if any one of the buildings were destroyed, there was very little likelihood that the building would be able to be rebuilt and, as such, the lender considered the income associated with that to not be valid for underwriting the loan. The applicant was asking for a variance that would allow the buildings to be reconstructed if, in the unlikely event they were destroyed, following the exact same footprint, the exact same dimensions and the exact same use.

Mr. Emerson questioned when the apartments were constructed. Mr. Long stated one phase was constructed in 2002 and the other in 2005.

Mr. Emerson questioned the reason for the request relating to setbacks as they were already there. Mr. Long stated if any one of the buildings were destroyed by more than 50%, it would require a variance to reconstruct the building.

Mr. Long stated there were technically two variances on the table. If the Board granted any one of the two, the applicant was fine as the other one would become moot. Mr. Emerson stated if the Board granted the setbacks, then the applicant would no longer be non-conforming and could be reconstructed; if the Board granted the reconstruction, then the applicant could reconstruct the buildings but no larger than they were currently.

Mr. Emerson questioned if there was anyone who wished to speak for/against the appeal.

Stewart Fitz Gibbon moved to grant the variance as requested. Lukas Gaffey seconded the motion.

Ken Suchan voted yes.

Gregg McIlvaine voted yes.

Doug MacMillan voted yes.

Stewart Fitz Gibbon voted yes.

Lukas Gaffey voted yes.

Tate Emerson voted yes.

Motion carried by a 6-0 vote.

Meeting adjourned at 8:05 p.m.

Tate Emerson, Chairman

Laurie Hart, Administrative Assistant