

MINUTES OF THE
FAIRFIELD BOARD OF ZONING APPEALS
June 2, 2021

Scott Lepsky called the Board of Zoning Appeals hearing to order at 6:00 p.m. at the Fairfield Municipal Building, 5350 Pleasant Avenue.

Roll Call

Maria Mullen, Secretary, called the roll of the Board of Zoning Appeals. Present members were Mark Rhodus (MR), Tony Rawe (TR), Chad Whitmore (CW), Mary Stier (MS), Scott Lepsky (SL), and Erin Simons (ES). Leland Rosato (LR), Building Official and Steve Wolterman (SW), Law Director were also present. SL made motion to excuse Dale Paullus, and was passed by the Board.

Pledge of Allegiance

Minutes of the Previous Meeting

The minutes were approved from the Board of Zoning Appeals meeting held on May 5, 2021.

New Business

Case No. BZA-21-5 – Fence Exceeding 6 Feet Tall and Accessory Off-Street Parking – 4325 Muhlhauser Rd

A variance request submitted by Joshua Lewis of iVCP Muhlhauser 2 LLC, for the property located at 4325 Muhlhauser Rd, Lot No. 13271, in the M-2 zoning district.

The applicant requested the case remain tabled.

Board Action

Scott Lepsky stated the case will remain tabled per the request of the applicant, and recommendation of Staff and SW.

Case No. BZA-21-8 – Sign location/Name of Off-Site Business/Exceeds allowable height – 465 Nilles Rd

Three variance requests submitted by Steve Weeks, Tri-State Signs, on behalf of the owner, for the property located at 465 Nilles Road, Lot No. 10675, in the D-1 zoning district.

Section 1187.05 (d)(1), (d)(4), and (d)(6) of the zoning code states, the sign shall only identify the name, address and phone number of the building or occupant on the premises where the sign is located; shall only be located in the center eighty percent (80%) of the property frontage; and the total ground sign height, including support structures, shall not exceed eight feet.

Pfefferle Tire needs signage out at the road, and is requesting to have an off-site sign on Sunoco's monument sign. Sunoco is requesting a variance for a new sign in the same location as the existing sign. The sign is not in the center 80% of the lot frontage and it exceeds the eight (8) foot tall maximum ground sign height.

LR gave a summary and notes on this variance request:

- New Monument / Ground Sign at Sunoco station, Pfefferle Tire, Fairfield Pub
- THREE (3) variances sought:
 - (1) Signs must identify the business(es) on which sign is located. Pfefferle Tire requesting a section of the proposed sign (sign not on their property). It will increase Pfefferle's exposure.
 - (2) Signs must be in center 80% of lot; Proposed sign is in easternmost 10% of lot.
 - (3) Ground signs must not exceed 8'-0" in height. Proposed sign is 12'-0" in height (sign face is 15'x7', 5 feet from ground to bottom)
- **Area/Size Variance** is requested.

Technical Staff Notes:

- Development Services involvement with multi-property / multi-party project to resolve numerous items and the benefits for all involved:
 - (1) Zoning Violations will be resolved. (Pfefferle truck and Fairfield Pub banner being used as permanent signage)
 - (2) New landscaping – new curbs by Public Works and Pfefferle contracted landscaping, and;
 - (3) More attractive sign (City contracted masonry work)
- Technical staff recommends approval of all variances.

SL addressed the Board with information regarding this particular sign. This particular property has had numerous sign challenges for a number of years. There was a local article regarding the sign issues, and the City trying to work with the businesses to help them be more successful. It has been a joint effort by everyone involved as mentioned by LR. SL complimented Staff on joining together and finding resolution to these issues.

TR asked if Design Review had a chance to review and approve the proposed sign. LR confirmed Design Review approved the sign and location. ES asked LR if he knew the height of the existing sign. LR is not aware, but ES will ask the sign contractor that question.

MR wondered if they could force Pfefferle Tire to park their truck back by their building. SW stated there is a proposed development agreement for all the parties involved in this project, which requires the Pfefferle truck to be moved from its current location. The agreement is pending the approval of the variances by BZA.

Property Owner Comments and Discussion

Steve Weeks, Tri-State Signs, spoke for the property owners requesting the variances.

- LR gave an accurate summary of the variance requests.
- The current sign is 113 ½ inches tall, just under 10 feet.

MR stated the new sign height is 144 inches, which makes it about 30 inches taller.

Public Comments

No one came forth.

Board Action

Based on the challenges mentioned earlier with the businesses of this property, and the working arrangement with all the involved, business owners and the City's Development Services Department, Scott Lepsky made a motion to approve all three variance requests. Mary Stier seconded the motion. The motion carried 6-0.

Case No. BZA-21-9 – Accessory Structure Exceeding 500 SF – 5972 Flaig Drive

A variance request submitted by Vesal Born, for the property located at 5972 Flaig Dr, Lot No. 8630, in the R-1 zoning district.

Section 1143.06 (a) of the zoning code states, "...accessory buildings or structures shall not exceed 500 square feet except on parcels zoned A-1 which are two acres or more in size."

LR gave a summary and notes on this variance request:

- Single-family residence property
- 24 x 32 Detached Accessory Building (768sf), which violates maximum 500sf accessory structure ordinance.
- Lot is 210' x 75' in R-1 Zone
- Note double-frontage lot – 30' setback from Flaig and Gilmore
- Not intended for business use. Private storage of vehicles, Jet-Skis, boat, etc.
- **Area/Size Variance** is requested

Proximity / Context Notes:

- Three streets back-to-back
- To North: Resor Road residential for miles
- To East: Mercy Hospital grounds
- To South: Mack Road Office Condos
- To West: Crestview Neighborhood
- Tight neighborhood with larger buildings – 15'-0" between tri-levels & 2-storys
- Several pools, but no detached garages in rear yards due to limited side yards
- Common but sporadic number of sheds 150-225sf
- From Flaig Dr entry to end of cul-de-sac (1/2 mile, 57 lots):
 - One detached garage in rear yard 500sf (5931 Flaig)
- Entire neighborhood (171 lots):
 - One large accessory structure 625sf (5988 Gilmore) – built before 2000 (no driveway)
 - One large accessory structure (slab) 400sf (6015 N Turtlecreek)

Technical Staff Notes:

- Technical staff concerned with excessive size of structure (distinct lack of large accessory buildings) and extensive paving – drainage not really concern, but extensive pavement not in character with rest of the neighborhood
- One notice of objection

Property Owner Comments and Discussion

Vesal Born, homeowner, spoke to his variance request.

- LR gave an accurate summary of the variance request.
- He was a mechanic, and has retired.
- Mr. Born needs to move his cars, boat, tools and other stuff from his old business location to his home.
- He is no longer in business, and is paying rent for storage of all his vehicles and equipment.
- He has lived at this property since 1999, and inherited the property from his parents.

SL asked Mr. Born if he received a copy of the seven requirements/considerations for an Area/Size Variance. As mentioned earlier, there was a letter from a resident against this variance request. Mr. Born also received a copy of this letter.

Mr. Born mentioned he could amend the size of his garage to 24 ft x 24 ft. SL asked if Mr. Born wanted the Board to consider his proposal based on a 24 ft x 24 ft accessory structure. Mr. Born responded that if he had to pick one, he would stick with the 32 ft x 24 ft accessory structure as he originally requested.

Public Comments

Amanda Born, wife of Mr. Born, spoke to their request. This would be a huge move for their family. Due to the amount of bills they have to pay for storage, and the hobbies they have as a family, it would be great to have the extra garage. He will not be doing any customer work on the property; only work on personal stuff and hobbies.

SL stated the following:

- As mentioned by Staff, this is a very large structure in that neighborhood.
- Given the seven specific conditions that must be considered by the Board with regard to the area/size variance request, he is having trouble checking each of those requirements, and given the size of the structure and Staff's concerns with some of the paving, he does not think this is the right fit for the property.
- The request as proposed is not something he can approved.
- SL feels something smaller along with some other changes may work better. He recommended Mr. Born could speak with Staff and come up with something more appropriate for his property.

ES called out number two on the list of requirements, "whether the variance is substantial," and item number 6, "whether or not the property owner's predicament can feasible be obviated through some other method other than a variance." These are Erin Simons' concerns on granting the variance.

Board Action

SL made a motion to deny the variance as requested. The motion was seconded by ES. Motion carried 5-1 with Chad Whitmore dissenting.

Case No. BZA-21-10 - Change of Commercial Use to Residential Use – 5292 Old Gilmore Road

A use variance request submitted by Robert Link, for the property located at 5292 Old Gilmore Road, Lot No. 2845, in the C-2 zoning district.

Section 1159.01(a) of the zoning code states residential uses are not permitted in the C-2 zoning district.

The owner, Robert Link is requesting to change the current commercial use of the property to a residential use.

LR gave a review and Staff notes:

- Single-family residential structure, changed to commercial use (Advanced Video Data Service)
- Owner has tried to sell as a commercial property with no success. He may have better results by marketing the property as residential.
- This area was rezoned as C2 (Central Business). If the house had remained a residence, it would have been allowed as a non-conforming use.
- Variance sought: Return to residential use violates condition of COF 1159.01(a)
- **Use Variance** is requested – note required items COF 1137.08(a)

Technical Staff Notes:

- Neighbor (2) single-family dwellings – 5280 (C3 zone) & 5266 (C3A zone) Old Gilmore
- Technical staff has no objections with proposal, provided:
 - (1) the existing concrete parking lot be reduced to appear more like a residential driveway (would need to remove about 850 sf of concrete to create a residential driveway).
 - (2) remove building signage and patch or repair in kind, and
 - (3) obtain building inspection and new Certificate of Occupancy

MS asked if it would have to follow R1 or R0 zoning requirements if they approved the use variance request. LR stated the Residential zoning rules would apply if the structure returned to a single-family home.

Property Owner Comments and Discussion

Bob Link, the owner, spoke on behalf of his use variance request.

- The building still looks like a house.
- They removed an old shed and added a concrete patio on back door
- Two offices and a conference room can be converted back to original rooms
- He no longer needs the property for his business.
- He does not want to live in the house.
- Property has been on the market for 2 ½ years to be sold as commercial property.
- He opened his business there in 2007.
- Garage is still a garage, and the kitchen is still a kitchen.
- They only have to remove a counter used for his business.

SL asked Mr. Link if he would be able to accommodate the three requests proposed by Staff. Mr. Link thinks the driveway would be an issue. He has a potential buyer that likes the driveway as it is because it would make it easier to back up and pull out onto the road. SL stated in order to approve the variance, Mr. Link may have to meet that request.

LR explained the concrete rule for the front yard in a residential area. The concrete cannot exceed 35% of the front yard. The site plan showing the areas of concrete to be removed is just an example of what could be removed to bring the driveway into compliance for a residential property. The current area of concrete is more like a parking lot. We don't want to have the concrete area filled with parked cars.

Mr. Link will contact his contractor that can do the concrete work. SL suggested the contractor come up with a plan for concrete removal to bring the driveway into compliance.

LR also said he could work with Mr. Link and his contractor on the driveway. Mr. Link does not have to use the proposed plan by LR, as long as the applicant creates a plan to remove enough of the existing driveway to be at 35% or less of allowable concrete in a front yard.

Public Comments

No one came forth.

Board Action

Based on the unique location of these four lots and based on its history, Scott Lepsky made a motion to approve the use variance with Staff's recommended conditions:

- (1) Remove building signage and patch or repair in kind.
- (2) Obtain a permit for occupancy and have the building inspected by the City.
- (3) Reduce the existing parking area to the 35% allowable driveway for a residential zoned property.

Erin Simons seconded the motion. The motion passed 6-0.

Case No. BZA-21-11 - Outdoor seating – 465 Nilles Unit C

A variance request submitted by Clinton King and Elizabeth Duffie, for the property located at 465 Nilles Road Unit C, Lot No. 10675, in the D-1 zoning district.

Section 1165.04 (a) of the zoning code states "All businesses, services or processing shall be conducted wholly within a completely enclosed building..."

The applicants are requesting additional outdoor space to accommodate more customers and an area to play outdoor games.

LR gave a review and notes on the variance request:

- Fairfield Pub – this will be the second outdoor seating area for customers
- COF 1165.04(a) All business must be conducted wholly within enclosed building
- **Area/Size Variance** is requested

Technical Staff Notes:

- Existing outdoor seating (approx. 15x30 – 450sf – near main entry at east)
- New proposed outdoor area 14'x 45' (630sf) with a new retaining wall
- Technical Staff convey City of Fairfield Police concern regarding hidden and remote location of proposed area – not within clear sight from surrounding parking lots or thoroughfares (thus elevated security and safety concerns)
- Technical Staff notes concern with safety / security of utility meters & panels, not really an area conducive to outdoor activity, intended for back access to dumpsters.

MS asked if there is a door in the back area for the Sunoco store. LR was not sure if it is an operating door.

MR questioned the fence on the retaining wall. LR is not sure, but he believes the liquor license rules requires the area to be enclosed with a fence with a gate. It will be the same type of fence that is around the other outdoor area for this business.

Property Owner Comments and Discussion

Elizabeth Duffie, Manager of Fairfield Pub, spoke on behalf of his use variance request.

- In regard to safety with not being able to see the area behind the building, you cannot see into the bar without coming in either. There really is no difference.
- Over the last year, they have been significantly impacted by Covid-19 with the compacity restrictions, and social distancing.
- Their intent is to create more outdoor space to accommodate their customers.
- There have been Several requests to have cornhole tournaments, and other similar activities. The front patio area cannot accommodate those activities.
- The back area is perfect for such activities and outdoor seating.
- There are no residential concerns around their building. Commercial and office buildings surround them.
- The dumpster is not out back. The dumpster is out front next to their other outside patio.
- There is a door to Sunoco, but it is not used, and she is not sure if it can be opened.
- There is a driveway to the back of the building that is visible to the proposed patio area. You could drive back there and see everything that is happening.
- They would like to cover the back area to have more use throughout the year.
- The utility area will be boxed in with a cabinet.
- Two of the doors in the back lead to their bar.
- They plan on having a kitchen in the future.

ES wanted to clarify that their intent is to keep the front patio area and add the back patio area for game space. Ms. Duffie said that was correct. TR asked if they could expand the front area instead. Ms. Duffie said they have no room to expand the existing patio because of parking and the dumpster.

The patrons will access the new patio by going through the bar to the two doors out to the back. They will fence and gate the area off. The gate will be egress only.

TR asked if they discussed their plans with public utilities since they will be gating off the area and installing a cabinet around the electric and water meters. Jeff King stated the meters are read by remote. The cabinet should not be a problem. He is in construction and can do the work himself. He stated they have the cleanest bar in the area. Mr. King explained the doors in the back, and they will be adding another door.

Public Comments

No one came forth.

SL knows they have been working hard for a number of years, and last year certainly didn't help anyone. He does have some public safety concerns. Anytime the Fairfield Police Department feels it necessary to weigh in with some thoughts, he does need to give it priority consideration. The first order of business is to keep everyone safe.

Mr. King stated he called over and talked to Pete (Lagemann), and he had no objections to our request. He has talked to other officers that come into his bar.

SW pointed out that Staff Technical Review is telling him that the police have reported they have concerns. If Mr. King wanted to bring in a witness that will say he has no concerns, then he needs to be here. The Staff Technical Review's procedure to get the reports from all of the Staff. Mr. Rosato is part of Staff giving their report. If someone else, who is not Staff, wants to speak on this issue, then he or she needs to be at the meeting.

Board Action

SL understands what they are trying to do, and he encouraged Mr. King to reach out to Development Services and Staff. If the Fairfield PD had concerns, Mr. King should also reach out to them to try and alleviate the issues or work around them. In its current form, he cannot support their request.

SL made a motion to deny this variance request for an outdoor area. MS seconded the motion. The motion carried 6-0.

Additional comments were made by Mr. King as to why the Police get to determine what goes on in the City. Mr. King said they have never had a problem at their business.

SL told him it was stated earlier that the review from the Police Department was permitted as part of the Staff Technical Review. The review notes by Staff is just one component in the Board's review of this case. SL again encouraged them to discuss the issues with the Police Department and Development Services. Mr. King is welcome to come back to BZA when he is ready to present his case again.

General Discussion

SL thanked all that attended training center at the Community Arts Center. He hoped that they found it valuable. Greg Dale is an engaging speaker. SL finds it encouraging that the things Greg was suggesting, staff already does and they do as an order of business. It will be helpful to have a reminder on some things.

SW spoke on the comments made by Mr. King and SL response:

- Generally speaking, people do have a right to do what they want on their property subject to either private property restrictions, which are enforceable by private property owners, and the ability to regulate the uses and purposes to which a property is put in a municipality is permitted constitutionally, the underwood is known as the police power of the state. This is basically the authority to regulate the uses for the general public health, safety, and welfare. That is the answer to why we have zoning in the first place.
- In terms of our procedure, rather than having different department heads attend every hearing, the authority to speak on behalf of all staff is appointed through Staff Technical Review. We know that the police department communicated some concerns. To suggest otherwise, really requires better evidence than he said, she said.
- SW hasn't spoken to Pete Lagemann, whom Mr. King referred to in his comments.
- LR stated Staff spoke with Chief Maynard.

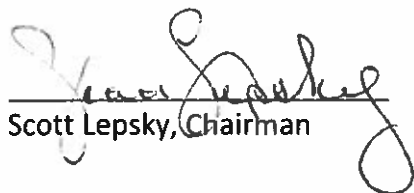
ES wanted to personally thank MM for providing the Use and Area/Size Variance requirements with the specific cases written on them. It was hugely helpful. They would like to have those at every meeting.

SL asked if there has been any movement on the 118 Palm Springs case. SW stated has not communicated with the owners' legal counsel. The legal team is focusing on some matters in the commercial realm right now. The item is on the agenda, but SW is not sure how they will proceed. He knows the dedication and consideration the Board has put into this matter. It is very much appreciated. What happens in the future with that case is something that will probably be determined by City Council as to whether or not we proceed with enforcement action.

SL said they would like to be appraised of the situation as LR and the Board have put a lot of time into this particular case.

Adjournment

SL made a motion to adjourn, seconded by ES. The motion carried 6-0.



Scott Lepsky, Chairman



Maria K. Mullen, Secretary