

MINUTES OF THE  
FAIRFIELD BOARD OF ZONING APPEALS

December 3, 2014

Ron Siciliano called the Board of Zoning Appeals hearing to order at 6:00 p.m. at the Fairfield Municipal Building, 5350 Pleasant Ave.

Roll Call

Lynda McGuire, Secretary, called the roll of the Board of Zoning Appeals. Present members were Jack Wessler, Greg Porter, Joseph Koczeniak, Mike Stokes, Ron Siciliano and Scott Lepsky. Rick Helsinger, Building Official and John Clemmons, Law Director were also present. Motion to excuse Mike Snyder carried 6-0.

Pledge of Allegiance

Minutes of the Previous Meeting

The minutes from the Board of Zoning Appeals meeting held on November 5, 2014 were approved. Motion carried 6-0.

Motion to move Old Business to the end of the meeting carried 6-0.

New Business

**Case No. BZA-14-0030 – Accessory Structure in side yard setback – 2629 Windage Dr.:**

Philip Trimboli is requesting a variance to construct a 10 x 12 shed in the side yard setback of the property. The proposed shed will replace the existing shed, in the same location.

STR had no comment on this case.

Property Owner's Comments

Philip Trimboli spoke regarding the variance. He wants to replace the shed that has been in that location for 30 years. The existing shed has been flooded out at least three times and is falling apart. He plans to concrete the drive and put the shed on the new concrete. Mr. Siciliano asked if the flood issue has been resolved. Since the flooding, the city has put in a 48" pipe to divert the water. There was discussion on placing the shed in the rear yard. The yard is on a hill and slopes downward to the creek. The shed would need to be elevated in the air. Mr. Helsinger agreed that the yard drops off pretty well in the back. Mr. Wessler asked how far from the property line the existing shed sits. Mr. Trimboli's fence sits about one foot inside the property line; the shed is approximately 6 and a half feet from the property line.

Public Comment

Mark Parker, Development Manager, spoke regarding the variance. The house was built in 1972. There have been several floods in this area, but it is not mapped in an "A" zone. In close proximity, there has been major run offs. Public Works has upgraded the piping; there hasn't been a flood event since 2003. Mr. Parker issued Mr. Trimboli a zoning violation on his existing shed for exterior blight; he would like to see the variance approved so it can be cleaned up.

There was discussion on the type of construction for the proposed shed. It will be wood, with shingles. It will be painted to match the house once it is completed.

Board Re-Convened

Mr. Siciliano said he is typically against these types of variances, but he is willing to consider it this time to take care of the blight issues on the property.

Scott Lepsky, seconded by Jack Wessler, made a motion to approve the variance, with the stipulation that the finished shed must match the décor of the existing home. Motion carried 6-0.

**Case No. BZA-14-0031 – Monument sign height to exceed 24 feet- 7200 Dixie Hwy.:**

Joshua Yauger, for Furniture Fair, is requesting a variance to raise a monument sign height from 24 feet to 32 feet.

STR had no comment on this case. Mr. Helsinger clarified that the sign measurement is taken from grade within 10 feet of the proposed sign.

Property Owner's Comments

Joshua Yauger, Bill Daniels and Steve Daniels, of Furniture Fair spoke regarding the variance. Mr. Yauger said that the sign contractor told him that the measurement is taken from the lowest point in the lot, which is the catch basin. Section 1187.02 (h) of the zoning code states “”Sign Height” shall be measured from the lowest horizontal surface grade immediately within ten feet of the base of the sign to the top of its highest element, including any structure element.” There was discussion on the sign design and measurement. The roof is being redesigned, with the peak being lowered. The sign is currently being redesigned; there is no plan submitted yet, they are waiting until they know if the variance will be approved. The current sign is about 25 feet tall. Mr. Williams said the peak is important because it ties in with the rest of the remodeled building. They plan on removing the existing sign when the new sign is installed.

Public Comment

None

Board Re-Convened

Mr. Siciliano said they are doing a good job of improving the lot. Mr. Wessler said he doesn't understand why they wanted the extra height. The LED portion of the sign can be touched from the ground if you stand underneath it. They have invested a substantial amount of money in the sign and they are concerned about vandalism.

Mr. Lepsky said that it is back far enough from the setback not to pose a safety issue; he has no problem with it.

Scott Lepsky, seconded by Mike Stokes, made a motion to approve the monument sign to 32 feet at the peak, as shown on the submitted drawing. A new plan will need to be submitted to the Building Division for approval, showing the revised height, construction and wind loads. Motion carried 6-0.

**Case No. BZA-14-0032 – Fenced outdoor seating area – 1115 Magie Ave.:**

Sandra Coffey, for the Elbo Room, is requesting a variance to designate an outdoor fenced area for smoking.

STR had recommended Fire Department approval on parking behind the building in relation to the fence. They approved the submitted plan after visiting the site.

Property Owner's Comments

Sandra Coffey spoke regarding the variance. Her original request was for an 8 foot by 32 foot vinyl fence; she wants to modify her request to 6 foot by 32 foot. Mr. Porter asked if she planned on having seating in the outdoor area. She plans on placing benches or a table in the fenced area. There will not be speakers installed or outdoor music in the fenced area. Mr. Wessler asked if her customers parked in the back of the building. There is parking for customers behind the building as well as a back entrance. The building has lighting in the back in the area in question. He said he was impressed that her neighbors signed a petition in favor of the variance.

Public Comment

None

### Board Re-Convened

Mr. Siciliano said he has a problem with the request; he doesn't think it works back there because of traffic. Mr. Porter said that as long as the Fire Department feels safe with the request, he has no issues.

Scott Lepsky, seconded by Jack Wessler, made a motion to approve the variance for a 6 foot by 32 foot fenced area, with the stipulation that no outdoor music is made available. Motion carried 5-1, Ron Siciliano dissenting. Motion to waive the five day waiting period carried 6-0.

### New Business

#### **Case No. BZA-14-0029 – Use Variance to operate used car dealership/car repair in the M-2 zoning district – 3120 Production Dr.:**

Michael Jacobs, Esq., on behalf of the owners of the property, is requesting a use variance to allow a car dealership in the M-2 zoning district. This case was tabled from the November 2014 meeting.

STR recommended that the board refer to the memo dated 12/2/14 from Tim Bachman, Development Services Director. (Exhibit E)

Scott Lepsky, seconded by Ron Siciliano, made a motion to remove this case from the table. Motion carried 6-0.

Mr. Bachman stated that he added letters to the 4 aerial photos submitted by the applicant, detailing the proposed parking and ingress/egress plans: A-1, A-2, B-1 and B-2. (Exhibit 5)

Everyone remains sworn in from the last meeting.

#### Property Owner's Comments

Michael Jacobs, Attorney, 246 High St. Hamilton, OH spoke regarding the variance. He stated that he requested any correspondence be sent to him at least 48 hours before the meeting. The memo was emailed to him early on December 2.

Michael Dingledein, Architect, 236 High St. Hamilton, Ohio, was sworn in. He has a Bachelor's and Master's degree in Architecture from Miami University, as shown in his biography, which was submitted as Exhibit 4. Mr. Jacobs referenced Exhibit 5 on the slideshow. The options presented in the four plans are kept within the property lines. All of the versions allow for emergency access. Mr. Jacobs submitted the Hamilton County Parking Standards (Exhibit 6) to the board. There was discussion regarding the ingress and egress, directional traffic patterns and parking orientation of the 4 options in Exhibit 5. There were no changes made to the curb cuts. Another alternative was also submitted (Exhibit 7). This option does not rely on perimeter use like the other 4. All traffic is on 3120 Production Dr. There is room in the back of the lot to turn around and for employee parking. There are 3 parking spots in the front for potential customers. They would need to back in those spots. Mr. Stokes asked for clarification on number of parking spots in this option; he counts 18; 3 being potential customer spots. Mr. Wessler asked about the parking orientation on the south end of the lot. His calculation shows they are 45 degrees, and mathematically, the figures in Exhibit 7 do not work out properly. The new calculation leaves 14 spaces in this option. Mr. Jacobs questioned Mr. Dingledein. He is familiar with Production Drive. He has an urban revitalization practice in Hamilton, and has 30 years of experience dealing with public planning. His job includes finding uses for unused locations and find good uses for current buildings. The alternative is demolition or vacancy. To do this, he takes into consideration the occupancy that is allowed, the physical size of the lot and building, whether or not the new use fits in with the adjacent businesses. His opinion on the property at 3120 Production Dr. and the use they are proposing is that it is consistent with the area; Route 4 is a used car destination that draws regional traffic. It is a fitting use for the property in relation to the adjacent properties. There is adequate space for emergency vehicles to enter and exit the property. He finds no adverse effects to traffic on Production Dr. from this business.

Mr. Clemmons questioned Mr. Dingledein. He asked if he has ever designed used lots or had experience with lots in Hamilton. He has not. He asked if most used lots have a larger display area in front of the building. The precedent Mr. Dingledein has noticed in Hamilton is that the lots are smaller and require a tighter distribution to fit more cars in the lot. Mr. Clemmons discussed the retention wall that is on the adjacent property, as seen in Exhibit 7. This will require the cars to be displayed behind the wall and you will only be able to see the tops of the cars. The view from Route 4 is not advantageous. Mr. Clemmons asked if he thought they were trying to force a car lot on a piece of property where it doesn't work. Mr. Dingledein said it wasn't his role to determine whether or not their business plan is a good idea. There are many examples of awkward lot configurations up and down Route 4; the market exists in this area. Mr. Bachman pointed out that the property line is missing on Exhibit 5 between 3140 and 3132 Production Dr.; they are proposing using the property at 3140 for ingress and egress without permission. He asked for clarification on Exhibit 7. He is confused about how traffic will flow and park, and how the front parking spots will be accessed. Mr. Dingledein stated that their preference is perimeter ingress and egress, but given the amount of traffic, the impact will be minimal. There was discussion regarding Exhibit 7 with regard to traffic flow and parking orientation. Mr. Bachman asked if they had permission from 3140 Production Dr. to use their lot. They have room without driving on 3140 Production Dr. They have the room if they angle the parking. He said there is plenty of space for emergency vehicles between 3140 and 3132. Mr. Jacobs said usually it is acceptable to drive on the center of the property line of the adjacent property.

Alex Guzman, 3132 Production Dr., was questioned. Mr. Jacobs asked him how he could advertise the new business. He could use internet advertising, direct mail, newspaper ads and word of mouth. The ability to drive people to the location would not rely solely on onsite advertising.

#### 5 MINUTE BREAK

Mr. Bachman referenced Exhibit E. Mr. Jacobs asked that he restrict his testimony to new issues only. Mr. Lepsky pointed out that this is a tabled case and it was to be expected that the comments from the previous meeting would be discussed. Mr. Porter noted that this memo was almost identical to the previous memo, save the first couple paragraphs. He asked if it is feasible to stick to the new information. Mr. Bachman agreed that the memo was very similar, and he would try and address the mainly the new information. Mr. Clemmons noted that there was some new pictures and information included in the memo and Mr. Jacobs was provided the information yesterday morning. Mr. Kozceniak stated that this was not a court of law; it is a Board of Zoning Appeals meeting. They can ask questions and rehash anything from the previous meeting. Mr. Bachman discussed Exhibit E. The variance they are requesting is a use variance, and there are several points to discuss. Circulation and parking are but one issue; there are many others. The pictures taken today show cars parked both ways, perpendicular and parallel, and there is parking in the right of way. To make one way circulation work, he really needs those three lots; one of which he doesn't have permission to use. Visibility is an important issue. The retaining wall is an issue, parking in the right of way is an issue even today; he suspects that will continue to occur. Advertising in the right of way is a concern. If you go up and down Route 4, you see those issues with this sector of the industry; with new and used car lots. Carl's Fine Cars/Weaver Barns may also be an issue regarding visibility. The visibility is ok today, but they may move the barns on the lot, which will block the cars. He asked the board to look at the overall aerial; Production Dr. is made up of similar lots built in the 60's-70's, that are made up of small warehouses and small parking lots. Does approving this variance set precedent for these similar businesses in the industrial zones? The city has been wrestling with the issues of car lots, sheds and the like on Route 4 for over a year. The market dictates the use, but the properties are being forced into this use when they are not good for this use. The configuration of this lot does not allow a car lot. There was discussion on the changes to the code regarding the changes from Permitted Uses to Conditional Uses. Mr. Kozceniak asked if the city had a specific plan for this area. Not that he is aware of; what you see is what you see. Mr. Kozceniak asked what the city's position would be if something such as a restaurant, boutique or florist shop wanted to locate to this building. Mr. Bachman stated that 10-12 years ago a taco stand was approved as a conditional use, for a lunch options for the surrounding businesses in the industrial subdivision. They would be looked at on a case by case basis. Mr. Siciliano discussed whether the 3132 and 3120 could possibly be combined properties. Mr. Guzman

rents 3132 from a different property owner. He asked Mr. Dingledein if Butler County had their own parking standards. They have adopted standards from other jurisdictions. There was discussion on the work that was proposed at 3120 Production Dr. Mr. Guzman will just be selling cars at that address. He is able to pull the cars inside of the building as well as detail them inside. He asked for clarification on where the Route 4 “Corridor” extended. Mr. Bachman thinks the corridor would be the businesses that front Route 4.

Mr. Lepsky pointed out that the Production Dr. “Corridor” doesn’t have any used car lots. Mr. Jacobs said 3120 Production Dr. is an “island of industrial uses surrounded by commercial uses”. Several businesses were discussed in that area that are industrial zoning classifications being used as commercial businesses. Mr. Lepsky stated that Car’s Fine Cars and Drive Time are not permitted uses; they were issued conditional uses. They also have Route 4 frontage. Mr. Jacobs said that whether or not you agree with the business plan or not, that is not the issue at hand. Future violations are not important; as the board can make conditions of the approval that cover such violations. He asked the board not to decide on the city’s new policy; this application was submitted before the new policy took effect. He referred to Exhibit E and asked Mr. Bachman if he measured any other similar buildings in this area; 3289 Homeward is a smaller building and there are no smaller lots. Mr. Jacobs said this shows that the property is a unique property in this area.

Public Comment

None

Board Re-Convened

The board will be deliberating privately and no formal action will be taken at this meeting. Their findings of fact will be presented at the next meeting.

Ms. McGuire motioned to recess to executive session as a quasi-judicial body for the purpose of conducting deliberations among the board members and with legal counsel regarding the decision of the board which decision is subject to immediate appeal and therefore constitutes imminent litigation. Ron Siciliano seconded the motion. Motion carried 6-0.

The board re-convened at 9:03 pm from executive session.

Mike Stokes, seconded by Scott Lepsky, made a motion to table the case until the January 2015 Board of Zoning Appeals meeting. Motion carried 6-0.

Adjournment:

Greg Porter, seconded by Scott Lepsky, made a motion to adjourn. Motion carried 6-0.

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Ron Siciliano, Chairman

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Lynda McGuire, Secretary