

**MINUTES
BOARD OF BUILDING AND ZONING APPEALS**

October 3, 2013

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

MEMBERS ABSENT: Adrian Eriksen and Gregg McIlvaine

STAFF PRESENT: Andrew Dutton

I. MINUTES

Lukas Gaffey moved, Doug MacMillan seconded, to approve the Minutes of September 5, 2013 as received. Motion carried by a 5-0 vote.

II. PUBLIC HEARINGS

Appeal #2013-22. Jon McGuire of Village Services Inc. is requesting a use variance from Planning and Zoning Code Section 1149.03(c)(2) to expand a nonconforming use outside of the existing building in a C-2 (Neighborhood Business) District at 611 West Liberty Street.

Mr. Emerson indicated that the applicant asked that the matter be tabled until the Board's November meeting.

Pat Zoller moved, Ken Suchan seconded, to table the appeal for one month (to the Board's November 7, 2013 meeting). Motion carried by a 5-0 vote.

Appeal #2013-24. Thomas Palecek, for Annette Palecek, is requesting a substitution of a nonconforming use from a construction company to an auto detailing business in an R-T (Traditional Residential) District at 331 Lucca Street.

Mr. Emerson indicated that the applicant also asked that the matter be tabled for one month.

Pat Zoller moved, Ken Suchan seconded, to table the appeal for one month (to the Board's November 7, 2013 meeting). Motion carried by a 5-0 vote.

Appeal #2013-27. Douglas Drushal, for Ross Winkler, is requesting a use variance from Planning and Zoning Code Section 1143.02 to allow a prohibited residential use in an M-2 (General Manufacturing) District at 292 Branstetter Street.

Doug Drushal, attorney representing Ross Winkler, stated the Board did "pretty much the same thing" a year or two ago for the Columbus property on West Old Lincoln Way.

Mr. Drushal stated any reasonable person would conclude the property was miss-zoned—the area was zoned M-2 and predominantly included car dealerships and houses. Mr. Drushal indicated in the M-2 District, residential uses were not permitted, and the Winklers were having difficulty selling the house. Mr. Drushal noted that the buyer, who was a co-applicant on the application, could not get a bank loan because the bank said that the use was not legal and if the home burned down, it could not be re-built. Mr. Drushal stated while the home could be re-built with the permission of the Planning Commission, it was not a certainty. Mr. Drushal stated banks were unwilling to “take a chance” that the collateral would go away and what would remain would be a vacant lot. Mr. Drushal stated the applicant was asking the Board to make the property an unquestioned, legal use so that the buyers could get insurance and a bank loan on the property. Mr. Drushal stated there was absolutely no way the property or the other residential ones in that area would be developed in an “M-2 kind of a use”, and it would make no sense to buy even a whole bunch of the houses that were together for an M-2 use because you’d be paying hundreds of thousands of dollars per acre, and the lot depth was not enough for a manufacturing kind of use anyway on that side of Branstetter. Mr. Drushal stated the economic hardship was pretty clear and was not created by the applicant—the property was created by the City by miss-zoning it. Mr. Drushal stated the request would not affect the public health and would improve the area by keeping the houses and maintaining them; Mr. Drushal stated approving the variance would not have any impact on anyone else who was in conformance with the spirit and intent of the Zoning Code.

Mr. MacMillan questioned if the people living in the home currently were the ones looking to purchase the home. Mr. Drushal stated he believed so; the owner did not live in the home. Mr. MacMillan noted there were a lot of houses on Branstetter.

Mr. Suchan questioned when the residential use became a prohibited use in the industrial district. Mr. Suchan noted there was a time when all previous uses were permitted, and then residential uses were removed and those uses became non-conforming uses. Mr. Dutton stated he looked at the 1991 Zoning Code, and residential uses were prohibited. Mr. Suchan stated because of the way loans were structured these days, people had difficulty obtaining a mortgage on these types of uses.

Ms. Zoller questioned if the home had always been occupied or if it had ever been vacant for a period longer than a year. Mr. Drushal stated he believed it had always been rented.

Mr. Suchan stated he felt that the area was a “continuous neighborhood” as opposed to just a sole house. Mr. Suchan stated he could see some problem if there was just a single residence and whether or not to continue that under those circumstances, but he felt that the home in question had some cohesiveness with other homes. Mr. Drushal stated most of the homes in the area were similarly sized and reasonably well kept single family homes.

Mr. Dutton noted that the request, as outlined on the application, was for a “residential use” and questioned if the use was specifically that of a single family residential use. Mr. Drushal stated that was correct.

Mr. Emerson stated that by granting the variance, the Board was “setting the stage” for any one of the other residential properties in that area to come back and ask for the same variance.

Mr. Suchan stated in the 1970’s and 1980’s, there was a presumption that you could continue to have a residential use, make improvements to it, and sell it. Mr. Suchan stated the idea at that time was that by encouraging residential in an industrial area, it was creating a nuisance down the road. Over the years, however, he felt areas like this (Long Road/Geyers Chapel Road as well), had stayed well maintained, residentially.

Mr. Dutton stated 10 or more years ago, when bank regulations were looser, this was not a problem but since the financial collapse, the Planning Department had questions like this all the time.

Mr. Emerson questioned the explanation given in the narrative, item “f”. Mr. Drushal stated the house was constructed before there was any zoning.

Mr. Emerson questioned if Staff had received any inquiries regarding the appeal. Mr. Dutton indicated he had not.

Doug MacMillan moved, Lukas Gaffey seconded, to approve the request of Ross Winkler at 292 Branstetter Street of a single family residence as received.

Mr. Gaffey voted yes. Mr. Gaffey stated his reasons for voting yes was that this was not a change to the Zoning Code, and there were a fair number of residential homes in relation to the property in question.

Ms. Zoller voted yes.

Mr. Suchan voted yes. Mr. Suchan stated there was a real hardship for someone not being able to sell their home because of mortgage regulations which was a normal right that people had.

Mr. MacMillan voted yes. Mr. MacMillan stated it was pretty hard to tell someone that they could not sell an asset.

Mr. Emerson voted yes. Mr. Emerson indicated he felt the hardship had been clearly defined and all of the criteria had been met.

Motion carried by 5-0 vote.

Appeal #2013-28. Steven Benesh, for Frito-Lay Inc., is requesting an area variance from Planning and Zoning Code Section 1143.05(b) to allow an accessory structure taller than permitted in an M-2 (General Manufacturing) District at 1626 Old Mansfield Road.

Steve Benesh, Frito-Lay Inc., stated he was asking for Board approval in order to increase the height of an existing corn silo on site (two currently) which were 42 years old. Mr. Benesh stated in trying to find the best means for replacing the silo, they wished to erect a welded silo (currently they used bolted silos). Mr. Benesh stated the existing silos were 15' in diameter but because of their size, they could not be transported across the highway. Mr. Benesh stated the proposed silo would be 14' in diameter (for transport across the highway), necessitating the increase in height in order to keep the capacity they had for corn. Mr. Benesh stated all of the documents provided to the Board reflected a height of 77', but he had since obtained quotes, and the height requested was now 85'. Mr. Benesh noted that 14' was the maximum diameter you could transport across the highway; there was no issue with the height. Mr. Benesh stated the height was determined by the corn capacity needed for the silos. Mr. Benesh stated the manufacturer had indicated to him that in order to keep 350,000 lbs. of corn in the silo, an 80' silo, 14' in diameter, would be needed but that he was requesting 85' just for some leadway should it be needed. Mr. Benesh stated with a bolted silo, they were rubber sealed and rust areas primarily began in those locations which was why they wanted to erect a welded silo.

Mr. Emerson questioned if both silos would be replaced. Mr. Benesh stated only one silo would be replaced; the north silo was in good shape.

Mr. MacMillan questioned the Code restriction on height. Mr. Dutton stated the restriction was put in place to address potential aesthetic issues. Mr. Dutton noted that the "line had to be drawn somewhere" and that the restriction also applied to buildings. Mr. Benesh stated Frito Lay had eight silos on their property.

Mr. MacMillan questioned whether Staff had received any inquiries with respect to the appeal. Mr. Dutton stated no.

Mr. Suchan stated in July, 2013 the Board granted a height variance to the Daisy Corporation for 135'. Mr. Emerson noted that height variance was needed as part of Daisy's process in making its cottage cheese product. Mr. Emerson noted that only a small section of that building would be 135' in height - not the whole building.

Doug MacMillan moved to grant the request of Frito Lay at 1626 Old Mansfield Road as requested. Mr. Suchan questioned if the motion was to approve the height of 77'. Mr. Emerson noted that the request was actually for two silos at 77', and the applicant was now requesting one silo at 85'. Mr. MacMillan amended the motion to include a silo up to 85' in height. Pat Zoller seconded the motion.

Ms. Zoller voted yes.

Mr. Suchan voted yes. Mr. Suchan stated he felt the criteria had been met and not granting the variance would otherwise adversely affect the business.

Mr. MacMillan voted yes. Mr. MacMillan noted there were other existing silos on the property which were buffered by other businesses. Mr. MacMillan also noted that none of the surrounding businesses had voiced an objection.

Mr. Gaffey voted yes. Mr. Gaffey stated he was voting yes because of the option for longevity and to maintain current capacity.

Mr. Emerson voted yes. Mr. Emerson noted that the silos were well buffered, and he felt the intent of the Code would be maintained.

Motion carried by a 5-0 vote.

III. MISCELLANEOUS

Mr. Dutton questioned if the Board wanted Mr. Benson, Law Director, to give the Board a “refresher course” on any legal issues and give the Board the ability to ask him questions members may have. Board members indicated they felt that would be helpful. Mr. Dutton stated he would schedule it for the Board’s November meeting at 5:00 p.m. with the regular meeting at 6:00 p.m. Mr. Emerson asked Staff to have Mr. Benson review use variances the Board had acted on and provide feedback.

Meeting adjourned at 5:48 p.m.

Tate Emerson, Chairman

Laurie Hart, Administrative Assistant