
**MINUTES OF SYMMES TOWNSHIP BOARD OF ZONING APPEALS
REGULAR MEETING
APRIL 2, 2018**

The meeting was called to order at 7:00 p.m. Members of the Commission present were: Mr. Fowler, Ms. Harlow, Mr. Havill, Mr. Ruehlmann and Mr. Wolfe.

Also present were: Bryan Snyder, Hamilton County Zoning Inspector and Luanne Felter, Zoning Secretary.

PUBLIC HEARINGS

MR.RUEHLMANN convened the public hearing for BZA 2018-02 for the property located at 10034 Washington Avenue.

MR. SNYDER stated that the appellant is requesting variance approval to allow the storage of limousines and other vehicles on the existing noncomplying parking lot without meeting the setbacks or installing the required screening. The subject property is located on the entire block bounded by Washington Avenue to the south, Adams Avenue to the north, Jefferson Avenue to the west, and Victor Avenue to the east.

The appellant recently moved an existing limousine service business onto the property without receiving a new tenant Zoning Certificate. The property includes a number of parcels, an existing parking lot and a former residential structure converted to office use. The appellant is using the office building for the office portion of his business and is storing the limousines and other vehicles used for his business on the existing parking lot which is currently not screened. The appellant has stated that the required fencing would be unsightly and expensive and would push back or cancel plans to construct a warehouse on the property to store the limousines inside within the next few years.

The site includes 19 separate parcels. Of the 19 parcels, 18 are zoned "G" Heavy Industrial. The majority of the parcels are 25 feet wide with half fronting on Adams Avenue to the north and the other half fronting on Washington Avenue. The location of the office structure is on the largest parcel that is located at the far eastern end of the site. The one parcel to the northwestern corner of the site is zoned "C" Residence; however, it is a vacant parcel and is not being considered as part of this request.

With the exception of this one residential parcel, the proposed use is permitted in the "G" Heavy Industrial district. To meet the zoning requirements the appellant would be required to complete a number of improvements. The parking lot is currently located partially within the right of way of Adams Avenue. This would have to be moved back 50 feet from the road. The lot would have to also be located 50 feet from the road to the south and to the west. The existing parking lot is 100 feet wide and moving it to the center of the site and meeting the 50-foot front yard setbacks would allow the same 100 feet in width. The Zoning Resolution would then require that the lot be screened by a 10-foot tall solid fence and streetscape landscaping would be required to be added to all three street frontages. Additionally, the one residential lot would have to be treated as residential property which means boundary buffers will be required around this one lot. However, due to the uniqueness of the property and this location, strict compliance with the Zoning Resolution may increase the impact of the use on the adjacent properties. The 10-foot tall fence requirement is also out of character with other types of fences permitted in the Zoning Resolution and would create a barricade style look that is typically not encouraged elsewhere in the Township. This style of fence was likely never intended to enclose an entire block because all four sides are visible from public streets. The

regulation was likely created for bus depots, taxi cab, semi-trailer, and other similar storage uses that would have a negative impact on the view from surrounding properties.

There are two other concerns with the existing parking lot that should be addressed as part of any variance consideration. First, the parking lot extends considerably into the right of way of Adams Avenue. The last 10 to 12 feet of the parking spaces facing Adams are located within the right of way. The asphalt for the parking lot actually connects with the asphalt for the road. In addition, the parking blocks for these spaces are located within the right of way. The current configuration allows for vehicles pulling up to the parking blocks to overhang into the traveling lane of Adams Avenue. These parking blocks should be moved back to assure that no vehicles overhang the right of way. The second issue involves the residential parcel on the northwest corner of the site. Currently parking blocks in this location allow vehicles to overhang onto the residential lot. Given that the vehicle storage use is not permitted on the residential parcel, these parking blocks should also be moved back to prevent any portion of the vehicles from extending outside of the limits of the parking lot because the edge of the parking lot is also the boundary between the residential and industrial zoning districts on the property. Lastly, I want to say that I have spoken with the appellant on the phone several times over the last few months. Most of the conversations were about his desire to build a warehouse and I neglected to ask him what his current plans were for the site.

MR. FOWLER wanted to know what the definition of a vehicle storage yard is.

MR. SNYDER stated that it is the storage of fleet vehicles.

MR. FOWLER needed to know what the difference is between that and a rental car company that parks vehicles in a parking lot.

MR. SNYDER stated that a rental car company is considered retail because they have a general parking area for customers who drive up and go into the office to make a transaction.

MR. FOWLER stated that he believes the limousine company should be considered retail also and wanted to know if the Board has the ability to disagree with that interpretation.

MR. SNYDER stated that he believes the use is a vehicle storage yard. If the Board does not agree with him they can deny the variance request for the required screening and setback requirements.

MR. FOWLER stated that he is concerned that if the Board grants the variance to allow a vehicle storage yard someone new can come in and store semi-trucks in the parking lot and wanted to know if the Board can set any conditions.

MR. SNYDER stated that the Board can set conditions without mentioning the type of trucks allowed. He suggested they specify the height and weight instead.

TOM MUEHLENKAMP (10034 Washington Avenue, 45140) stated that he is the owner of the company. He has been in business for 13 years. He moved his business here to be closer to his home which is located in Symmes Township. In the Staff Report one of the factors to be considered is whether the owner purchased the property with the knowledge of the zoning restrictions. The answer is no. He spoke with Bryan Snyder on the phone on several occasions about building a warehouse and he never mentioned that his business was considered a vehicle storage yard and that the property needed to be brought up to code. He got a violation from the Zoning Inspector. When he questioned her about it, she said that Zoning was not aware that he was moving the fleet operations and parking the vehicles outside. That is not true. The warehouse will not be built for approximately two years so he needs to park his vehicles outside and cannot afford to make the improvements. He has spoken with his neighbors and they have signed a petition against the construction of a wall. He would like to install lights on existing telephone poles in the middle of the lot and on the front of the existing garage that

faces the parking for security reasons and restripe the lot to accommodate the limousines. He thinks Mr. Fowler made a valid point. His business should not be considered a vehicle storage area since he rents limos. People are always coming and going and the employees park their cars in the parking lot. As for the concern of semis parking there, he has no plans to sell his business for a while since he only lives two miles from his house and it is very convenient.

MR. RUEHLMANN wanted to know if the vehicles are washed or maintained on site.

MR. MUEHLENKAMP stated that he does not do maintenance there but will wash the buses on site. The limos are taken to the car wash to be cleaned.

MR. FOWLER wanted to know if a warehouse would be big enough to store all his vehicles and what the timeframe would be.

MR. MUELENKAMP stated that under the Zoning Resolution he is allowed to build a warehouse big enough to store all but one of his vehicles. He may come and ask for a variance so he can store them all inside but is not sure yet. As for a timeframe, he is highly motivated to begin construction as soon as possible because his vehicles were previously stored inside and advertised that way as a selling feature and this is a step back. He is also concerned about vandalism. This is what may have caused the confusion with Zoning because I asked if I could have a fence for security purposes.

MR. HAVILL stated that he is confused. Does that mean you want a fence and, if so, can it be smaller?

MR. MUELENKAMP stated that before he bought the property he went over a couple of different options. If he couldn't build the warehouse he definitely wanted a fence for security purposes. If he is required to put up a fence he would prefer a 10-foot tall fence for security and then won't build the warehouse. The only drawback would be that the fence has to be 100% opaque and then his employees would not be visible from the outside if something happened inside. He has several female employees that he worries about.

ELI KRAFTE-JACOBS, ESQ. (4270 Ivy Pointe Boulevard, 45245) stated that his interpretation of Sec. 31.3-229 of the Zoning Regulation is that in order for a use to be considered a vehicular storage yard the fleet must be inactive and not accessible to vehicular traffic of the general public. That is not the case with his client. His vehicles are used on a daily basis and are never inactive.

MR. HAVILL wanted to know how Mr. Snyder came to this decision and asked if car rental companies require a variance.

MR. SNYDER reiterated that he did not have a detailed description of what was going to happen on this site when he made his determination of the use. He understands that the vehicles are being used but the fleet is stored there and the service is taking place off site. A rental car company is making the transaction on site. Obviously, the only business that would have an inactive fleet would be a junk yard. Rental car companies do not require a variance; they just need to meet the 20 foot setback requirement. Fencing would only be required if the parking lot was reconfigured. He noted that the definition of a vehicle storage yard was not disputed with his office until later on when it became an issue.

MR. FOWLER wanted to know if Mr. Snyder has changed his interpretation of the use now that he has heard all of the testimony.

MR. SNYDER stated that he has not changed his mind. By preparing the Notice of Refusal and the Staff Report he has provided his official interpretation and the Board only needs to decide whether to grant the variances. He noted, however, that if the appellant told him he didn't agree with his interpretation he would have advised him to come to the Board for clarification.

MR. MUELENKAMP stated that he will be closing on the property soon and the seller is getting anxious. He would like the Board to make a determination tonight so he can move forward.

MR. WOLFE agreed and noted that the definition is not before them. He believes a 10-foot high fence would be ridiculous. It should at least be reduced. The parking blocks should be moved back from overhanging in the right of way. The Board could impose conditions in the resolution to protect future use.

MR. HAVILL noted that he has mixed feelings. He suggested that the Board grant a 50-foot setback and allow no screening because it may set a precedent. The applicant will still have plenty of room for parking.

MR. WOLFE noted that the limos are too big. He will not be able to maneuver them.

MR. FOWLER stated that the factors listed in the Staff Report need to be considered. There are no practical difficulties on this site. The Board cannot modify the zoning requirements to make the property suitable for his purposes. We have a responsibility to the residents to follow what is in the Zoning Resolution. I believe that this is not a vehicle storage area and don't understand why this case is in front of us.

MR. WOLFE noted that the appellant brought the case before us and has not asked for a reinterpretation of the use.

MR. RUEHLMANN stated that he would like the Board to come up with something so the appellant can move forward and buy the property.

MR. HAVILL reiterated that he would like a 50-foot setback. It would only require a can of paint for restriping and it will keep him away from the neighbors.

MR. RUEHLMANN wanted to know what would happen to the parking lot if the Board granted a 50-foot setback.

MR. SNYDER stated that he would have to remove the remaining asphalt. There needs to be 20 feet between the parking lot and road.

MR. WOLFE didn't feel that the setback would work and wondered what would happen to the parking once the garage was built.

MR. RUEHLMANN agreed and suggested the Board grant a 0 foot setback with the condition that the tire stops are removed.

MR. HAVILL didn't believe there was any justification for a 0 foot setback especially since there are other alternatives.

MS. HARLOW stated that the best way is to leave the parking lot as is and remove the tire stops.

MS. HARLOW made a motion to approve a 0 foot setback without the required screening for the vehicle storage yard at 10034 Washington Street.

MR. WOLFE seconded the motion and the roll call vote was as follows:

Mr. Fowler – 'nay', Mr. Havill – 'nay', Ms. Harlow – 'aye', Mr. Ruehlmann – 'aye', and Mr. Wolfe – 'aye'.

MR. RUEHLMANN convened the public hearing for BZA 2018-03 for the property at 9361 McKinney Road.

MR. SNYDER stated that the appellant is requesting approval for the construction of a garage addition onto the existing single family home that includes less side yard setback than required on the east side of the home.

The appellant enclosed a 1,890 square foot carport into a garage without obtaining a building permit. From what we can tell, this carport was in existence for a number of years. Looking at the survey of the property it has determined that the carport is 1.1 feet from the property line where a 15-foot side yard setback is required. The addition was done inside the footprint of the carport and has not encroached any further into the eastern setback. The appellant was notified of the violation by the Zoning Inspector and is now requesting variance approval to allow the enclosed carport to remain. During one of our conversations they were notified that they needed to meet the five foot minimum separation distance stipulated in the fire code that is necessary for fire protection and is currently working with the Building Department.

The house was constructed at a slightly different angle than the eastern property line. At the front corner of the home, the setback from the eastern property line is approximately 2.3 feet and the setback decreases as you move south along the eastern wall of the garage addition to 1.1 feet. There is shrubbery and landscaping between the garage and the existing home to the east. The enclosure of the carport may reduce visual clutter and may reduce the noise that came from the carport area. If you look at the Staff Report you will see a photo of the home prior to the construction of the garage addition by Google Streetview. The request is a variance based on practical difficulties.

MR. FOWLER wanted to know why enclosing the garage warranted a further look at the property and a need for a variance.

MR. SNYDER stated that the garage was non-complying which means they could keep it as is but were not allowed to make any changes to it.

MS. HARLOW wanted to know if other variances were granted in this area.

MR. SNYDER stated that there were several variances granted in this area; one included a variance on the adjacent property that allowed a two-story building addition to be located within 5 feet 8 inches from the property line.

MR. WOLFE noted that modifications will be required to the interior wall and roof on the structure for it to be in compliance with the Building Department.

MR. SNYDER stated that they are working together to make the necessary changes.

PAUL POLLY (9494 BUTLER WARREN ROAD, CINCINNATI 45241) stated that he is representing the appellant. She contacted him when she received the violation. Since he used to be in construction, he noticed right away that there was an issue with the firewall and that she should have gotten a building permit. One wall has been ripped out already. The carport has been there for years and they have not received any complaints. The Building Department must have issued a permit for the construction because the homeowner and the previous owner have been paying taxes on it. I would not call this enclosure a garage because it has a small door and a small back door in the rear for the lawn mower and provides a utility area for her swimming pool. No vehicles will fit inside. The enclosure was necessary because she likes to purchase items from yard sales and the doors hide the stuff from view and prevents theft. Lastly, the contractor told her she didn't require a permit and she believed him since she used to live out in the country where zoning is lax.

MR. RUEHLMANN wanted to know when the carport was enclosed.

MR. POLLY stated that it was done approximately three months ago. He noted that the appellant cannot afford to tear it completely out but is willing to do whatever it takes to bring it up to compliance.

MR. FOWLER stated that he has no issues granting the request because the carport has been there for years and the enclosure doesn't change anything.

MS. HARLOW noted that the enclosure looks nice; however, the firewall is an issue and is troubled that it is located one foot from the property line.

MR. HAVILL stated that he has no tolerance for people who do not comply with the Zoning Code. Permits are required whenever you build something.

MR. FOWLER stated that he agrees; however, the Board must make a decision based on the facts provided and not personal feelings. The enclosure does not change the use of the structure. If the Board denies the appeal the appellant will have to open up the structure and it will still be located one foot from the property line.

MR. WOLFE wished that some of the neighbors in attendance would speak up but it appears that they don't want to get involved.

MR. RUEHLMANN stated that carport and storage areas are completely different uses. He believes the homeowner had plenty of options available for storage without having to change the carport--one of which was to build a shed in the backyard.

MR. FOWLER reiterated that the setback will not change even if the variance request is denied.

MR. WOLFE made a motion to approve the building addition on the existing home with less side yard setback than required at 9361 McKinney Road.

MR. FOWLER seconded the motion and the roll call vote was as follows:

Mr. Fowler – 'aye', Mr. Havill – 'nay', Ms. Harlow – 'aye', Mr. Ruehlmann – 'nay', and Mr. Wolfe – 'aye'.

ADMINISTRATIVE MATTERS

MR. WOLFE made a motion to approve the minutes of the February 5, 2018 meeting.

MR. HAVILL seconded the motion and the roll call vote was as follows:

Mr. Fowler – 'aye', Mr. Havill – 'aye', Ms. Harlow – 'abstain', Mr. Ruehlmann – 'aye', and Mr. Wolfe – 'aye'.

ADJOURNMENT

MR. RUEHLMANN adjourned the meeting at 9:01 p.m.

Approved:

Ronald Ruehlmann, Chairperson

Luanne Felter, Zoning Secretary