

MINUTES OF THE
FAIRFIELD BOARD OF ZONING APPEALS

September 4, 2019

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 (MM), Secretary, called the roll of the Board of Zoning Appeals. Present members were Jack Wessler (JW), Chad Whitmore (CW), Joseph Koczeniak (JK), Scott Lepsky (SL), and Erin Simons (ES). Leland Rosato (LR), Building Official and Steve Wolterman(SW), Law Director were also present. A motion was made to excuse Melody Vergenz and Leslie Besl and 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 July 2, 2019.

New Business

Case No. BZA-19-11 – Outdoor Seating Area – 5901 Dixie Hwy

Anne McBride, on behalf of owner, Shared Harvest Foodbank, Inc., requested a variance for the property located at 5901 Dixie Hwy in the C3A 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...”

LR gave his notes on this case:

- Outdoor seating area for proposed new Panera Bread.
- Zoning Code 1165.04(a) requires all business or service to be conducted within the building.
- Regulation required to ascertain potential issues such as outdoor activity immediately adjacent to a residential neighborhood.
- *Use Variance* is requested.

Technical Staff Notes:

- No adverse effect on the rights of adjacent property owners or tenants, the public’s health safety or general welfare.
- Does not appear inconsistent with the general spirit and intent of the zoning code.

Property Owner Comments and Discussion

Elizabeth Fields, was present to represent Anne McBride on behalf of owner, Shared Harvest Foodbank and spoke on behalf of their variance request. Ms. Fields stated the following:

- The plan is to build a Panera Bread restaurant on this property.

- Patio, seating area will be on the front of the building, facing Dixie Hwy.
- They are requesting outdoor seating which consists of five (5) tables; each table will have four (4) chairs for a maximum of 20 patrons.
- The plan submitted shows fencing around the seating area.
- She is not aware of outdoor speakers for the patio area. Does not believe they have speakers, but if they do, the music would be at a low volume.
- Normal operating hours are 6 am to 9 pm.

ES questioned the area just outside the fenced seating area. It appeared on the plan that the walkway out of this area allows for patrons to walk into the parking lot in front of the drive-thru lane. There is parking on that side of the building. Ms. Fields reviewed the parking lot layout. ES recommended a crosswalk marking at the walkway/ramp to the parking lot for the cars in the drive thru yield to the pedestrians. Ms. Fields stated the drawings are preliminary and can be changed to add the crosswalk.

Public Comments and Discussion

No one in the audience came forth.

Board Action

Scott Lepsky, Chairman, made a motion to approve the variance with the following conditions:

1. The Board recommends adding protective measures such as easily identifiable markings at building entrance or exit for public / pedestrians that cross the proposed drive-thru lane while exiting or entering the building.
2. If outdoor speakers with music are installed and/or they have outdoor music, the volume must be at a reasonable level for background music, and can only be played between the hours of 9 am to 10 pm.

The motion was seconded by Jack Wessler. Motion carried 5-0.

Case No. BZA-19-9 – Accessory Structure over 500 SF – 2471 Redstart Drive

The property owners, Jeff and Jerri Southerland, requested a variance for the property located at 2471 Redstart Drive, Lot No. 3639, in the R-0 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 the Board his notes on this case:

- New detached garage (896 sf) in rear yard.
- Remove existing detached garage and extend driveway and replace all existing paving
- Clarification: Proposed garage is 24' x 28' (672 sf)
Lean-to structure is 8'-0" along 28' dimension (8' x 28' = 224 sf)
672 sf + 224 sf = 896 sf total
- Zoning Code 1143.06(a) prohibits accessory structures over 500 sf
- *Area/Size Variance* is requested

Relevant Context:

- Outer limit of an average density neighborhood, at end of a cul-de-sac; therefore, wide pie-shaped lots with large rear yards

- Medium-size houses built in late 70's / early 80's. Bi-levels and ranches
- Lot backs up to a heavily-grown and wooded land in Springfield Twp / Hamilton Co
- Due to steep grades, natural creek bed, and thick natural growth the area does not appear developable in near or far future – possible flood plain area
- Similar-sized detached garages (pre-date 500 sf ordinance)
- Neighbors on either side of the property have sent emails in favor of this structure.
- They are well within the 35% allowable accessory structures for their rear yard.

Technical Staff Notes:

- Variance does not appear substantial
- Essential character of neighborhood would not be altered
- Adjoining properties would not appear to sustain negative effects
- Variance would not affect delivery of city services or encroach easements

Property Owner Comments and Discussion

Jeff and Jerri Southerland, property owners, spoke on behalf of their variance request. They have several reasons for their variance request:

- They have lived at the property for 38 years.
- The old garage is too small for two vehicles and storage.
- The covered porch on the side of the garage is for outdoor enjoyment.
- It will have a metal roof within the standards of the Fairfield Ordinance.

JW discussed the possibility of making the garage area smaller. He does like the lean-to porch area. JW verified with LR about the type of metal roofs allowed per ordinance. The intended roof will meet our standards.

SL likes the look of the plans. SL asked if they considered removing the lean-to/porch portion of the structure and only build the garage. They did consider it, but they liked the idea of a covered porch for outdoor entertaining. They have an existing deck which is really too small and it is not covered. With the covered porch on the garage, it will not be necessary for them to build a larger deck with a cover.

JW spoke on setting precedent by approving an accessory structure of this size.

ES wanted clarification on the double “man” door as shown in the drawings. Mr. Southerland said it will not be the double door, only a single door with windows along that side.

Public Comments and Discussion

No one in the audience came forth.

Board Action

SL stated this property is unique considering the topography, the shape of the lot, and it backs up to a Hamilton County undevelopable area. The neighbors have shown support. Staff indicated it is also well under the 35% allowable accessory structures for the rear yard. SL was agreeable to allow this structure based on this information. SL made a motion to approve the variance as submitted. ES seconded the motion.

The motion carried 5-0.

Case No. BZA-19-10 – Exceed Density Limit – 5877 Ross Road

L. Steven Moore, on behalf of GoldOller Real Estate Investments, requested a variance for the property located at 5877 Ross Road, Lot No. 9554, in the R-4 zoning district.

Section 1155.05 of the zoning code states "...any multi-family structure legally existing on the effective date of Ordinance No. 159-92 (effective January 14, 1993) shall continue as a conforming use and shall not be defined or limited by Section 1133.01 (a)(64) and shall not be subject to or limited by the provisions of Chapter 1198. Such existing structures may be rebuilt to, but not exceeding, their legally existing density as of January 14, 1993.

A ten-unit apartment building located at 78-87 Brittany Ln was destroyed by fire. The owner would like to rebuild the apartment building with 20 units. Even though this property is over the allowable density limit of six units per acre, our ordinances allows for this building to be rebuilt as it was prior to the fire. The 20-unit proposed building would exceed the original building by ten units.

LR gave the Board his notes on this case:

- Explained the fire and loss of the entire building, and total demolition to date.
- Fire restoration of 10-unit apartment building, required complete demolition, but applicant would like to take the opportunity to rebuild with 20 smaller units on former building footprint, as it appears that the older style larger 2 & 3 bedroom multiple bath apartments may not be as marketable today
- The 20-units would be one and two bedroom units.
- Exceeds allowable lot area per family in accordance with Zoning Code 1155.05(a)
- **Area/Size Variance** is requested

Background:

- Photos of previous building – townhouse style apartments were shown in the slideshow presentation, as well as the layouts for two 1-bedroom apartments, two 2-bedroom apartments, and one 3-bedroom apartment.

NOTE: Packet distributed to Board members included all of applicant's handouts, not all of which are shown on today's slideshow presentation.

Technical Staff Notes:

- Built in 1970's city zoning permitted 10 units per acre
- If requested as new construction today only 6 units per acre would be permitted due to a revised ordinance in 1993 intended to control / reduce concentration of multi-family housing
- The 1993 ordinance revision included clause to permit reconstruction of existing structures rebuilt to, but not exceeding, their legally existing density as of 1993 (i.e. 10 units per acre)
NOTE: Actual area of the parcel is less than 10 acres, which would yield a current density slightly more than 10 units per acre, but the technical staff still willing to honor the pre-1993 density ratio
- Current city comprehensive plan as well as our Fairfield Forward program to be finalized yet this year both identify the city's housing ratio goal of 70/30... Currently approx. 55/45

- Increase density also concerns technical staff as far as increase strain on utilities, which in this development were not originally constructed to specific City standards
- Concern with existing fabric of neighborhood /street – stacked apartment style vs. former townhouse style

JK asked LR if they are requesting the same square footage as the original building. LR stated it would be the same footprint but with an additional ten units. SL asked if the owners could rebuild it with ten units without a variance since the new rule is six (6) units per acre. LR stated they could build it with ten units. JK asked if they were to sell the property to a new owner could the new owner build the building with ten units. SW said a new owner could build it with the ten (10) units.

JW inquired as to the calculation of the units per acre. How do they determine the total acreage? SW said it is actually based on the entire development, and he confirmed that the entire development is consistent with ten (10) units per acre.

Property Owner Comments and Discussion

Dustin Brock, director of construction for GoldOller Real Estate Investments, and Paul Bielicki, with Applied Building Sciences, spoke on behalf of their variance request. They have several reasons for their variance request:

- The building with 10 units at 78-87 Brittany Lane was damaged by fire, and has been demolished.
- They intend to rebuild on the same building footprint.
- Based on the entire development, they believe the density of the complex is 4.6 units per acre. They were a bit confused when they were contacted by the City that they were over their density limit for units.
- Existing utilities will not be affected and there will be no addition to the utility load. The previous occupancy of the ten (10) units was 52 people. Eight of those units were 3-bedroom, 3-story townhomes, and some of those had three bathrooms. The other two units were 1-bedroom.
- New building plan will be for 20 units; 14 1-bedroom and six (6) 2-bedrooms. The capacity will still be for 52 people.
- Current parking spaces are sufficient.
- The floor plans submitted are the current types of floor plans. They would be re-configuring floor plans since the original building had 3-story, 3-bedroom townhomes, and a few had basements.

SL wondered if the density configuration was resolved. SW explained the calculation is based on the entire development as a whole parcel, the entire Wildwood Development. That is where it was limited to ten (10) units per acre at that time. It has all been used, and that was acknowledged in the 1970/1980's. SL went over the ordinance one more time stating if this development were built new today, they would only be allowed six (6) units per acre. Ten (10) units were allowed prior to changes, and the building can be rebuilt with ten units. The variance request is for an extra ten (10) units over the 10 units allowed for reconstruction.

Mr. Brock has a zoning report stating they have 133.19 acres in their asset and development of Wildwood. There are 583 current units. The math is approximately 4.5 units per acre. SW explained that they do not own the entire development, only a portion of it. By separating what they own from the rest of the development, the portion not owned by them is over the 10 unit limit per acre. Based on only the parcels they own, the acreage would allow for more units. This development was originally built based on all the parcels combined.

The units per acre were based on the entire development. One large development borrowed acreage from others that is now not owned by them.

Mr. Brock stated they will not be putting an extra strain on the utilities. The parking would be the same. Occupant load would be the same. The building will match/blend with other buildings in the community.

ES mentioned that in the documentation provided by the applicant, they cited there is a change in taste of what renters are looking to rent. They argued the larger units are difficult to rent which creates their hardship. ES wanted an idea of what their current occupancy rates are in the similarly styled units. They have four other buildings with the same style of townhomes. They are 2500 - 3000 sf in size, and are notoriously the highest in rent. These are a struggle to rent. Mr. Brock is unable to give us the total number of those units that are currently being rented. The biggest demand is for 1-bedrooms. Sometimes they have a waiting list for 1-bedroom units. The cost factor is huge for the larger units when they need to remodel or re-rent because someone moves out.

JW asked the applicant if they could use the same footprint and have only ten (10) units. Mr. Brock confirmed they could do the ten units, but they would be the larger units, not the proposed 1-bedrooms they need. They would not need to be at this meeting if they went forward with only the ten (10) units.

JW asked LR and SW if this development has two separate parcels, and if the applicant only owns a portion of the entire development.

- Mr. Brock said they own four (4) different phases in the development, Brittany Ln, Woodstock Drive, Chapel Hill Drive, and an area called, Glen Eagle.
- Greg Kathman (GK) told JW that there are multiple parcels throughout Wildwood and owned by a couple different owners. There are also other portions of the development in addition to the multi-family areas. SW added that the roads and utilities within Wildwood are private.
- JW is trying to determine what the ten (10) units per acre actually covers.
- SW said there are minutes from a meeting that actually confirmed that the acreage was at the capacity for units. It was done when the development plan was submitted; it was approved and acknowledged by the developers that the maximum density had been achieved. That is how the density was permitted at that point in time.
- GK added that in 1995, Towne Properties was the owner/developer of this site. Towne Properties requested approval for their last phase of development; and based on approval of that last phase, they agreed it was at maximum density and was built out as of 1995. When City approved the last phase of construction at that time, the City confirmed the development had reached its maximum density.
- JW explained Mr. Dawson is only basing the acreage on the portion they own of the development, not the development as a whole. This is one whole private development, with respect to the roads and utilities. The density is based on all the parcels and units in the entire development. He is not sure how they did the math, but it is at maximum density which was approved when it was originally completed.

Public Comments and Discussion

Twinkle and Kelly Dawson, 4535 Whitmore Ln, spoke against the additional units.

- The Dawsons' property backs up to the parking lot in front of this apartment area.

- They built their house in Whitmore Estates 16 years ago. They were told the apartment complex was built to maximum density, based on their research before choosing to build there.
- The tenants from Wildwood trespass on their yard. They cut through to walk to the Thortons gas station.
- Lots of trash blows into their yard from the apartments.
- They have called the management and they are not addressing the problem. They have suggested solutions to the issues but management is not receptive to their ideas to resolve the issues.
- They have called the police about the foot traffic/trespassers in their yard. It is a safety issue for their children.
- Concerned about the height of the new building.
- Fence is broken down.
- Their house is an investment and it is bringing down the value.
- Other neighbors unable to attend the meeting are in agreement with them.
- They have security system and no trespassing signs, but it does not stop the tenants from walking through their yards. Mr. Dawson almost shot a young man walking by his window. They just walk right through even when they are out in their yard.
- They dread more units. There will be more trespassers and more trash.

JW recommended that the Dawsons continue to contact the police.

Marvin and Angela Mathis, 4527 Whitmore, spoke against the additional units.

- Mr. Mathis was home the day of the fire. The fire trucks had to park on their street to fight the fire.
- They have lived there for six (6) years.
- They have the same concerns as Dawsons.
- Concerns with the infrastructure, the trespassing, and litter
- The fire trucks were on his street to get water to put out the fire.
- Noise and lights with additional units

Mr. Brock said the building will be no higher than the original building. No matter the outcome of this variance request, Mr. Brock would like to talk to the Dawsons and the Mathis' about the problems they are having. GK added the current property owners/management have been much more responsive to issues than the past owners.

SL stated the City is working toward a higher percentage of single family houses, and allowing this is going against that goal. The Whitmore residents are not supporting the extra ten (10) units. Current ordinance only allows for six (6) units per acre. JW asked again if they were allowed to re-build the building with ten (10) units. As it was stated by LR and SW earlier, they are allowed to rebuild the building with ten units without this variance. The variance is for adding ten more units.

Board Action

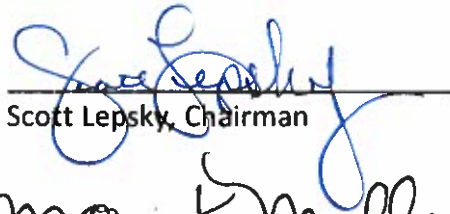
SL made a motion to deny the variance as submitted. ES seconded the motion. The motion carried 5-0 to deny the variance.

Additional Discussion

GK wanted to remind the Board of the case regarding Anthony Pippin, owner of Pippin's Produce from the April meeting. It involved a large greenhouse structure at his residence, 771 Symmes Road. At that time, the Board passed a 6-month continuance, and we are coming up on the end of that 6-month period. The six months was given to have the City's staff research this issue. They formed a task force to help their research, and they are finalizing a report that should be ready in a few days. The report will have some recommendations on Mr. Pippin's case and also future cases that may come up under the same umbrella regarding these large greenhouses. The report is advisory only; it does not have to be followed by the Board. It contains recommendations by the Staff and the task group. We expect to bring Mr. Pippin's case before the Board at October's meeting.

Adjournment:

SL made a motion to adjourn, seconded by JW. Motion carried 5-0.



Scott Lepsky, Chairman



Maria K. Mullen, Secretary