



## **BOARD OF ZONING APPEALS REGULAR MEETING MINUTES**

**November 16, 2021 at 6:30 PM in Council Chambers**

The meeting was called to order by Mr. Jaskiewicz at 6:30pm.

### **Roll call:**

Members present – Tom Jaskiewicz (Chair), Michael Terry, Nate Metzger

Members absent – Randa Prendergast, Diana McCoy,

Also present: Taylor Brill (Village Planner), Doug Holthus (Solicitor)

### **APPROVAL OF MINUTES**

Mr. Jaskiewicz noted approval of the meeting minutes for September 21, 2021 would need to be tabled until a quorum of member present during the meeting were in attendance.

Mr. Metzger was sworn in

### **COMMUNICATION**

#### **1. Zoning (Ms. Brill)**

Ms. Prendergast sent in her resignation letter for the Board of Zoning Appeals. The Mayor is in the process of finding an interested member to take her spot.

The first part of the zoning code was in front of the Steering Committee this month. Review of the second part is plan for early December.

Mr. Terry clarified that the decision was made to hold off on filling the Zoning Inspector position. Ms. Brill confirmed.

### **PUBLIC COMMENT**

None.

### **NEW BUSINESS**

Mr. Jaskiewicz asked Ms. Brill if all notices were mailed out in accordance with our ordinance. Ms. Brill confirmed.

CU-21-3; 0 US 42: Conditional Use- Miscellaneous Business Services (Operation Restoration); Applicant: Ryan Moore

The application is for a conditional use located at the south-east corner of Alcott and US 42. The request is to establish a Miscellaneous Business Service (Operation Restoration). They are requested approval of the use on the site in question. The primary entrance would be off of Alcott Dr. and the development would be subject to Major Site Plan review, if the Conditional Use were to be granted. The proposed use is a listed conditional use in the B2 District and is subject to the regulation is Chapter 1168.04. Proposed concept drawing and site plan were submitted along with the application. The Board shall consider whether the proposed conditional use is consistent with the standards contained in Section 1183.05 and 1138.05, of the zoning code. The Board of Zoning Appeals shall approve an application for a conditional use if the following three conditions are met:

- i. The proposed use is a conditional use of the zoning district, and the applicable development standards established in the Zoning Ordinance are proposed to be met.
- ii. The proposed development is in accord with appropriate plans for the area.
- iii. The proposed development will be in keeping with the existing land use character and physical development potential of the area.

Based on the review of the standards contained in the planning and zoning code, staff recommends APPROVAL of the conditional use, with the condition that all work/warehousing be done inside facility and be operated in accordance to our public nuisance regulations.

#### **SWEARING IN OF SPEAKERS**

Ryan Moore, Tim Moore, Tyler Harriman, and Kari Hehmeyer were sworn in by Mr. Holthus.

#### **NEW BUSINESS (cont.)**

Tim Moore talked about the nature of the business. A fire and flood clean up and mold remediation business, called Operation Restoration. The business is relatively quiet, not loud machinery. The loudest aspect would be the moving of fleet vehicles in and out of the site. Revenues in multi-million dollars to help expand the tax base in Plain City. Create commerce. 10 current employees, expecting 20 in the next few years. Support military and hire veterans and brand speaks to that. They are going to have an attractive building and keep the landscaping up.

Ryan Moore (Finance Director) stated 99% of work is performed off-site. The loudest is vehicles in/out of space each day. They are currently located in Worthington. Want to expand to Plain City / Dublin / Hilliard areas. Can respond quickly if closer. A "win/win" bringing some money to the local economy. \$3M in revenue is targeted for next year.

Mr. Terry asked about an apartment on site? Ryan Moore stated that the plans in front of the board are very similar to the proposal denied a few months ago. About 10% office and 90% warehouse. Doesn't believe that they would really need the office space. Willing to work with the Village on the build out to make sure it fits into the community. No one to live there, only business.

Mr. Jaskiewicz asked how will the building be situated on the site? Ryan M.: didn't have a certain place we need the building; we are flexible and we'll work with the city. Open to the entrance being on Alcott or US 42. Mr. Terry noted that the transportation study done on US 42, limits access off of US 42.

Mr. Jaskiewicz stated some of the concerns for residents have been noise and pollution on the site. What number of employees in 3-5-10 years? Tim M. stated perhaps total of 20 employees in next 3-4 years. 99% of work is off-site; most employees off-site working. Mr. Jaskiewicz asked if this building would be mostly to store the equipment. Mr. T. Moore: confirmed, stating that some administrative staff would be in the building but most are doing service calls. Do not have a lot of customers coming into the business. Mr. R. Moore stated the loudest piece of equipment is a small dehumidifier.

Mr. Jaskiewicz, noticed in the application that some work will be done on site in preparation. Mr. T. Moore stated that this would mostly be loading equipment. Will be enclosed. There will be a dumpster, where some materials are dumped, but this is done during the day. The hours of operation are 24/7, but 15% may be during the night where fleet vehicles may be loading up to go to a site. People will be able to sleep through that. Normal operations in the facility are M-F 9-5pm.

Mr. Jaskiewicz asked how many jobs does the total revenue equate to. Mr. T. Moore stated between 200-300 jobs.

Mr. Metzger asked how will the property be landscaped. Ryan stated they want to make it look as nice as possible. Want to work with the Village to make sure it is up to standard. Doesn't have anything specific in mind, but will keep it well maintained.

Mr. Jaskiewicz explains Design / Review, Planning Commission and other components of the approval process. Tonight, is for approval of the use. If that is granted there is a whole process that follows with Planning and Zoning. Taylor will work with you to make sure all code requirements are met. Asked if this conditional use is for this particular application only.

Ms. Brill: Confirmed. If this business vacates and if another use not already approved, then next owner will have to re-apply for another Conditional Use. Anything done to improve the site for a new construction, would require a major site plan that goes to planning commission. If any deviation from the code is requested, they would need to file a variance and come back in front of this board.

Mr. Harriman was invited to provide comment.

His issue is with any business that goes in here. Village Ordinance in 2001 for 2.33 +/- acres of green space. This area should have been designated as green space. Realizes it's too late to change that and is conflicted. While likely minimal impact, this Application seems no different than the one denied a few months ago. None of the neighbors / the HOA wants a business as this location. "Biggest struggle" is with the building itself; a warehouse, not in keeping with a residential neighborhood. There is no consistency and the Application seems to be missing a lot of information. Needs "assurances" that our property values will not be reduced / that enjoyment of our own property will not be impacted. This is a neighborhood, not a warehouse district. We need to follow our Comprehensive Plan. Does not believe the three (3) criteria are met. Not opposed to the business, so long as they're "good neighbors". The building needs to be neighborhood friendly, not this warehouse type as seen in the Application.

Mr. Jaskiewicz explains process and obligations of BZA, and that proposed design / design renditions are not germane to this process. Those items / concerns will be addressed during the remaining steps in the process. Cub Cut on Alcott: ODOT will not permit any other curb cuts onto US 42 at this location. Explains purposes of this body.

Mr. Harriman asked if a warehouse what your residents want in this area. Take into consideration the wants of the residents. Asked when is the Comprehensive Plan ever considered.

Mr. Jaskiewicz and Mr. Terry explain the "shading" of various areas on the Comprehensive Plan map(s). We try to follow, but none of this is etched in stone.

Mr. Harriman stated if this is approved, a lot of work will be needed by DRB. Ms. Brill stated next phase, if approved, will be to Planning Commission and please come and attend.

Mr. T. Moore stated only this business is expected on site and treat this as if my own home will be in the area. Mr. R. Moore stated loudest noise one of our dryers makes, similar to a dehumidifier. Want to work with Village and understands concerns.

Ms. Hehmeyer was invited to provide comment.

Her home directly abuts the property in question. Doesn't think the application is sufficiently complete. Mr. Jaskiewicz explains next steps of the application if approved. Mr. Terry explains all boards have regularly scheduled meeting and this can be found on the website if the community wishes to attend. Ms. Hehmeyer continues to voice concerns that the application is not sufficient per 1136.08(C)(5). The plot plan is one used during the previous denial at same location. Area is heavily residential. Traffic and noise are not sole considerations has concerns about chemicals use. Mr. R. Moore stated they use only green products.

Public Hearing portion for this application closed and deliberations occurred by the Board. The board considered the following factors for the conditional use:

1. The proposed use is a conditional use of the zoning district, and the applicable development standards established in the Zoning Ordinance are met
  - a. Mr. Jaskiewicz stated that they are looking at the proposed use and further details in terms of site plan/design will be addressed in next steps. Believes standard is met. Mr. Terry understands why the board did not receive a full site plan and would have felt more comfortable if they did, because more information would be helpful. Has faith in the remaining steps of the process. Stated some trouble with the standard and its "are met" language. Mr. Metzger also stated more details would be helpful in determining if the standards are met.
2. Proposed development is in accord with plans for the area
  - a. Mr. Jaskiewicz stated yes, this area is a part of the commercial corridor. Mr. Terry agreed, stating among other uses that might be permitted, this use seems most appropriate. Mr. Metzger believes this use fits the area.
3. The proposed development will be in keeping with the existing land use character and physical development potential of the area
  - a. Mr. Jaskiewicz stated it's a vacant field currently with residential areas adjacent. Mr. Terry noted that everywhere, there is brackish areas where there is a transition from commercial to residential. The decision was made at some point to call this a commercial area. Mr. Metzger had nothing additional to add.

Mr. Jaskiewicz moved to table the application for one week, in order to have the Findings of Fact. Seconded by Mr. Terry. 2 yeas, 1 no.

**CU-21-4; 122 W 2nd Ave: Conditional Use- Accessory Dwelling Unit; Applicant: Terry Miller**

**VAR-21-5; 122 W 2nd Ave: Variance- A deviation from Chapter 1183.05 which states, "...accessory use or structure shall be twenty-five percent (25%) or less of the gross floor area of the principal use or structure," to allow for 50% or less, A deviation from Chapter 1149.04(d-e) to allow for a minimum of 5' from the property line; and a deviation from Chapter 1149.04(f) to allow the accessory structure to be 25ft in height.**

Mr. Jaskiewicz asked since both the next application were for the same property if the staff report could be read for both.

Ms. Brill stated the applicant is requesting the Board of Zoning Appeals' approval for a conditional use to allow for an accessory dwelling unit (ADU) on the property. The property 122 W 2nd St is within the Single-Family Residential District (RS2) and an ADU is a listed conditional use. The proposed ADU will serve as a detached garage with a second floor living space. The structure will be 25'x26' and stand 25ft tall. The total square footage for both the first and second floor combine will be 1,492 square feet. Per Chapter 1183.05, accessory structures are permitted provided that they are 25% or less of the gross floor area of the principal use. For this application, given that the principal structure is 2950 sqft, as the code is written an accessory structure could be no more than 738 sqft. As proposed the detached garage would meet all of the other requirements for accessory structures, except the rear setback requirement and the height requirement. Per Chapter 1149.04, the rear setback is 8ft or more from the rear property line and other structures shall not exceed the height of the main dwelling structure. The applicant has requested a variance in order to accommodate these deviations. The Board shall consider whether the proposed Conditional use is consistent with the standards contained in Section 1149.03, 1183.05 and 1138.06, of the zoning code.

Celia Miller and Terry Miller were sworn in by Mr. Holthus. Celia Miller explained the reason behind the application to be for the care of her older parents, and the need for more space, without adding a addition onto the house.

Mr. Jaskiewicz stated that the request for AUDs are becoming more prevalent and the board has approved a number of similar applications. Mr. Terry asked if in the future with the new zoning code rewrite if this application will be needed. Ms. Brill clarified this will be considered in the update, but cannot confirm with certainty that there will not be applications like this that come up in the future.

Mr. Jaskiewicz asked what the current setbacks in the district were. Ms. Brill said 8ft from the side and rear lot line. Mr. Jaskiewicz asked if an encroachment on the setback would create issues for EMS services. Ms. Brill confirmed that there would be access to the structure via the existing driveway. Fire separation between the building would be most important. Does not see and issue with the 2ft encroachment into the rear setback.

Mr. Metzger asked if there was currently a fence on the property. Ms. Miller confirmed that there is an old fence. Mr. Terry asked if there was a possibility that this could be rented out in the future. Ms. Brill confirmed this to be a possibility and stated there was not anything the Village could or should do to regulate this. Mr. Terry asked about the process to establish a new address for the ADU. Ms. Brill stated that new address request can be filed with the Planning and Zoning Department.

Mr. Metzger asked about the current homes' construction. Ms. Miller stated that it is a limestone ranch and they do not wish to add or interfere with the current structures construction. Mr. Metzger asked if there was currently a shed on the property. The applicant confirmed. Mr. Metzger asked if all other homes on the street were ranches. The applicant stated it was a mix of housing types and some being

renter-occupied. Mr. Metzger asked if the new structure would interfere or be taller than the tree canopy to the rear. Ms. Miller stated there was a mix between some taller, more mature trees and smaller ones.

Mr. Jaskiewicz asked if was possible for the applicant to move the building so, it was within the 8 ft setback. Ms. Miller stated this may be possible. Ms. Brill noted that we would need to ensure that there was adequate fire separation if this were to be done.

Mr. Jaskiewicz asked if there was any public comment for the application. Hearing none the public hearing portion was closed.

## **DISCUSSION**

### CU-21-4-Accessory Dwelling Unit

- The proposed use is a conditional use of the zoning district, and the applicable development standards established in the Zoning Ordinance are met;

Mr. Terry agreed this is a conditional use in the district and the applicable development standards are met. Mr. Jaskiewicz and Mr. Metzger agreed.

- Proposed development is in accord with plans for the area

Mr. Terry said it's a residential area asking to add more residential dwelling so it seems appropriate.

- The proposed development will be in keeping with the existing land use character and physical development potential of the area

Mr. Terry concurred that there are similar type units in the area and no residents have come out to voice objections, so he believes this is met.

Mr. Jaskiewicz moved to table the application for one week, in order to have the Findings of Fact. Seconded by Mr. Terry. All yeas

VAR-21-5: A deviation from Chapter 1183.05 which states, "...accessory use or structure shall be twenty-five percent (25%) or less of the gross floor area of the principal use or structure," to allow for 50% or less

- A. That said area variance will not be contrary to the public interest.  
Mr. Jaskiewicz did not believe this would be contrary. Mr. Terry and Mr. Metzger agreed.

- B. That said area variance is justified due to special conditions.

- C. Mr. Jaskiewicz did not believe this would be contrary. Mr. Terry and Mr. Metzger agreed.

C. That the literal enforcement of the Zoning Ordinance will result in practical difficulties. The factors to be considered and weighed in determining whether practical difficulties have been encountered shall include, but not be limited to the following:

1. Whether there can be any beneficial use of the property without the variance;

Mr. Jaskiewicz stated yes there is beneficial use, they live on the property.

2. Whether the variance is substantial;

Mr. Jaskiewicz stated that the increase from 25% to 50% is substantial. Mr. Terry noted this is mostly due to the second story because the footprint isn't.

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

Mr. Jaskiewicz noted the mix between ranches and two-story homes in the area. He does not believe the character of the neighborhood would be affected. Mr. Terry and Mr. Metzger agreed.

5. Whether the variance would adversely affect the delivery of governmental services (e.g. water, sewer, garbage);

Mr. Jaskiewicz noted fire and police protection should be considered as well, but does not believe this variance would cause issue.

6. Whether the property owner purchased the property with knowledge of the zoning restriction; and

Mr. Jaskiewicz confirmed with the applicant that they did not know there was a zoning restriction.

7. Whether the property owner's predicament feasibly can be obviated through some method other than a variance.

Mr. Terry stated no and Mr. Jaskiewicz agreed. Mr. Metzger asked if some of the square footage could be alleviated if they made the structure wider. Mr. Terry stated they would have to shrink the structure in order to make and impact on the overall square footage.

- D. That the spirit of the Zoning Ordinance will be observed and substantial justice done if the area variance is granted.

Mr. Terry stated that the spirit is that the accessory structure remains smaller than the principal structure. He believed this was met. Mr. Jaskiewicz and Mr. Metzger agreed.

- E. That the variance is based on need not convenience or profit.

Mr. Jaskiewicz stated that the need was to provide additional dwelling space and not based on profit. Mr. Terry agreed.

VAR-21-5: A deviation from Chapter 1149.04(d-e) to allow for a minimum of 5' from the property line;

- A. That said area variance will not be contrary to the public interest.

Mr. Jaskiewicz did not believe this would be contrary. This could create an issue if there was a neighbor behind, but this is a private interest. Mr. Metzger asked if the property to the rear is also zoned RS2. Ms. Brill confirmed.

- B. That said area variance is justified due to special conditions.

Mr. Jaskiewicz stated that this seems to be justified, if they cannot move it closer due to fire separation. Ms. Brill stated she did some rough measurements. They have about 39' from the back

of the house to the rear property line, they are proposing a 26' structure, and if they were setback 8' from the rear property line, this would leave 5' between the home and proposed structure. Would confirm before next Tuesday what the code would require for separation purposes. Mr. Terry stated that if there were found to not be enough separation, then there would be a special circumstance.

C. That the literal enforcement of the Zoning Ordinance will result in practical difficulties. The factors to be considered and weighed in determining whether practical difficulties have been encountered shall include, but not be limited to the following:

1. Whether there can be any beneficial use of the property without the variance;

Mr. Jaskiewicz stated yes there is beneficial use.

2. Whether the variance is substantial;

Mr. Jaskiewicz stated that it doesn't seem substantial

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

Mr. Jaskiewicz no detriment in his opinion and there were no neighboring property owners that spoke in opposition

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

Mr. Jaskiewicz stated no. Mr. Metzger asked if the existing fence would cause issues with access. Mr. Jaskiewicz stated there may be issue if there was an existing utility easement. Ms. Brill stated typically if the easement would need to be accessed anything in the way would need removed. She also stated that some of the neighboring zoning district, across the road for example, have a required 5' setback instead of the 8'. Mr. Jaskiewicz asked if someone would be permitted to construct something on an easement. Ms. Brill confirmed.

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

Mr. Jaskiewicz confirmed with the applicant that they did not know there was a zoning restriction.

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

Mr. Jaskiewicz stated there may be a way for her to move the structure closer to the home.

D. That the spirit of the Zoning Ordinance will be observed and substantial justice done if the area variance is granted.

Mr. Jaskiewicz did not believe this would be an issue.



E. That the variance is based on need not convenience or profit.

Mr. Jaskiewicz stated that the need was to provide additional dwelling space and not based on profit. Mr. Terry agreed.

Mr. Terry moved to table the application for one week, in order to have the Findings of Fact. Seconded by Mr. Jaskiewicz. All yeas

VAR-21-5: A deviation from Chapter 1149.04(f) to allow the accessory structure to be 25ft in height.

A. That said area variance will not be contrary to the public interest.

Mr. Jaskiewicz did not believe this would be contrary. Mr. Terry agreed.

B. That said area variance is justified due to special conditions.

Mr. Jaskiewicz stated that this seems to be justified. The existing home is a ranch, in order to build a two story building it would be taller.

C. That the literal enforcement of the Zoning Ordinance will result in practical difficulties. The factors to be considered and weighed in determining whether practical difficulties have been encountered shall include, but not be limited to the following:

1. Whether there can be any beneficial use of the property without the variance;

Mr. Jaskiewicz stated yes there is beneficial use, they live on the property.

2. Whether the variance is substantial;

Mr. Jaskiewicz stated this is not substantial. Mr. Terry agreed. Mr. Metzger stated that if it's a similar height to a two-story home, it does not seem substantial.

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

Mr. Jaskiewicz noted the mix between ranches and two-story homes in the area. He does not believe the character of the neighborhood would be affected. Mr. Terry agreed.

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

Mr. Jaskiewicz stated this would not be an issue.

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

Mr. Jaskiewicz confirmed with the applicant that they did not know there was a zoning restriction.

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

Mr. Jaskiewicz stated no, not based on what was submitted. Mr. Metzger asked if this could be a one story structure. Mr. Jaskiewicz noted this may cause some issues with overall lot coverage threshold.

D. That the spirit of the Zoning Ordinance will be observed and substantial justice done if the area variance is granted.

Mr. Terry stated that regulation is in place to make sure that structure doesn't exceed the height of other structures in the vicinity. Mr. Metzger stated he like they were proposing a two-car garage, instead of one.

E. That the variance is based on need not convenience or profit.

Mr. Jaskiewicz stated that the need was to provide additional dwelling space and not based on profit. Mr. Terry agreed.

Mr. Jaskiewicz moved to table the application for one week, in order to have the Findings of Fact. Seconded by Mr. Terry. All yeas

#### **ADJOURNMENT**

Meeting adjourned at 9:03pm.