

## MINUTES

### CITY OF WOOSTER BOARD OF BUILDING & ZONING APPEALS

August 6, 2020

**I. MEETING CALLED TO ORDER AND ROLL CALL**

Stewart Fitz Gibbon, Chairman of the Board of Building and Zoning Appeals, called the meeting to order. Board members Stewart Fitz Gibbon, Brad Gowins, Doug MacMillan, Gregg McIlvaine, Mark Reynolds, and Ken Suchan were present at the meeting. Board member Andrew Dutton, Planning and Zoning Manager, was present representing the City of Wooster.

**II. APPROVAL OF MINUTES**

Ken Suchan made a motion to approve the July 2, 2020, regular meeting minutes. Brad Gowins seconded the motion. The motion passed unanimously 6-0.

**III. PUBLIC HEARINGS**

***Application #BZA-20-18.***

Chad Brockett requested an Area Variance to Planning and Zoning Code Section 1115.03(a) to allow a new home within required side yard setbacks at 1053 Ashwood Drive (Parcel Number 68-01057.000) in an R-1 (Suburban Single-Family Residential) zoning district.

Chad Brockett, 1905 State Route 89, Jeromesville, stated that the variance was to have 6 foot setbacks on both sides of the house. Mr. Brockett explained that the lot was small and the front setback would be 50 feet from the road, which would align with the house to the east. He noted that the lot was tapered in the rear, which reduced the side yard. Mr. Brockett explained that the owner would like to keep as much of the backyard as possible. Mr. Brockett stated that he would be willing to get the property surveyed if there were any discrepancies.

Mr. Fitz Gibbon asked if anyone from the public would like to address the Board regarding the application.

William Gibb, 1052 Ashwood Drive, stated the following:

This is not a neighborhood that is recently established. Comparing a house built today in a neighborhood is not the same as a house built 30-50 years ago. So Chad is willing to pay for a boundary survey? The boundary survey question is in the east side (where trees were taken down).

FYI, this lot and the adjoining lot + house were both sold during auction after the stay at home order was put in place late March

Mr. Brockett stated that most of the lots in the neighborhood tapered from the back to the front. Mr. Brockett explained the subject lot tapered from the front to the back, providing limited space.

Mr. Fitz Gibbon closed the public hearing.

Doug MacMillan moved to adjourn to Executive Session. Brad Gowins seconded the motion. The motion passes unanimously, 6-0.

Doug MacMillan moved to come out of Executive Session. Ken Suchan seconded the motion. The motion passed unanimously, 6-0.

Ken Suchan made a motion to approve application BZA-20-18, as presented with the condition that before construction, a boundary survey shall be completed by the builder. Doug MacMillan seconded the motion.

Ken Suchan voted yes and stated that the proposal met all other code regulations and the setback on each side was at least 5 feet from each property line. He added that the lot was an unusual shape.

Doug MacMillan voted yes for reasons cited by the Board.

Gregg McIlvaine voted yes and stated that the proposal was the best use for the lot.

Brad Gowins voted yes and stated that the variance would not change the characteristics of the neighborhood. He explained that the area was zoned R-1 for single-family homes and noted there were special circumstances due to the shape and size of the lot.

Mark Reynolds voted yes for reasons cited by the Board.

Stewart Fitz Gibbon voted yes and stated that the individual side setbacks were greater than the minimum. He noted that the builder made an effort to try to fit the house on the lot as best as possible by pushing the house back.

The motion passed unanimously, 6-0.

***Application #BZA-20-19.***

Kathy Bressi requested an Area Variance to Planning and Zoning Code Section 1113.01(e)(8)(D.)(ii.) to allow fencing without a unified color at 124 Cannon Drive in an R-1 (Suburban Single-Family Residential) zoning district.

Kathy Bressi, 124 Cannon Drive, was present at the meeting, however, was unable to communicate due to technical issues. Mr. Dutton stated that the city was installing a bike path on the west side of Burbank Road running from Milltown Road to the Wayne County property. He explained that the city had taken out the large trees on Mrs. Bressi's property for the project. Mr. Dutton continued that the proposal was to install a 4 foot black metal fence. Mr. Dutton stated that the Planning and Zoning Code required all fencing on a property to be unified color and noted that there was an existing white privacy fence in the rear of the property.

Mr. Fitz Gibbon asked if anyone from the public would like to address the Board regarding the application. No one from the public was present to comment on the application and Mr. Fitz Gibbon closed the public hearing.

Mark Reynolds made a motion to approve application BZA-20-19, as presented. Brad Gowins seconded the motion.

Mark Reynolds voted yes and stated that the purpose of the code was to prevent a mismatch fence. He continued that the existing white solid fence was on the other side of the property and the proposed decorative fence was not near it.

Brad Gowins voted yes and stated that the Board had historically approved similar variances if there had been a separation of the different styles.

Gregg McIlvaine voted yes for reasons cited by the Board.

Doug MacMillan voted yes for reasons cited by the Board and stated that the type of fence was attractive.

Ken Suchan voted yes for reasons cited by the Board.

Stewart Fitz Gibbon voted yes for reasons cited by the Board and added that there were unique circumstances as the front of the property was affected by a public project.

The motion passed unanimously, 6-0.

***Application #BZA-20-17.***

Charles Hamilton appealed the Planning Commission's decision to approve Conditional Use application PC-20-14 for building additions to a place of worship at 3186 Burbank Road in an R-1 (Suburban Single-Family Residential) zoning district.

Stewart Fitz Gibbon stated that the Building and Zoning Appeals Board was responsible for hearing appeals regarding the City of Wooster Planning Commission. Mr. Fitz Gibbon explained that the representatives present were John Scavelli, City of Wooster Law Director, Kevin Gibbons, City of Wooster Assistant Law Director, and Louise Keating, representing the Unitarian Universalist Fellowship of Wayne County.

Charles Hamilton, 1031 Cannon Drive, stated that if the Planning Commission meeting had been held in person, he would have been able to express himself more fully. Mr. Hamilton continued that he was appealing the fact that he was not allowed to present his position at the time of the meeting. He continued that he understood that due to the pandemic and the Governor's ruling, the city was allowed to handle meetings virtually.

Mr. Hamilton stated that some information presented by the church at the Planning Commission meeting was incorrect. Mr. Hamilton explained that the parking lot was expanded in 2008, not 2005, as indicated. Mr. Hamilton continued that the original parking lot was constructed in 2005. Mr. Hamilton explained that in 2008, the church tore out the previously approved permeable parking and installed concrete.

Mr. Hamilton stated that the detention pond was allowed to hold water, but explained that the detention pond was designed and maintained not to hold water. Mr. Hamilton continued that he had a maintenance complaint because the church agreed to maintain the pond and the pond had not been maintained. He noted that the pond was operating properly in the beginning, but was no longer functioning correctly.

Mr. Hamilton explained that Planning Commission member Mike Steiner asked the church if the neighbors had brought up any issues before the proposed expansion. Mr. Hamilton stated that there were complaints submitted by the neighbors to the church over the last 15 years concerning drainage, fencing and lighting. Mr. Hamilton explained that there was documentation from the neighbors.

Mr. Hamilton continued that the church was in violation of the City Ordinances and the expansion would further exacerbate the problem. Mr. Hamilton stated that there was a mound on the south side of the church's property and half of the water ran onto his property. Mr. Hamilton continued that the neighbors on Cannon Drive sent a petition opposing the application.

Louise Keating, 141 East Liberty Street, stated that she represented the Unitarian Universalist Fellowship of Wayne County. She also introduced Peter Schantz, builder and building committee member for the fellowship and John Long, Civil Engineer from Shaffer, Johnston, Lichtenwalter & Associates, Inc. She noted that Mr. Long prepared the initial engineering when the church was built in 2005 and also the engineering studies for the proposed expansion.

Mrs. Keating stated that a traffic study was not required by the city for the project and was not necessary. Mrs. Keating stated that noise was not an issue because the fellowship conducted most of their business indoors. Mrs. Keating explained that there were no proposed changes to the traffic pattern or parking. Mrs. Keating stated that all traffic would continue to enter and exit from Burbank Road, which was a major north/south artery in the city. Mrs. Keating continued that the expansion would accommodate the population that had joined the church in the past 15 years.

Mrs. Keating stated that the church was required to have a professionally prepared engineering study to demonstrate that stormwater generated from the property was managed and contained. Mrs. Keating explained that existing stormwater basins were designed to manage and contain stormwater. Mrs. Keating continued that the opinion of the engineers was that water from the church's property was not exiting onto neighboring properties. Mrs. Keating noted that the stormwater basins were not designed to be visually appealing or manicured and it was more important that they perform their function of capturing stormwater.

Mrs. Keating stated that the church would address issues with fencing as part of the building project. Mrs. Keating continued that fencing and mounding were put in place to control and reduce headlights shining into back yards. Mrs. Keating stated that the Planning Commission required the construction of a continuous solid fence from the westernmost parking spot to the easternmost parking spot. Mrs. Keating explained that the church regretted that the deterioration of the fence had caused distress to the neighbors. She noted that when the expansion was proposed, neighbor's concerns regarding mowing and the stormwater basin were reviewed. Mrs. Keating stated that an ongoing dialog would be established so that the neighbors will be kept informed as other things were done on the property.

John Scavelli, 538 N. Market Street, stated that the appeal was for the Planning Commission's granting of a conditional use permit. Mr. Scavelli continued that conditional use permits were governed by specific criteria within the codified ordinances of the City of Wooster. Mr. Scavelli stated that instead, Mr. Hamilton focused on two separate issues. He noted that the first, property maintenance, was not part of the Commission's approval. Mr. Scavelli indicated the second issue was that Mr. Hamilton was not heard based on the Zoom meeting.

Mr. Scavelli explained the conditional use criteria and indicated that none of the criteria had anything to do with property maintenance. He continued that evidence not related to the criteria should not be considered in the Planning Commission. Mr. Scavelli explained that there was nothing sufficient to appeal and asked that the part of the appeal be denied.

Mr. Scavelli continued that the electronic meeting section was more complicated and noted that the Board meeting took place on Zoom due to the COVID-19 pandemic. Mr. Scavelli stated that because of the pandemic, the Ohio legislature enacted a temporary public meeting law until the end of the pandemic, or until December 1, 2020, whichever was earlier. Mr. Scavelli indicated that the law only required the City to provide public access to the meeting in order to interact. Mr. Scavelli continued that the public participants were required to have access to evidence. Mr. Scavelli stated that the applicant was invited into the Zoom meeting and then anyone else could attend on YouTube. Mr. Scavelli explained that all of the evidence was available to the neighbors and was presented during the Commission's meeting. Mr. Scavelli stated that the electronic part of the appeal issue should also be denied.

Mr. Fitz Gibbon asked if anyone from the public would like to address the Board regarding the application. No one from the public was present to comment on the application and Mr. Fitz Gibbon closed the public hearing.

Gregg McIlvaine moved to adjourn to Executive Session. Brad Gowins seconded the motion. The motion passes unanimously, 6-0.

Gregg McIlvaine moved to come out of Executive Session. Mark Reynolds seconded the motion. The motion passed unanimously, 6-0.

Mr. Fitz Gibbon stated that the Board would consider the appeal in two parts. Mr. Fitz Gibbon explained that the first motion would be if the Planning Commission properly considered the merits of the maintenance issues raised regarding the conditional use. Mr. Fitz Gibbon continued that the second motion would be if the Planning Commission held a proper public meeting. He noted that each would be voted on separately.

Ken Suchan made a motion to approve the first part of the application BZA-20-17 regarding if the Planning Commission properly considered the merits of the maintenance issues raised regarding the conditional use. Gregg McIlvaine seconded the motion.

Brad Gowins voted yes and stated that he believed the Planning Commission addressed concerns and spoke to the members of the church about the concerns.

Mark Reynolds voted yes and stated that the Planning Commission addressed the merits of the maintenance issues that were presented by the application.

Ken Suchan voted yes and stated that the record showed that the Planning Commission heard all of the residents and included a condition regarding maintenance issues.

Doug MacMillan voted yes and stated that he felt compassion for the neighbors and their maintenance problems. He continued that neighbors should approach the city about those maintenance issues.

Gregg McIlvaine voted yes for reasons cited by the Board.

Stewart Fitz Gibbon voted yes for reasons cited by the Board. He continued that the Planning Commission adequately considered maintenance issues and made fence maintenance a condition of the conditional use approval. Mr. Fitz Gibbon also noted that maintenance issues could be addressed by the City Departments.

The motion passed unanimously, 6-0, upholding the Planning Commission and denying the portion of the appeal.

Brad Gowins made a motion to approve the second part of application BZA-20-17 regarding if the Planning Commission conduct a proper public meeting. Mark Reynolds seconded the motion.

Brad Gowins voted yes and stated that a legal public meeting and public hearing had been conducted within the standards passed earlier in the year by the State Legislature.

Mark Reynolds voted yes and stated that the meeting was lawful. He noted that given everything that was going on, it may not have been the perfect setting for a meeting, however the city met all the requirements to make it a legal public meeting.

Ken Suchan voted yes and stated that the city met all of the criteria for a public meeting during the COVID-19 crisis.

Doug MacMillan voted yes and stated that the meeting did meet all of the criteria that were set up by the state.

Gregg McIlvaine voted yes and stated that the meeting met the legal requirements.

Stewart Fitz Gibbon voted yes for reasons cited by the Board. He stated that the methodology adopted by the state for COVID-19 didn't yield the same type of public meeting that everyone was used to. He continued that the City, City Boards and City Council all worked very hard to make sure that the public was heard.

The motion passed unanimously, 6-0, upholding the Planning Commission and denying the portion of the appeal.

**IV. ADJOURNMENT**

Doug MacMillan made a motion to adjourn. Brad Gowins seconded the motion. The motion passed unanimously, 6-0.

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**Stewart Fitz Gibbon, Board of Building and Zoning Appeals Chairman**

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**Carla Jessie, Administrative Assistant**