

BOARD OF ZONING APPEALS MINUTES
April 6, 2022



MEETING

LOCATION: City Council Chambers, City Building

MEMBERS: Christopher Amburgey David Kash
PRESENT: Jim Hall Jerry Heidenreich

STAFF

PRESENT: Devra Wells, Assistant Development Services Director
James Metz, City Planner

OTHERS PRESENT: Amanda Gabbert, Keith Alexander, Karlie Brown, Mallory Wright,
Heather Adams, and Jeff Payne.

Acting chairman Chris Amburgey called the meeting to order at 5:30 P.M. The roll was called by James Metz. A voting quorum was present for the meeting. Mr. Amburgey led the pledge of allegiance.

APPROVAL OF PREVIOUS MEETING MINUTES – MARCH 2, 2022

Mr. Amburgey asked if everyone had a chance to review the previous meeting minutes and asked for a motion regarding the March 2, 2022 meeting minutes. Mr. Kash made a motion to approve the minutes as submitted with the change that David Kash swore in speakers and not Todd Moore. Mr. Hall seconded the motion. The motion was approved through roll call.

VARIANCE REQUEST #2-22: AREA AND DIMENSIONAL VARIANCE – 2900 N VERITY PARKWAY

Mr. Amburgey presented Use Variance Case #3-22: A variance request by applicant Amanda Gabbert for approval of a Use Variance at the property located at 1326 & 1240 Central Ave, Middletown, OH 45042. The properties are zoned UC-C: Urban Core Central Subdistrict. The variance requested is to utilize the buildings as a medical office while the Middletown Development Code prohibits medical offices within the UC-C district.

Mr. Metz was sworn in by Mr. Kash and presented the case using a PowerPoint presentation.

Mr. Metz displayed photos of the subject property.

Mr. Metz displayed a zoning map and stated that the properties are zoned UC-C: Urban Core Central Subdistrict. Mr. Metz read the City of Middletown’s Development Code regarding medical offices being a prohibited use. Mr. Metz stated that City Council placed a moratorium on the acceptance of medical offices, skilled nursing, pharmacies, and urgent care facilities and other similar uses within the UC districts. Mr. Metz continued stated that the text amendment to the Development Code was approved and became effective on October 22, 2021.

Mr. Metz stated that per the Middletown Development Code, the requirement for legal notice for variance requests, and meeting notice letters for the proposed variance were sent to all property owners contiguous and directly across the street or public right-of-way and noted that

no comments were received.

Mr. Metz displayed and read Chapter 1226.10: Variances and the Use Variance Review Criteria.

Mr. Metz displayed the following Appeals information: any person or entity claiming to be injured or aggrieved by any final action of the Board of Zoning Appeals has the right to appeal the decision the court of common pleas as provided in the Ohio Revised Code Chapters 2505 and 2506.

Mr. Metz concluded his staff report.

Mr. Heidenreich asked Mr. Metz if he has record of who was in the building prior to the current occupants or previous uses. Mr. Metz states he does not.

Mr. Kash asked Mr. Metz if the building is currently uninhabited and what was the prior use. Mr. Metz states he does not know but the applicant is here to answer.

Mr. Amburgey opened the public hearing and invited anyone forward who wanted to speak for the application.

Applicant, Ashley Gabbert, came forward to speak for the requested variance and was sworn in by Mr. Kash. Ms. Gabbert stated the building has been vacant and is set up as an office that was used for a long period of time as a construction company. Ms. Gabbert states the property owner, Keith Alexander, is present. Ms. Gabbert explains Path Behavioral Health's intended use of the building which she states is strictly mental health, behavioral health, therapy, and a nurse practitioner who does medication management. Ms. Gabbert explains that her company operates from 9 am to 6 pm. Ms. Gabbert explains the demographics of Middletown specifically detailing the amount of the population that is on Medicaid or other government services.

Mr. Kash asks Ms. Gabbert that at the time of signing the rental agreement did Ms. Gabbert research to see if her use would satisfy the zoning criteria. Ms. Gabbert states that when she looked into the property it was an approved use. Mr. Kash asked did she confirm that it was an approved use before she closed on the property. Ms. Gabbert said she was unaware of the moratorium or of the text amendment change by City Council and that the realtor dealt with "all of that".

Mr. Hall asked Ms. Gabbert that at the beginning of her presentation that she mentioned temporary housing. Ms. Gabbert stated she would not be operating temporary housing.

Mr. Amburgey asks if anyone else would like to speak in favor of this application. Mr. Kash swears in Keith Alexander.

Mr. Alexander states he is the building owner by proxy as his business, Alexander Commercial Properties, LLC owns the building. Mr. Kash asks if Mr. Alexander has any interest in Path Behavioral Health other than being his tenant. Mr. Alexander says he does not. Mr. Alexander states that he had worked with the City's Economic Development Team to buy quite a bit of the properties within the city and it was not conveyed to him when he purchased the site that medical offices were not permitted. Mr. Alexander restates several times that the City's

Economic Development Team came to him to purchase the building.

Mr. Amburgey asks if anyone else would like to speak in favor of this application. Karlie Brown was sworn in. Ms. Brown states that most of her clients in the Middletown area reside downtown and that is located in downtown would be better for Path Behavioral Health as they're not able to continue to transport their clients as they have been doing. Ms. Brown states she is a resident of Middletown and that she is in favor of this variance.

Mr. Amburgey asks if anyone else would like to speak in favor of this application. Mallory Wright was sworn in. Ms. Wright states that she works out of the Middletown and London Office. Ms. Wright states working with patients in need in person is better than telehealth and that they have nothing to do with suboxone or methadone. Ms. Wright continues to state that they would prescribe other medications out of the building but that they would be monitored weekly by a nurse. Ms. Wright states that she believes it's best to be where the people who need the most assistance are already and that they will help with this mental health epidemic they're seeing across this nation.

Mr. Amburgey asks if anyone else would like to speak in favor of this application. Heather Adams was sworn in. Ms. Adams spoke in favor of the application stating that she needed counseling for her kids and had to leave town to access it and that having it in Middletown would be an additional service to kids.

Mr. Amburgey asks if anyone else would like to speak in favor of this application. Hearing none, Mr. Amburgey asks if there is anyone who would like to speak in opposition of this variance. Jeff Payne was sworn in. Mr. Payne states he is the Executive Director for Downtown Middletown. Mr. Payne explains the purpose of Downtown Middletown, their service area, and what they do. He continues with describing the history of why City Council decided to place a moratorium on medical offices downtown and how that is counter to Downtown Middletown's purpose. Mr. Payne describes the building and a brief explanation of the history of the building as well. At the close of his comments, Mr. Payne asks that the Board does not grant this request.

There is an inaudible discussion from 1:04:17 to 1:05:07.

Mr. Payne states he was invited by Rick Pearce to join Mr. Alexander, someone from the City of Dayton, and the City Economic Development Director to sit down and discuss their ideas on what their vision was.

Mr. Kash asks if during this visionary meeting if the intended uses of this building were discussed and whether they would fall within permissible uses for the zoning. Mr. Alexander states he was not in possession of the building or aware of it at that time.

Mr. Amburgey addresses Mr. Payne stating that he understands that the Ohio State Supreme Court upheld a case that paralleled the reading of the City of Middletown's Development Code regarding use variances and that our City Council does not need to be told Mr. Payne's thoughts regarding again and again.

Mr. Amburgey asks if anyone else would like to speak in opposition of this application. Anne Potter is sworn in. Ms. Potter states that she applauds the workers at Path Behavioral Health as it's a tough job but one that needs to be done as her daughter actually works for Jobs and

Family Services. Ms. Potter follows up that the City has invested a lot of money into downtown and that the businesses that are in downtown are struggling because of Covid-19. Ms. Potter ends up her public comment by stating she doesn't oppose Path Behavioral Health but she does not agree with the location.

Mr. Amburgey asks if anyone else would like to speak in opposition of this application. Linda Warner is sworn in. Ms. Warner states she is a fan of what Path Behavioral Health does but she does not agree with permitting the variance based on a mistake that was made. Ms. Warner continues on stating that there has been a lot of work into downtown and that her and her husband have poured everything they have into downtown. Ms. Warner ends her public comment by asking the Board not to make an exception for Path Behavioral Health.

Mr. Amburgey asks if anyone else would like to speak in opposition of this application. Hearing none, Mr. Amburgey closes the public hearing.

Mr. Hall asked Mr. Metz if the blue area in the Downtown Middletown Map represent all of the UC subdistricts. Mr. Metz states there is a large overlap but the map provided by Downtown Middletown does not include all of the UC subdistricts.

Mr. Amburgey asks if there is a motion. Mr. Kash states that the motion would be to either grant or deny the variance request. Mr. Heidenreich made a motion to deny. Mr. Kash seconded the motion. Mr. Amburgey asks if there is any discussion necessary. Mr. Kash states that no one will contest the sincerity of Path Behavioral Health's mission and their much-needed service however he's reviewed the use variance criteria and doesn't find the applicant has satisfactorily proven to the requisite burden of proof which included A, B, E, and C. Mr. Hall states he agrees with Mr. Kash.

Ms. Gabbert asks to speak to the Board. Ms. Wells states that the public hearing is closed. Mr. Amburgey stated he would reopen the public hearing to allow Ms. Gabbert the opportunity to speak again.

There is an inaudible discussion for approximately 10 seconds. Mr. Kash then states he would make a motion to reopen the public hearing. Mr. Hall seconds the motion. The motion is passed unanimously.

Ms. Gabbert thanks the board and states that there isn't any other space for Path Behavioral Health. That they have been looking for over a year and have not found a location. Ms. Gabbert also states it is a financial hardship as they are not able to locate downtown and would have to move to the outskirts of the city.

Mr. Kash asks Ms. Gabbert if she negotiated her lease with Mr. Alexander to include an out if she was unable to utilize the building as a mental health clinic. Ms. Gabbert states she does have an agreement. Mr. Kash states the development code is black and white as it applies here and asks Ms. Gabbert if she agrees as she is a medical clinic. Ms. Gabbert agrees. Mr. Kash asks if she thought to inquire with the City before negotiating her lease agreement. Ms. Gabbert said she did not and at the time she was working with a real estate broker starting in September 2021. Mr. Kash states that the errors that occurred at between Path Behavioral Health and him. Mr. Amburgey closed the public hearing.

Mr. Amburgey returns to the motion that was originally presented. Mr. Metz called the roll. The

vote to deny the variance request was approved unanimously. Mr. Amburgey states that he is going to exercise his right to speak to the City of Middletown. He states the the city will never turn the corner unless we honor our code. Mr. Amburgey states he knows hard times and he admires the applicant. He encourages them to not glve up and asks Mr. Payne to help them find a location that can work for them.

NEW/OLD BUSINESS

Mr. Amburgey moves to Old and New Business. Ms. Wells states that there is one piece of new business. A request, specifically from city council, that all of our boards and commissions meetings be video recorded, rather than just audio recording, which is what is currently done. They're not looking for these kinds of recordings to be live, but to have them filmed for review, if anybody wanted to see them later on. So, it was asked of city staff that we'd bring it before you engage your opinion on whether or not you would support actual video recording rather than just audio recording of the board meetings. The board agrees in unison that it is a good idea.

ADJOURNMENT

With no further business to conduct, there was a motion to adjourn at 7:01 pm.
The motion passed unanimously.



Chris Amburgey
Acting Chairman



James Metz
City Planner

*Full Meeting Recording Available in the Development Services Department.