

BOARD OF ZONING APPEALS

Springfield, Ohio

Monday August 20, 2018

7:00 P.M.

City Forum, City Hall

Meeting Minutes

(Summary format)

Chairperson Denise Williams called the meeting to order at 7:00 P.M.

MEMBERS PRESENT: Ms. Jeannette Anderson, Ms. Rhonda Zimmers, Mr. Mathew Ryan, Mr. Mark Brown, and Ms. Dori Gaier

MEMBERS ABSENT: Mr. James Burkhardt and Ms. Denise Williams

OTHERS PRESENT: Stephen Thompson, Planning, Zoning, and Code Administrator Cheyenne Pinkerman, Community Development Specialist

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SUBJECT: Approval July 16, 2018 meeting minutes.

Ms. Gaier asked if the board had any corrections to add to the minutes.

Ms. Gaier asked the board members to voice yes if they were in favor of approving the minutes. Members voiced yes.

Ms. Gaier asked if any opposed to voice nay. Hearing none, Ms. Gaier stated minutes stand approved.

SUBJECT: Case #18-A-10 Request from Ashley & William Young for a conditional use permit to establish a daycare, type A at 916 Warder St. in a RS-8, Medium-Density, Single-Family Residence District.

Ms. Gaier stated that the public hearing was now open and asked for Mr. Thompson to read the staff report.

Mr. Thompson gave the staff report.

The applicant is requesting a conditional use permit to establish a type A daycare. Type A daycares permit up to 12 children at one time.

ANALYSIS for Conditional Use:

In considering an application for a conditional use, the Board shall give due regard to the nature and condition of all adjacent uses and structures, and the consistency therewith of the proposed use and development. Before authorizing a use as a conditional use, the Board shall review the facts and circumstances of each proposed conditional use in terms of the following standards and shall find adequate evidence showing that the proposed conditional use at the proposed location:

(1) Would not be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of noise, smoke, odor, vibration, dust and dirt, cinders, noxious gases, glare and heat, fire and safety hazards, sewage wastes and pollution, transportation and traffic, aesthetic and psychological effects. The Board shall use and give recognition to those performance standards which are available in model codes or ordinances, or have been developed by planning, manufacturing, health, architectural and engineering organizations, and can be applied to the proposed use, to assist it in reaching a fair and objective decision;

Staff Comment: It would not.

(2) Is in fact a conditional use as established under the provisions of this Springfield Zoning Code as eligible to be permitted in the district involved;

Staff Comment: Yes.

(3) Will be harmonious with and in accordance with the general objectives, or with any specific objective of this Springfield Zoning Code;

Staff Comment: Yes.

(4) Will be designed, constructed, operated and maintained as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that the use will not change the essential character of the same area;

Staff Comment: Yes.

(5) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;

Staff Comment: Yes.

(6) Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;

Staff Comment: It would not.

(7) Will have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares. Upon authorizing a conditional use, the Board shall impose such requirements and conditions with respect to location, construction, maintenance and operation, in addition to those expressly stipulated in this Springfield Zoning Code for the particular conditional use, as the Board may deem necessary for the protection of adjacent properties and the public interest.

Staff Comment: Yes.

STAFF RECOMMENDATION:

Approval of the conditional use permit.

Ms. Gaier asked if the board had any questions for Mr. Thompson. Hearing none, Ms. Gaier asked if the applicant or the applicant's agent wished to speech.

Mr. Thompson stated the applicant was not present.

Ms. Gaier asked if anyone else wished to speak.

Ms. Debbie North, 401 Buckingham Drive, London, OH, explained that she owned the business next to the property in question. Ms. North expressed that she was not attending the meeting in opposition, just to express her concerns. Ms. North explained one of her concerns was her private parking lot being used for pick up or drop off. Ms. North explained that she has had several issues with the neighborhood. Ms. North expressed her other concerns for the children and the neighborhood not being safe for children to play outside. Ms. North explained that there had been a lot of drug activity coming from the apartments across the street and explained that the occupants use the alley that runs along the property. Ms. North questioned if the zoning would be for any kind of business or just the day care business. Ms. North explained that she would like to see a privacy fence put up along the alley to protect the children.

Mr. Thompson explained that the daycare would not be open for 24 hours and if the board chose to, they could set hours that the daycare could operate. Mr. Thompson explained that the property was zoned RS-8, a residential zoning district. The daycare type A is a conditional use within that district. Mr. Thompson explained that regardless of the case it would stay zoned RS-8.

Ms. Gaier questioned if the conditional use would only be for the applicant and would not carry over if or when someone else moved in the home.

Mr. Thompson explained that the conditional use would stay with the applicant on the property. Mr. Thompson explained if the applicant left in a year, the conditional use would no longer be valid.

Ms. North explained one of her biggest concerns would be parking. Ms. North questioned where the pick-up and drop off would be. Ms. North explained that intersection was very busy.

Ms. Anderson asked Ms. North if she has spoken with the applicant.

Ms. North explained that she had spoken with them very briefly.

Ms. Anderson asked if there had been any other complaints.

Mr. Thompson explained that he had not received any additional complaints.

Ms. Zimmers asked if the applicant had their license to run a daycare.

Ms. Gaier stated they were licensed and had been for several years.

Mr. Thompson explained that they have not went through the permit process with building regulations.

Mr. Ryan questioned if any plans were submitted for parking.

Mr. Thompson stated no plans had been submitted. Mr. Thompson explained in the zoning code, there is nothing stating that parking has to be on private property. Mr. Thompson explained that they could park on the public right of way.

Ms. Gaier stated that the board did not have control over the parking and the only thing the board had control over was the hours of operation.

Ms. Gaier asked if there was anyone else that wished to speak at that time. Hearing no further discussion, Ms. Gaier asked if there was a motion to close the public hearing.

MOTION: Ms. Anderson made a motion to close the public hearing. Seconded by Ms. Zimmers. Approval by voice vote.

Ms. Williams stated that the public hearing was now closed and asked for a motion to approve Case #18-A-10.

MOTION: Motion by Mr. Ryan to approve Case# 18-A-10 with the stipulation that hours of operation, 6:00 A.M to 6:00 P.M., be included in the final application. Seconded by Mr. Brown.

Hearing no further discussion or questions, the Board determined the following findings of facts:

1. The applicants have been licensed for seven years.
2. It is not a commercial building so private parking is not required.
3. Hours of operations set by board, 6:00 A.M to 6:00 P.M.

VOTE:

YEAS: Ms. Zimmers, Mr. Ryan, Ms. Brown, and Ms. Dori Gaier

NAYS: Ms. Anderson

Motion Approved 4 to 1

SUBJECT: Case #18-A-11 Request from Community Civil Engineers, LLC for variances from Chapter 1142 to build a new gas station and convenience store at 2598 E Main St. in a CC-2, Community Commercial District

Ms. Gaier stated that the public hearing was now open and asked for Mr. Thompson to read the staff report.

Mr. Thompson gave the staff report.

The applicant is requesting variances from Chapter 1142 to build a new gas station and

convenience store. The property is located in Transect 5, Urban Commercial Center of the Eastern Edge Overlay. The variances include parking and drives along the front of the property, greater than 20' maximum setback for the building, and less than 15 parking spaces. The building setback is necessary because the location of the underground gas tanks is along E Main St.

ANALYSIS for Variance:

The Board may grant a variance only where there exists a “practical difficulty” as defined by the courts in Ohio in established case law. The Ohio Supreme Court’s decision in Kisil v. City of Sandusky, (1984) 12 Ohio State 3d 30, is a land mark decision in establishing common law governing variances by distinguishing between “use” and “area variances.” Area variances involve an exception from such requirements as yard, lot, and height standards. The Supreme Court established that a practical difficulty must exist before an area variance can be granted.

Then subsequent to this case, in Duncan v. Village of Middlefield, (1986) 23 Ohio 3d 83, the Ohio Supreme Court more fully explained the practical difficulty standards. The factors to be considered and weighed in determining whether a property owner seeking a variance has encountered a practical difficulty in the use of his/her property include, but are not limited to:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

Staff Comment: No. The location of underground storage tanks limits any improvements to the property that comply with the standards.

2. Whether the variance is substantial;

Staff Comment: Yes, however, there is a demonstrated hardship.

3. Whether the essential character of the neighborhood will be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

Staff Comment: No.

4. Whether the variance would adversely affect the delivery of government services (e.g., water, sewer);

Staff Comment: No.

5. Whether the property owner purchased the property with the knowledge of the zoning restrictions;

Staff Comment: Yes.

6. Whether the property owner's predicament can be obviated through some method other than a variance; or

Staff Comment: No. Variance are the only way to allow for the proposed layout.

7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Staff Comment: Yes.

STAFF RECOMMENDATION:

Approval of a variance from Chapter 1142.03 and 1142.04 for a setback greater than 20 feet, fewer than 15 parking spaces, and parking and drives located in the front of a building.

Ms. Gaier asked if the board had any questions for Mr. Thompson. Hearing none, Ms. Gaier asked if the applicant or the applicant's agent wished to speak.

Mr. Steven Butler, 2440 Dayton-Xenia Road, Beavercreek, OH, explained that his client wished to upgrade his existing building to include the convenient store. Mr. Butler explained that his client wished to put up a new building with a convenient store to serve the local community. Mr. Butler explained that the applicant planned to keep the existing canopy and the underground tanks. Mr. Butler explained that the existing building and car wash would be removed. Mr. Butler explained that more parking would replace the carwash. Mr. Butler stated the new building would upgrade the existing site.

Ms. Gaier asked if there was anyone else that wished to speak at that time.

Mr. Bill Sayre, 1915 Devon Drive, Springfield, OH, explained that he owned the property across the street. Mr. Sayre explained that the gas station that was previously there had polluted his property and was now under watch by the EPA. Mr. Sayre explained that he was concerned that the existing tanks may be the reason for the pollution. Mr. Sayre explained that he sent a letter to the new company and never received a response.

Mr. Thompson explained that staff did not have any information on the environmental on the site.

Ms. Gaier questioned if that fell under the board's jurisdiction to correct.

Mr. Thompson stated that was correct, it did not.

Ms. Zimmers questioned the number of parking spots.

Mr. Thompson explained there were five parking spots not including the twelve spots at the pumps.

Mr. Ryan questioned the variances, parking, and the building setback. Mr. Ryan asked what the third variance was.

Mr. Thompson explained the third variances was parking and drives located in the front of the building. Mr. Thompson explained that the location was a corner lot, with the eastern edge plan, entrances or drives in the front of the property are not permitted. Mr. Thompson stated the public should enter on the sides or the rear of the property. Mr. Thompson explained that the property being a corner lot makes that difficult. Mr. Thompson showed on the map where the drives would potentially be.

Mr. Ryan asked if there was a required setback for the rear of the property.

Mr. Thompson explained there was not a required setback for the rear but would need to meet the building codes, which are not stated in the zoning codes.

Ms. Zimmers asked if there were any concerns with deliveries.

Mr. Thompson stated there were concerns from staff but the applicant may have something to say.

Mr. Butler explained that with the twelve spots next to the pumps and the five designated parking spots, they feel there would be enough space. Mr. Butler showed on the map where the delivery trucks would enter.

Ms. Zimmers questioned if the delivery trucks would block any of the drives.

Mr. Butler explained that the trucks would not block the drives.

Ms. Zimmers explained her other concern would be the trucks parking in the alley.

Mr. Butler stated that was not the intent.

Hearing no further discussion, Ms. Gaier asked if there was a motion to close the public hearing.

MOTION: Mr. Brown made a motion to close the public hearing. Seconded by Mr. Ryan. Approval by voice vote.

Ms. Williams stated that the public hearing was now closed and asked for a motion to approve Case #18-A-11.

MOTION: Motion by Ms. Anderson to approve Case #18-A-11 Request from Community Civil Engineers, LLC for variances from Chapter 1142 to build a new gas station and convenience store at 2598 E Main St. in a CC-2, Community Commercial District. Seconded by Ms. Zimmers.

Hearing no further discussion or questions, the Board determined the following findings of facts:

1. Previously a gas station
2. Good addition to the neighborhood.
3. Deliveries will not block the alley.

VOTE:

YEAS: Ms. Anderson, Ms. Zimmers, Mr. Ryan, Ms. Brown, and Ms. Dori Gaier

NAYS: None.

Motion Approved 5 to 0

SUBJECT: Case #18-A-12 request from Katz Tires for a conditional use permit to reestablish non-conforming automotive oriented use at 14 E North St. in a CB-10, Central Business District Commercial District

Ms. Gaier stated that the public hearing was now open and asked for Mr. Thompson to read the staff report.

Mr. Thompson gave the staff report.

The applicant is requesting a conditional use permit to reestablish a non-conforming use. The previous non-conforming use was an automotive oriented use. The proposed use will be a tire shop.

ANALYSIS for Conditional Use:

In considering an application for a conditional use, the Board shall give due regard to the nature and condition of all adjacent uses and structures, and the consistency therewith of the proposed use and development. Before authorizing a use as a conditional use, the Board shall review the facts and circumstances of each proposed conditional use in terms of the following standards and shall find adequate evidence showing that the proposed conditional use at the proposed location:

(1) Would not be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of noise, smoke, odor, vibration, dust and dirt, cinders, noxious gases, glare and heat, fire and safety hazards, sewage wastes and pollution, transportation and traffic, aesthetic and psychological effects. The Board shall use and give recognition to those performance standards which are available in model codes or ordinances, or have been developed by planning, manufacturing, health, architectural and engineering organizations, and can be applied to the proposed use, to assist it in reaching a fair and objective decision;

Staff Comment: It would not.

(2) Is in fact a conditional use as established under the provisions of this Springfield Zoning Code as eligible to be permitted in the district involved;

Staff Comment: Yes.

(3) Will be harmonious with and in accordance with the general objectives, or with any specific objective of this Springfield Zoning Code;

Staff Comment: Yes.

(4) Will be designed, constructed, operated and maintained as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that the use will not change the essential character of the same area;

Staff Comment: Yes.

(5) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;

Staff Comment: Yes.

(6) Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;

Staff Comment: It would not.

(7) Will have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares. Upon authorizing a conditional use, the Board shall impose such requirements and conditions with respect to location, construction, maintenance and operation, in addition to those expressly stipulated in this Springfield Zoning Code for the particular conditional use, as the Board may deem necessary for the protection of adjacent properties and the public interest.

Staff Comment: Yes.

STAFF RECOMMENDATION:

Approval of the conditional use permit.

Ms. Gaier asked if the board had any questions for Mr. Thompson.

Ms. Anderson asked if the building was vacant.

Mr. Thompson stated yes and explained that the most recent use was by the champion city cross fit gym.

Ms. Anderson asked if they would sell tires.

Mr. Thompson explained that the company would sell and install tires. Mr. Thompson explained that the original design of the building was for a tire company. Mr. Thompson explained that there has been several automotive uses in the past.

Ms. Gaier asked if the board had any further questions for Mr. Thompson. Hearing none, Ms. Gaier asked if the applicant or the applicant's agent wished to speak. Hearing none, Ms. Gaier asked if there was anyone else that wished to speak at that time. Hearing no further discussion, Ms. Gaier asked if there was

a motion to close the public hearing.

MOTION: Mr. Brown made a motion to close the public hearing. Seconded by Mr. Ryan. Approval by voice vote.

Ms. Williams stated that the public hearing was now closed and asked for a motion to approve Case #18-A-12.

MOTION: Motion by Ms. Anderson to approve Case #18-A-12 request from Katz Tires for a conditional use permit to reestablish non-conforming automotive oriented use at 14 E North St. in a CB-10, Central Business District. Seconded by Ms. Zimmers.

Hearing no further discussion or questions, the Board determined the following findings of facts:

1. Building was designed for automotive use.
2. Fills a vacant space.
3. No opposition.

VOTE:

YEAS: Ms. Anderson, Ms. Zimmers, Mr. Ryan, Ms. Brown, and Ms. Dori Gaier

NAYS: None.

Motion Approved 5 to 0

Board Comments:

None.

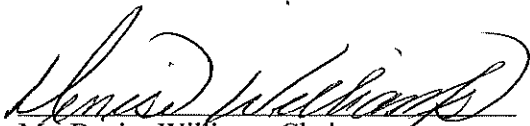
Staff Comments:

None.

Subject: Adjournment

Mr. Brown made a motion to adjourn the meeting. Seconded by Ms. Anderson.

Vice-Chairperson Dori Gaier adjourned the meeting at 7:41 pm.



Ms. Denise Williams, Chairperson

Ms. Dori Gaier, Vice-Chairperson