

MINUTES OF THE  
FAIRFIELD BOARD OF ZONING APPEALS

November 5, 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, Scott Lepsky and Mike Snyder. Rick Helsing, Building Official and John Clemmons, Law Director were also present.

Pledge of Allegiance

Minutes of the Previous Meeting

The minutes from the Board of Zoning Appeals meeting held on October 1, 2014 were approved. Motion carried 7-0.

Old Business

**Case No. BZA-13-0014 – Review of outdoor seating variance– 22 Donald Dr.:**

James Coffman, Jr., for Scotty's Pub, is back before the board to have his case reviewed for outdoor seating. STR suggested that the board support the Police recommendation of adding more/better security cameras.

Property Owner's Comments

James Coffman Jr. was in attendance to speak for the variance. He is asking to continue the variance as it was previously approved. Pete Lagemann from the Police Department was also in attendance. Mr. Lagemann indicated that the bar gets crowded, and while they don't have many issues with the outdoor dining, if there are altercations inside the bar, they end up out in the parking lot and the people from inside the bar and in this outdoor dining area tend to congregate around the altercation. This has happened 4-5 times in the last year. Identifying people becomes difficult and they want more, higher quality cameras. Mr. Coffman was actually shot in the parking lot recently. There has been a change in clientele to a rougher crowd. They are trying to change this by hiring live bands, charging a cover charge and raising food and drink prices. Mr. Clemmons emphasized the importance of the cameras. When it comes to the security videos, usually if the bar looks bad, the cameras are "broken". The board could make it a condition that the police has to sign off on the amount and clarity of the cameras. Mr. Koczeniak asked Mr. Lagemann if there were concerns about the parking lot cameras. There are concerns, because there is only one camera and it is aimed out into the parking lot. It is hard to identify anyone with that one camera. Mr. Coffman says he has 12 cameras inside and outside the building and runs an "up and up" business. He has nothing to hide. Some of the people with issues are not even patrons of his bar; they come from other establishments and end up in his parking lot. He is willing to work with police on the cameras in order to keep his outdoor seating variance.

Public Comment

None

Board Re-Convened

Mike Snyder, seconded by Jack Wessler, made a motion to approve the continuance of the variance as it was previously approved, contingent on acceptable lighting and security camera quantity, quality and maintenance as determined by the City of Fairfield Police Department. If the Police Department determines they are not getting the cooperation that is required, the variance must go before the Board of Zoning Appeals to be reviewed. There was discussion on whose responsibility it was to control the lighting in the parking lot. The applicant feels he can work with the landlord on that issue. Motion carried 6-1, Ron Siciliano dissenting.

**Case No. BZA-14-0006 – Review of outdoor dining and music variance – 7121 Dixie Hwy.:**

Kevin Brandt, for Buzzard Bay, is before the board to have his case reviewed for outdoor dining and music. STR had no comment on this case.

Property Owner's Comments

Kevin Brandt spoke regarding the variance. He would like to have his variances approved as they were previously approved. The police have had no incidents at this establishment and there have been no complaints. Mr. Snyder asked if he had gotten any feedback from the neighboring properties. One time he had an issue with his security alarm that had gone off for 45 minutes, and one of the neighbors was upset with him.

Public Comment

None

Board Re-Convened

Mike Stokes, seconded by Mike Snyder, made a motion to approve the continuance of the variance as it was previously approved. Motion carried 7-0.

**Case No. BZA-14-0013 – ~~Multiple variances relating to a variable message reader board sign~~ Off site sign, modification to existing non-conforming pole sign– 4785 Factory Dr.:**

The owners of the property submitted a sign plan that eliminates most of the original variances. The only remaining variances are:

1. Off-site signage
2. Modification to existing non-conforming pole sign

The owners have withdrawn the request to install a variable message reader board sign all together. STR recommended the owners adhere to the sign plan submitted.

Property Owner's Comments

The tenant from International Car Service was in attendance to speak for the variance. He still wants to be able to use the reader board sign, because people can't see him and don't know he is in the strip center. Mr. Stokes explained that the owners of the property proposed the new sign plan. Mr. Bachman met with the owners of the property and they submitted the new plan. He asked if the record reflected what the owners submitted. The submitted plan was part of the packet that was sent to the board before the meeting. If the tenant has issues with what has been proposed, he will have to take those issues up with the landlords. Mr. Siciliano noted that they are not adding any additional signage and the tenant has been through a lot to get a sign for the business. Mr. Lepsky said the plan makes better use of what is there; as there can be a total of 7 sign spaces available if necessary. Mr. Clemmons suggested that the board turn the 5 original variances down and then vote on the two remaining variances separately, so that it is clear what is and is not approved.

Public Comment

None

Board Re-Convened

Mr. Koczeniak asked for clarification and there was general discussion on the applicant applying for the variance as opposed to the owners applying. The landlord has to approve what the applicant is proposing; and in this case, they do not approve the application.

Ron Siciliano, seconded by Jack Wessler, made a motion to deny the original 5 variances regarding a variable message reader board. Motion carried 7-0.

Scott Lepsky, seconded by Mike Snyder, made a motion to approve the amended variance request, with the stipulation that they must adhere to the sign plan submitted. Motion carried 7-0.

#### New Business

##### **Case No. BZA-14-0028 – Roof in front yard setback – 6176 Bartel Dr.:**

James Hardman is requesting a variance to construct a covered front porch in the front yard setback of the property.

STR had no comment on this case.

##### Property Owner's Comments

James Hardman spoke regarding the variance. He wants to cover his front porch to protect the area in inclement weather. None of his neighbors had any objections. He applied for a permit and was told he needed a variance. Mr. Siciliano thinks it is an improvement to the house and the neighborhood, and as long as he doesn't plan to enclose it, he is in favor of the porch. Mr. Snyder said he thought the porch would blend in with the neighborhood nicely.

##### Public Comment

None

##### Board Re-Convened

Scott Lepsky, seconded by Mike Snyder, made a motion to approve the variance as submitted, with the stipulation that the building materials must match the existing house. Motion carried 7-0. Motion to waive the 5 day waiting period carried 7-0.

##### **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.

STR recommended that the board refer to the memo from Tim Bachman, Development Services Director.

Mr. Clemmons had several points of order he addressed:

- This case was previously heard as a Conditional Use by the Planning Commission and was denied.
- Staff is prepared to present a negative recommendation in this case.
- Applicants may appeal if the variance is denied.
- This case will be more formal than normal; they will swear in witnesses, cross examine the witnesses, and presenting written "findings of fact". There will be no contact with anyone regarding the case off the record; with the applicant or with counsel. He reminded everyone that the meeting is recorded, and to make sure the blue light is on when speaking into the microphone.

Mr. Clemmons swore in everyone that would be testifying in the room.

##### Property Owner's Comments

Michael Jacobs, Attorney, 246 High St. Hamilton, OH spoke regarding the variance. He suggested that exhibits for the applicant be numbered and exhibits for the city be lettered. Exhibit 1 was submitted, which is an Affidavit of Sanaa Hanna, owner of the property, which gives Mr. Jacobs permission to act on her behalf regarding the use variance. Exhibit 2 was submitted, which is a map of the area with labels showing name of the business, address, and nature of the business. Mr. Jacobs referenced Exhibit 2. Everyone took notice of the map and had no objections on the labels. 3120 Production Dr. is the subject property. Alex Guzman, the proposed tenant at the subject property also operates a business next door at 3132 Production Dr. 3140 Production is a contractor's business, 5852 Dixie is a used car lot and shed business, 5888 Dixie is a tool

rental facility, and 5910 Dixie is a used car lot. All of these properties are in the M-2 zone. Exhibit 3 was submitted, and is a zoning map of the City of Fairfield. Mr. Jacobs referenced the map and discussed the businesses in the surrounding M-2 zone. The current businesses are all non-conforming in the M-2 zone. 3120 Production Dr. obtained a Conditional Use approval 22 years ago to operate as an office building. The subject property has become sort of an “island” in a sea of car lots. It’s not inconsistent to allow use of the property to change to a car lot; everything surrounding is operating as C-3 uses.

Michael Hanaa, 4169 Meadowbrook Ln., spoke regarding the variance. He immigrated to the United States from Egypt in 1969. He bought the building at 3120 Production and opened his own CPA office there in 1992. Mr. Jacobs asked him how much of the building he used. He only used the office portion in the front; most of the building has been unoccupied. He is now retired and has tried to lease the building, but there has not been anyone in there since 2010. He has tried to sell the building for the last 4-5 years. He has made a few aesthetic changes and replaced the roof over the years. A former tenant changed out the door in the back about 10 years ago. Mr. Guzman is currently a tenant in the building next door and wants to sell used cars. Recently he approached Mr. Hanaa to lease the building to him to grow his business. There was discussion on paving at the subject property. There are 24 parking spaces in front and to the rear of the building. Mr. Guzman also wants to pave in front of the building if the city allows him.

Alex Guzman, 1239 Edward Dr., Cincinnati spoke regarding the variance. He is originally from Mexico. He has been running his business at 3132 Production Dr. for 14 years. It is currently a car lot and body shop. He plans to occupy both spaces and expand the used car lot. He has looked at other buildings, but this one works best because it is right next door to his current location.

Mr. Clemmons submitted Exhibit A, which are 9 various photographs that were taken of the subject property at 3120 Production Dr. He presented Exhibit A to Mr. Guzman. The property is currently being used by Mr. Guzman as a car lot. The photographs show cars parked in the grass near the street in front of the business and promotional signs to draw attention from travelers on Route 4 that were cited as zoning violations by the Zoning Inspector. The pictures show, according to Mr. Guzman, the way he was operating the business before he was cited. He wants to do whatever the city asks of him. He removed the illegal signs and banners once he was cited, as well. He was parking in the front in the grass to see what it would look like once he paved it. He moved the cars immediately after he was cited. He is responsive to the city’s requirements and will continue to be in the future. Mr. Clemmons submitted Exhibit B, which is a photograph of his current sign at 3132 Production Dr. There is no reference on the sign to selling cars; it only references a body shop. Mr. Guzman has been trying to obtain a license from the State of Ohio to sell cars since 2009. He was denied three times, before they finally approved him this year. Mr. Jacobs referenced the zoning map, and stated that the most intense uses are north and east of Route 4 and are mostly industrial uses. The areas adjoining Route 4 are less intense and then further south and west is high density residential, tapering to less dense. The current Conditional Use of the subject property as office space is not consistent with this plan and the surrounding uses. Mr. Jacobs said he isn’t sure how one additional car lot in the area is inconsistent with the surrounding uses. Shared Harvest Foodbank provides a large buffer and there are no residential properties nearby. He isn’t sure how the businesses that are in the M-2 zone are able to operate those types of businesses, which are more like C-3 uses. Mr. Siciliano asked what type of business Mr. Hanaa leased to most recently. It was a touch up/refinishing shop.

#### FIVE MINUTE BREAK

Timothy Bachman, Development Services Director for the City of Fairfield, testified. He has been with the City of Fairfield for 29 years, 27 as Development Services Director. He submitted Exhibit C, which is a written summary by Mr. Bachman that addresses each of the 7 points that the City of Fairfield Codified Ordinances requires to qualify for a use variance. According to the ordinance, the board is to find, “beyond a reasonable doubt” that the use meets all 7 of the requirements. Mr. Bachman proceeded to read each issue in the memo (Exhibit C). The applicants applied for a conditional use through the Planning Commission in August of 2014 and were denied. Carl’s Fine Cars at 5852 Dixie Hwy was issued a Conditional Use in October 1986 and Drive Time at 5910 Dixie Hwy was issued a Conditional Use in May of 2011. Both of

these properties surround the subject property, and are zoned M-2. Both properties also front on Route 4, and the Conditional Uses made sense because of the access and visibility. There was another car lot that wanted to obtain a conditional use in the M-2 zone on Port Union Rd., and was turned down. He referenced the aerial photo at 3120 Production Dr. and noted the lack of visibility from Route 4. Mr. Clemmons pointed out where the right of way was on the aerial. There was discussion on where Mr. Guzman was parking cars in relation to the right of way and these issues were pointed out in several of the photos in Exhibit A. Mr. Bachman referenced the survey that was submitted by the applicants in relation to parking. There are several issues with parking spaces and the lack thereof on this property due to the narrowness of the lot. A power pole that is currently in the lot also impedes parking and flow of traffic through the lot. There is concern that emergency vehicles may have issues getting into the lot.

Mr. Clemmons stated that the original comprehensive zoning plan was to keep the most intense industrial uses on the east side of Route 4. Areas that now house the used car lots were eventually zoned C-3 or C-3A. There was discussion regarding the parking at 3120 Production Dr. Mr. Clemmons stated that approximately 1/3 of the front of the property was right of way, thus can't be used for parking. Car lots along Route 4 have always had problems with parking in the right of way and illegal temporary signage, especially on the weekends when the city is not staffed. Several violations have been issued. There are 2 other car lots that are zoned M-2 in addition to the two previously discussed: "Autolicious" at the intersection of Bypass 4 and Route 4, and "Moe's Autos" north of the tracks on Route 4. There have been no car lots without frontage on Route 4 that have been authorized in an industrial or other non-permitted commercial zone.

Mr. Jacobs asked Mr. Bachman his educational background. He has a Bachelor's Degree in Urban Planning, and a Master's Degree in Business. The information that he provided regarding parking spacing was taken from the AIA Standards Book, "Minimum Parking Space Dimensions". There are various different dimensions provided in that book in reference to parking, depending on the type of parking, such as 90 degree parking and parallel parking. The lack of space in the parking lot may require people to back out onto Production Dr., which could cause traffic issues. The severity of the traffic problems would depend on different factors, such as time of day and amount of traffic. There was discussion on where the curb cuts are located for various businesses in that area. Mr. Jacobs pointed out that Mr. Hanaa did not configure the spacing and layout of building or the size of the lot. He stated that reconfiguring the parking would help alleviate the concern of backing out into the street. Mr. Jacobs asked if 5888 Dixie Hwy, which is Production Tool Rental, is in the M-2 zoning district and if it was issued a Conditional Use. This address is located in the M-2 zone, and it was not issued a Conditional Use. There was discussion on what type of business was operated out of this building and whether or not it was a permitted use. 3140 Production Dr. is zoned M-2 and is a general contractor's office. The majority of the business is warehouse for the storage of construction materials and a warehouse is a permitted use under the M-1 zoning. There was discussion on whether or not the board could place restrictions on a variance and what those restrictions could consist of in relation to approving this variance. Mr. Jacobs asked for clarification on the requirement of the board to find "beyond a reasonable doubt" that the 7 items on Exhibit 3 are proven. The city thought was that use variances were a very important issue, and worded it that way in the ordinance.

There was discussion on the character of the area and businesses that are permitted. The applicant can legally operate a used car facility in the C-3 or C-3A zoning district. Mr. Jacobs asked if the city's concern would be alleviated by a parking plan submitted by the applicant, with regard to traffic circulation. Yes, if the plan met all of the parking standards. But the traffic and parking issues are just one part of the whole picture. Mr. Clemmons commented that if compliance was met with regard to parking spaces and right of way, how practical is the property to be used as a car lot? Very little parking area would be left. Businesses not on Route 4 shouldn't be trying to attract attention of motorists away from Route 4. Mr. Jacobs asked if the variance could be tabled for one month, to give him the opportunity to come up with a parking plan for the property and to respond to the memo (Exhibit C) presented today. Mr. Clemmons had no objection to his request, but asked him to keep in mind that the finding wouldn't happen until the January meeting, at the earliest.

Mr. Clemmons stated that City Council recently adopted changes in the ordinances for car lots, which apply to properties that are already zoned for car lots. In the C-3 and C-3A zone, they will be moved from Principal Permitted Uses to Conditional Uses. Mr. Siciliano asked if the applicant could ask for a rezoning of the property. The applicant has 3 different options available to them: Conditional Use Application, Re-zoning and Board of Zoning Appeals. He asked if 3132 Production was zoned M-2 and if sales were allowed there. He can repair cars but not sell them there.

Mr. Porter asked why there was so much opposition to this variance by the city. He has not seen such a strong case against a variance since he joined the board. Mr. Bachman stated that there hadn't been a use variance before him in the past. They are trying to do a better job of policing these types of businesses, because of the recent code changes by City Council. Planning Commission started studying the issue in early summer, because the city was concerned with the direction those businesses were headed and felt that they needed an additional level of review.

Public Comment

None

Board Re-Convened

Scott Lepsy, seconded by Greg Porter, made a motion to table the variance at the applicant's request. Motion carried 7-0.

If the applicant wants to submit something for the board to review, the information will need to be given to the secretary by 11/18 at the latest. If it is later than that, it can be sent as a supplemental mailing. The mailing will be sent on 11/21.

Adjournment:

Motion to adjourn carried 7-0.

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Ron Siciliano, Chairman

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Lynda McGuire, Secretary