

**MINUTES  
BOARD OF BUILDING AND ZONING APPEALS**

**September 5, 2013**

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

**MEMBERS ABSENT:** Adrian Eriksen, Gregg McIlvaine and Pat Zoller

**STAFF PRESENT:** Andrew Dutton

**I. MINUTES**

Doug MacMillan moved, Tate Emerson seconded, to approve the Minutes of August 1, 2013 as received. Motion carried.

**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 non-conforming use outside of the existing building in a C-2 (Neighborhood Business) District at 611 West Liberty Street.

Jon McGuire stated a variance was being requested to mount exterior blowers onto the West Liberty Carwash at 611 West Liberty Street. Mr. McGuire stated they would be mounted to the building exterior, and as the car would exit the carwash, it would dry the vehicle. Mr. McGuire indicated that if the dryers could not be installed, additional revenue would not be generated which was the biggest reason the dryers were needed. Mr. Emerson questioned if the carwash would still be profitable even if the dryers were not installed. Mr. McGuire stated that it could be, but for the amount of money that they planned to invest in the site, it may not be feasible without the dryers.

Mr. MacMillan questioned if the dryers would adversely affect the neighbors in the area. Mr. McGuire stated the dryers would not produce any more noise than the truck traffic that existed currently. Mr. McGuire stated the dryers would be taken out of service from approximately 8:00 p.m. or 9:00 p.m. until 7:00 a.m. or 8:00 a.m.

Mr. MacMillan questioned if he operated other facilities. Mr. McGuire stated yes—5 other locations. Mr. MacMillan questioned whether any existed in a residential area. Mr. McGuire stated yes. Mr. McGuire further stated that with the newer technology, it helped with the noise levels.

Mr. Suchan questioned if most other carwashes had dryers. Mr. MacGuire stated some carwashes were enclosed and others had dryers mounted to either the interior or exterior of the wall. Mr. MacGuire stated he looked into extending the bays and mounting the dryers inside, but he did not feel it was in the best financial interest to do that. Mr. MacGuire stated the dryers would have 3, 15 hp motors and the dryers would extend just a few feet from the wall; the building itself would not be expanded.

Mr. Emerson questioned if shrouding would be added to further reduce the noise. Mr. McGuire stated no, but indicated he would be willing to do that if need be. Mr. McGuire stated the motors could also

be mounted on top of the building in an enclosed area. Mr. McGuire indicated that the dryers would operate for 60 seconds but would shut off prior to that time if the vehicles exited more rapidly.

Mr. Emerson noted that a dryer was only proposed on one of the bays. Mr. McGuire indicated that was correct.

Mr. Suchan questioned if the zoning of the property had changed in the past 10-15 years. Mr. Dutton stated he was not sure.

Mr. Emerson asked Mr. McGuire for documentation which would indicate that without installing the dryers, the carwash would not be beneficial. Mr. McGuire stated he could get that documentation but did not have it with him.

Mr. Emerson questioned if there was a condition unique to the property which was not normally found in the zoning district. Mr. McGuire stated the carwash was the only one that existed in that particular area.

Mr. Emerson questioned whether the hardship was created by his actions. Mr. McGuire stated the non-conforming zoning of the facility was not created by him. Mr. Emerson questioned if he was aware of the non-conforming status of the property before purchasing the property. Mr. McGuire indicated he had not yet purchased the property but likely would not purchase it without the variance being granted.

Mr. Suchan questioned if the dryers were a normal part of a carwash business. Mr. McGuire stated 10-15 years ago, dryers may not have been such a necessity but were now part of what customers wanted. Mr. Suchan stated as with most businesses, there were technology upgrades over time.

Mr. McGuire stated he did not feel the dryers would adversely affect any of the adjacent property owners, and he would be willing to adjust the time of when the dryers were functional. Mr. McGuire stated he would also be willing to do an enclosed structure if the dryers were found to be a problem.

Mr. Emerson questioned if the Planning Department had received any calls regarding the request. Mr. Dutton stated he received one inquiry—neither for nor against.

Mr. Suchan questioned if the exit was towards North or Larwill Street. Mr. MacMillan stated the exit was towards Larwill Street. Mr. Suchan noted that Larwill Street was zoned residentially but noted that for years, vehicles had been exiting the site onto Larwill.

Mr. Suchan questioned whether the building was ever used differently—whether it had been converted to a carwash. Mr. McGuire stated the building was originally constructed as a carwash.

Mr. MacMillan noted that the Board was not permitted to consider financial conditions when evaluating a variance. Mr. MacMillan stated he felt the issue was that new technology was being created, and a business needed to keep up with the technology or buildings would become unused over time. Mr. MacMillan noted it would be difficult to do anything else with the lot given its size.

Mr. Dutton noted that there was another carwash located in a C-2 District located along Beall Avenue but was not self-serving. Mr. Suchan questioned where cashwashes were permitted. Mr. Dutton stated they were permitted in C-5 and M-1 Districts.

Mr. MacMillan noted that when customers exited the property, they had to immediately turn away from the residential properties (Larwill was one way), so it should not interfere “too much” with the residential area.

Mr. Suchan stated he felt the variance was the minimum necessary in that the applicant was not trying to expand the entire site but that only a small portion was being altered. Mr. McGuire further noted that no addition to the building was being requested—they were trying to work within existing areas of the building.

Mr. Emerson stated he was struggling with the idea that the dryers were needed in order for the business to be profitable. Mr. McGuire noted that the newest site he purchased two years ago was very similar to the property in question, but after adding the dryers and revamping the site, business increased by 55% within the first year. Mr. Emerson questioned if there were dryers on all of the car washes he owned. Mr. McGuire stated yes. Mr. McGuire stated for long term viability, the dryers were needed.

Doug MacMillan moved, Tate Emerson seconded, to enter into Executive Session. Motion carried by a 4-0 vote.

Ken Suchan moved, Doug MacMillan seconded, to adjourn from Executive Session and return to the public hearing. Motion carried by a 4-0 vote.

Mr. Emerson stated based on the criteria, the Board felt that evidence had not been submitted to support the criteria needed in granting a use variance. Mr. Emerson stated the Board was willing to table the request until its October meeting at which time the applicant could provide the Board with additional criteria.

Doug MacMillan moved, Ken Suchan seconded, to table the request to the Board’s October 3, 2013 meeting. Motion carried by a 4-0 vote. Mr. Emerson stated the Board wished for the applicant to complete the use variance worksheet so that it could better evaluate the appeal.

**Appeal #2013-23. Donald Rutt for Judy Mallonn** is requesting an area variance from Planning and Zoning Code Section 1133.03(c)(4) to exceed the maximum lot coverage requirement in an R-2 (Single-Family) District at 4374 Deer Creek Drive.

Don Rutt, building contractor, stated a sunroom was proposed to be constructed where an existing deck was currently located. Mr. Rutt noted that the deck was 12’ x 12’, and indicated a 12’ x 16’ sunroom was proposed. Mr. Emerson stated the existing lot coverage was 31.9%, and the lot coverage with the sunroom would increase to 32.5%. Mr. Rutt noted that the Homeowner’s Association within the development approved the proposed sunroom.

Mr. MacMillan indicated it appeared the lot in question was “a different size” from other lots within the subdivision. Mr. Rutt stated the lot was a corner lot and indicated that most of the homes did

exceed the maximum lot coverage under the current Zoning Code regulations. Mr. Rutt noted that the regulations in determining lot coverage had changed when the Zoning Code was updated (in 2007).

Mr. Rutt stated the sunroom could be constructed within the existing deck outline, but the sunroom was not viable at that size. Mr. Rutt stated the sunroom would be located to the rear of the home and would be visibly pleasing and would not adversely affect neighboring property values.

Mr. Emerson questioned if Staff had received any inquiries regarding the appeal. Mr. Dutton stated yes, but no direct opposition.

Mr. Suchan stated it was his understanding that prior to the Zoning Code update in 2007, the Code did not count hard surface areas towards coverage calculations. Mr. Dutton stated that was correct. Mr. Suchan stated it was likely that when the homes were originally constructed within the development, they were within the coverage regulations that existed at that time. Mr. Dutton stated that was correct. Mr. Suchan noted that many of the surrounding homes in the area already exceeded the coverage percentage that was being requested by the applicant.

Doug MacMillan moved, Lukas Gaffey seconded, to grant the request of Donald Rutt, on behalf of Judy Mallonn, for an area variance from Planning and Zoning Code Section 1133.03(c)(4) in order to exceed the maximum lot coverage requirement in an R-2 (Single-Family) District at 4374 Deer Creek Drive.

Ken Suchan voted yes.

Doug MacMillan voted yes. Mr. MacMillan stated he was in favor of the variance because it was a very minor increase. Mr. MacMillan further noted the variance had the support from the Homeowner's Association within the development.

Lukas Gaffey voted yes.

Tate Emerson voted yes. Mr. Emerson cited the same reasons for approval as outlined by Mr. MacMillan and noted the character of the neighborhood would be maintained and the lot coverage would be similar to other homes within the development.

Motion carried by a 4-0 vote.

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

Thomas Palecek, representing the owner of the property, stated the request was for the continuance of a non-conforming use. Costanzo Construction, Inc. began operating from this location in 1963, and their business included street construction, sidewalk construction, basements, and siding repairs. Mr. Palecek stated as part of that operation, Costanzo Construction had dump trucks, pick-up trucks, bulldozers, high lifts, semi's, and compressors and materials such as sand, stone, cement blocks, bricks, gravel, concrete forms, pipes, railroad ties, and railroad tracks. Mr. Palecek stated the business operated 7 days a week until Alfred Costanzo died in April, 2004. Thereafter, the property was rented to Carl Reese for a detailing operation. Mr. Palecek stated he felt the current use was less intensive than the construction company as there was no heavy/loud equipment or machinery which was being

used. Mr. Palecek stated the operations of the detailing business included cleaning and polishing cars onsite. Mr. Palecek stated the owner was unaware that a substitution was needed from the Board, and once the applicant was made aware of that, the owner filed for the variance now before the Board.

Mr. Palecek stated the size of the building had not increased; the area outside used for the business had not increased. Mr. Palecek stated during the nicer months, some of the detail work could be done outside.

Mr. Emerson questioned what prompted Staff to contact the owner of the property. Mr. Dutton stated he received a complaint as to the use of the property and the condition of the site.

Mindy Cavin, 324 Palmer Street, stated her property was directly behind the building in question. Ms. Cavin submitted pictures to the Board, none of which were older than June, 2013. Ms. Cavin stated she contested the fact of the property being used as a construction company. Ms. Cavin stated she moved to her home in April, 1996 and the building was vacant; very rarely did anyone ever come/go from the site. The grass was rarely mowed/maintained. Ms. Cavin stated that she recalled instances that when the door was open to the building, and nothing was being stored inside/it was vacant. Ms. Cavin noted that Costanzo Construction operated from Honeytown Road once it vacated the Lucca Street location.

Ms. Cavin noted that the Board should have received a letter from the Kryder's regarding the appeal (see file) who also attested to the fact that the building had been vacant for quite some time.

Ms. Cavin noted that the lawn had only been cut twice this year, once after a complaint was made to the City. Ms. Cavin stated wooden pallets were piled around trees and the building; there were disabled vehicles on the property "for years". Ms. Cavin stated the building was in disrepair and windows were boarded up; there was very little paint left on the building. Ms. Cavin stated disassembled refrigerators were placed up against the building and for a long time, there were tires piled up collecting water creating a mosquito issue. Ms. Cavin stated there were sometimes between 8 and 10 cars parked in the middle of Lucca Street making it difficult to pass through there in a vehicle, especially since Lucca Street was narrow. Ms. Cavin stated she had seen workers detailing cars in the street. Ms. Cavin stated while the building was currently zoned R-T, the building was zoned R-2 prior to the 2007 Zoning Code update. Ms. Cavin stated she felt the business should operate out of an area which was zoned for that purpose.

Ms. Cavin noted there was a similar building located within the neighborhood which was currently being used for storage of vehicles and indicated if the variance were not granted, a similar use for the building in question was possible.

Mr. MacMillan questioned Ms. Cavin as to when she began to notice business activity at the site. Ms. Cavin stated in the past three years, the activity had "ramped up" and she had made numerous calls to the City about the property for the past several years. Ms. Cavin stated the property was becoming increasingly unsightly—grass was not mowed; pallet storage outside. Ms. Cavin noted that Lucca was also a dead end street. Ms. Cavin requested that the Board deny the request.

Dick Berner, owner of property at 337 Palmer Street (AC Electric), stated that when he purchased the building in 1999, there was no construction company operating from the building at 331 Lucca Street.

Mr. Berner indicated he had looked at purchasing the building for storage but ended up bringing in trailers for his storage purposes. Mr. Berner stated he again looked at the building in 2004 and 2006 and indicated the building remained in disrepair and was not being occupied. Mr. Berner noted that he had been before the Board on several occasions, and had always followed the regulations in place for his building which was also a non-conforming use. Mr. Berner also indicated that he always tried to maintain his property, especially because it was located in a residential neighborhood, but indicated the detail business had a lot of junk cars/storage around the building and was not being a good neighbor.

Patricia Geib, 1123 Eastern Avenue, stated Costanzo Construction did operate from the Lucca Street property but that their main facility was on Honeytown Road. Ms. Geib stated the building was empty for many years and she did not realize that a detailing business had located in the building as it looked like a junk yard. Ms. Geib stated there were vehicles sitting outside without tires or wheels. Ms. Geib stated if they were going to operate a business from the building, it should not look like a junk yard. Ms. Geib asked the Board to deny the request.

Mr. Palecek stated they were not seeking a variance and felt that the detail business was a less intrusive use of the property. Mr. Palecek stated the owner of the property had submitted an Affidavit which indicated that Costanzo Construction had operated from the property through part of 2004. Mr. Palecek stated Al Costanzo, who was a shareholder of Costanzo Construction, ran a business in which he repaired railroad siding and tore down buildings and took items out of the building and stored them at the Honeytown Road location, but railroad siding, tracks and railroad ties were stored at the Lucca Street property. Mr. Palecek stated the detailing business was a less intrusive use of the property. Reese Detailing had been operating from the property since 2004. Mr. Palecek stated considering that Costanzo Construction had big equipment and lots of materials when they operated from the property, it was easy to see that Reese Detailing was a less intrusive use. Mr. Palecek noted that Costanzo Construction operated from the Lucca Street property for over 40 years.

Mr. Palecek stated his wife, Annette Palecek, who was a Costanzo, submitted an Affidavit attesting that Costanzo Construction operated from the building until 2004. Mr. Suchan noted that from 1963 until 2004, there was a business operating from the property. Mr. Palecek stated that was correct. Mr. Suchan noted that the residents had indicated that in 1996 or 1999, the building was vacant and they were looking to purchase it. Mr. Suchan questioned if the building was for sale in 1999. Mr. Palecek stated no.

Mr. Suchan questioned the duration for a non-conforming use ceasing. Mr. Dutton stated the limitation was 1 year. Mr. Palecek noted that the Affidavit submitted noted that there was not a break over 1 year. Mr. Suchan noted that the non-conforming substitution also occurred nine years ago and that Board approval was not obtained then for that substitution.

Mr. Emerson stated from what had been witnessed by the neighbors and the testimony which was given indicated, he felt the construction company was *less* intensive than the detailing business was. Mr. Palecek stated he felt the detailing business was less intensive given that the business entailed cleaning and polishing cars as opposed to hi-lifts, dump trucks, sand, gravel, tracks, ties and vehicles coming into/out of the site. Mr. Suchan questioned if the intensity of the construction business had changed over the years. Mr. Palecek stated there probably was less intensity with the construction company business in 2003 than there was in 1985.

Mr. Gaffey questioned if there were any bills of delivery from 2004 to the Lucca Street address. If they could provide those, Mr. Gaffey stated he felt that would help establish that the construction company business was still in use in 2004. Mr. Gaffey noted that the water bill on the property did not become effective until 2008 for the detail business, but questioned whether rental receipts could be provided for the detailing business beginning in 2004. Mr. Gaffey stated he wanted verification that the use had not discontinued, especially given the neighbors accounts of the activity at the property and their account that the building had been vacant/unused. Mr. Palecek asked the Board for a continuance to its October meeting, and he would present appropriate documents at that time to the Board.

Mr. Gaffey stated there were some "condition issues" with the property and noted that the zoning of the property was R-T.

Mr. Emerson stated from an intensity standpoint, he felt the applicant had to better address the intensity of the construction company business up until the time the property was used as a detailing business. Mr. Palecek stated the property was a legitimate non-conforming use and in 2004, the property was then rented by Reese Detailing. Mr. Palecek stated the question was whether the detailing business was less intrusive as opposed to the construction company. Mr. Suchan stated if the construction company business became one of only being used for storage, the question then became whether the detailing business was more or less intensive in relation to the building being used for storage. Mr. Gaffey stated the Board had to compare the intensity of the uses as outlined in Zoning Code Section 1149.03(1)(a) which stated, "*Whenever a non-conforming use is changed to a less intensive use, it shall not thereafter be changed to a more intensive use*". Mr. Gaffey noted that if the building was used by the construction company for storage, people would not be working out of there on a day-to-day basis. With the detailing business, vehicles were now coming in/out of the site daily and traffic was being impeded on the street, and he felt that was a more intensive use of the property.

Carl Reese, Reese Detailing, prior to his time renting the building, Costanzo Construction was operating from the building. The building was full of "all kinds of stuff", and it took the owner 3-4 weeks to get the items out of the building in order for him to rent it. Mr. Reese stated that the grass did not get cut like it was supposed to; and with regard to the crates being stored outside, he wished that the neighbors had approached him as he would have moved them. Mr. Reese stated someone dropped the crates off for him to burn in the winter time. Mr. Reese stated the green car had been sitting there a long time; the blue car had been there 6 months; the refrigerator was a neighbors who had asked him if he could put it with the other junk along the side of the building that was to be removed for scrap. Mr. Reese stated no one had ever complained to him. Mr. Reese stated one of the vehicles had been removed; the other car was there for parts.

Mr. Palecek questioned Mr. Reese if he had been using the property for his detailing business since 2004. Mr. Reese stated yes. Mr. Palecek questioned who worked with him in the detailing business. Mr. Reese stated his girlfriend and his four kids.

Doug MacMillan moved, Lukas Gaffey seconded, to adjourn into Executive Session. Motion carried by a 4-0 vote.

Lukas Gaffey moved, Doug MacMillan seconded, to exit out of Executive Session and return to the regular portion of the meeting. Motion carried by a 4-0 vote.

Doug MacMillan moved, Lukas Gaffey seconded, to table the request until the Board's October meeting.

Mr. Emerson stated the Board was tabling the matter so that information could be submitted to the Board which showed continuous use by Costanzo Construction up until the uses changed as well as providing information which illustrated the intensity level prior to the change of use.

Motion carried by a 4-0 vote.

**Appeal #2013-25. Joe Campbell for Condor Pacific Properties** is requesting an area variance from Planning and Zoning Code Section 1169.15(b) to allow for a gravel driveway surface and to Section 1181.09(a) to develop a property without the required sidewalk along the right-of-way in an M-2 (General Manufacturing) District at 2424 Long Road.

John Campbell, Campbell Construction, representing Condor Pacific Properties, indicated the applicant wished to withdraw the request for a gravel driveway surface and noted a 2" material would be placed instead.

Mr. Campbell stated the applicant would like to delay the installation of the sidewalk along Long Road until there was a sidewalk connection on the adjacent properties. Mr. Campbell noted there were no sidewalks along Geyers Chapel, Akron or Long Road currently. Mr. Campbell stated the applicant did not have a problem putting the sidewalks in if and when the sidewalks came down to and were contiguous to the property. Mr. Campbell stated the sidewalks would be something to maintain and there was a possibility since there still were some non-conforming residential properties in the area that children would have a tendency to come over and play on the sidewalks.

Mr. MacMillan noted that there was a lot of foot traffic on the sidewalks along Enterprise which was likely from the employees of the businesses who walked during their lunch hour. Mr. Campbell stated the sidewalk, if constructed on the Cordor property, would not be contiguous with Enterprise.

Mr. MacMillan questioned if there were sidewalks on the south side of the Daily Record property. Mr. Campbell stated no.

Mr. Campbell reiterated that Condor was asking that the Board grant them a variance so that they did not have to install a sidewalk now, but that they would install the sidewalk when the time came that the adjacent properties were developed. Mr. Emerson stated he was concerned that one of the adjacent property owners would request a similar variance from the Board.

Mr. Campbell noted that the new ODOT facility and Brasfond were new buildings which did not have sidewalks installed. Mr. MacMillan questioned if Buckeye Container was granted a variance relieving them of installing sidewalks. Mr. Dutton stated he did not believe so. Mr. Campbell stated at the time Parallel Design and TekFor was constructed, sidewalks were not required (prior to the 2007 Zoning Code).

Daniel Voltz, 2301 Long Road, stated he had lived at his property for 18 years and was there before Long Road was widened. Mr. Voltz stated after Long Road was widened, it was developed for Buckeye Container and TekFor. Mr. Voltz stated there was much more foot and bicycle traffic once the improvements were made to Long Road. Mr. Voltz stated he was concerned for the safety of the

residents in the area and on Eastwood Drive who used Long Road to exercise/walk. Mr. Voltz stated with the widening of Long Road, there was more truck and car traffic which presented a safety issue for the residents and felt sidewalks were important.

Mr. Suchan questioned if there was a sidewalk on the south side of Long Road. Mr. Campbell stated no.

Jim Jones, Chesterland Estates, 1516 Timken Road, stated his company developed Enterprise Parkway, and as he developed properties, sidewalks were installed. Mr. Jones stated that if the developer agreed to install the sidewalks once adjacent properties were developed, he felt that was a good alternative.

Mr. Emerson stated he felt the sidewalk should be installed once either side of the property was developed as opposed to at the time both adjacent properties were developed. Mr. Campbell agreed—as long as the sidewalk would be a continuation. Mr. Campbell noted that Condor owned the adjacent (corner) property, but the intent was to sell it as they did not need it for their facility.

Doug MacMillan moved, Lukas Gaffey seconded, to grant the request from Planning and Zoning Code Section 1181.09(a) to develop a property without the required sidewalk along the right-of-way in an M-2 (General Manufacturing) District at 2424 Long Road, contingent upon a formal agreement, financial guarantee or letter of credit being made to the City to complete the sidewalk when an adjacent property with sidewalk was installed.

Motion carried by a 4-0 vote.

Meeting adjourned at 7:45 p.m.

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**Tate Emerson, Chairman**

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**Laurie Hart, Administrative Assistant**