

BOARD OF ZONING APPEALS MINUTES
May 5, 2021



MEETING
LOCATION: City Council Chambers, City Building

MEMBERS
PRESENT: Christopher Amburgey Roger Daniel Dan Ward
 Jerry Heidenreich David Kash Jim Hall
 Todd Moore

STAFF
PRESENT: Devra Wells, Zoning Administrator
 Ashley Combs, Development Services Director

OTHERS PRESENT: Jonathan Burkhardt Joe Fitz
 Nieol Dunkle Alexandria Madison
 Steven Hightower Matt King

Chairman Todd Moore called the meeting to order at 5:30 P.M. The roll was called by Development Services Director, Ashley Combs. A voting quorum was present for the meeting. Mr. Heidenreich led the pledge of allegiance.

APPROVAL OF PREVIOUS MEETING MINUTES – JANUARY 12, 2021

Mr. Moore asked if everyone had a chance to review the previous meeting minutes and asked for a motion regarding the January 12, 2021 meeting minutes. Mr. Moore noted a typo stating he presented a case when he was not in attendance. Mr. Daniel identified that there was a needed correction to the type of material identified in the case from CNC and that it was called CEC. Mr. Heidenreich made a motion to approve the minutes with the noted changes. Mr. Daniel seconded the motion. The motion for approval with the noted changes carried through roll call.

VARIANCE REQUEST #2-21: USE VARIANCE – 6459 MANCHESTER ROAD

Mr. Moore presented Use Variance Case #2-21: A use variance request by applicant AG Manchester Properties LLC for approval of a Variance to use an existing church located at 6459 Manchester Road as an Assembly Hall. The property is zoned R-2 Low-Density Residential where Assembly Halls are prohibited.

Devra Wells, Zoning Administrator, presented the case using PowerPoint presentation.

Ms. Wells displayed photos of the subject property.

Ms. Wells displayed a zoning map and explained per the Warren County Auditor, the building on the property was constructed in 2002 and is categorized as “Church, Public worship” and is a total of 10 acres. The property is located in the City’s R-2 Low-Density Residential Zoning District where Assembly Halls are prohibited.

Ms. Wells explained that the applicant purchased the property on February 25, 2020. Per the applicant, the property was previously owned and operated by a church and used as a place of worship. The floorplan and characteristics of the existing building, parking facilities

and site conditions make it suitable to be used as an Assembly Hall.

Ms. Wells noted that the applicant stated that the property will be used for events such as weddings/receptions, birthday parties, community gatherings, private parties and meetings, children's plays, and other special events.

Ms. Wells displayed an additional photo of the subject property.

Ms. Wells stated that per the Middletown Development Code, the proposed use best fits in the Commercial Uses Category under Assembly Halls and Conference Centers.

Ms. Wells continued to explain that per the Middletown Development Code, Assembly Hall and Conference Centers are defined as: Facilities or buildings available for lease by private parties that may include kitchen facilities for the preparation or catering of food, the sale of alcoholic beverages for on-premises consumption during scheduled events not open to the public, and/or outdoor gardens, decks, or reception facilities.

Ms. Wells stated that Assembly Halls and Conference Centers are principally permitted uses in Zoning Districts: B-3 General Business District, BC-I Business Center Interchange Subdistrict, BC-H Business Center Hub Subdistrict, BC-O Business Center Office Subdistrict, BC-F Business Center Flex Subdistrict, and conditional uses in Zoning Districts: UC-C Urban Core Central Subdistrict and UC-S Urban Core Support Subdistrict.

Ms. Wells stated that per the Middletown Development Code, the requirement for legal notice for variance requests, 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 no comments were received.

Ms. Wells read Chapter 1226.10: Variances:

Per the Middletown Development Code, the purpose of a variance is to provide limited relief from the requirements of the code in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this code. It is not intended that a variance be granted merely to remove inconveniences or financial burdens that the requirements of this code may impose of property owners in general. Variances are intended to address extraordinary, exceptional, or unique situations that were not caused by the applicant's act or omission. Where an applicant seeks a use variance that would allow for a use not otherwise permitted in the applicable zoning district, said applicant shall be required to supply evidence that demonstrates that the literal enforcement of this code will result in an unnecessary hardship.

Ms. Wells displayed the Use Variance Review Criteria:

- A. The property cannot be put to any economically viable use under any of the permitted uses in the zoning district in which the property is located;
- B. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;
- C. The variance requested cannot otherwise be resolved by a zoning map amendment or a zoning map amendment is not the most beneficial approach;
- D. The essential character of the neighborhood will not be substantially altered as a result of the variance;
- E. There is an existing structure that cannot be reasonably used for a permitted use or a

- conditionally permitted use in the applicable zoning district;
- F. The proposed use is listed in Table 1204-3;
- G. The hardship condition is not created by actions of the applicant;
- H. The granting of the variance will not adversely affect the rights of adjacent property owners or residents;
- I. The granting of the variance will not adversely affect the public health, safety or general welfare;
- J. The variance will be consistent with the general spirit and intent of this code;
- K. The requested use is permitted in another district in this code; and
- L. The variance sought is the minimum that will afford relief to the applicant.

Ms. Wells concluded her staff report.

Mr. Moore asked if there were any questions for Ms. Wells before opening the public hearing. Hearing none, Mr. Moore opened the public hearing and invited anyone forward who wanted to speak for the application.

Applicant, Jonathan Burkhardt, came forward to speak for the requested use variance. Mr. Kash swore in Mr. Burkhardt.

Mr. Burkhardt stated that Ms. Wells did a good job presenting their case. He stated he was would be happy to answer any questions asked by the board.

Mr. Heidenreich asked what kind of modifications would be done to the building if the use variance were approved. Mr. Burkhardt stated that interior renovations would be done but no exterior renovations at this time.

Mr. Amburgey asked about the interior walls for the interior renovation.

The property owner, Nieol Dunkle, came forward to speak in favor of the applicant and was sworn in by Mr. Kash.

Mr. Heidenreich asked for the business plans for the property.

Mr. Dunkle stated that they wished to use the building to hold events such as birthday parties and weddings.

Mr. Moore asked for additional details of their events and plans.

Mr. Dunkle stated that could be a place for people to rent and hold their events.

Mr. Kash asked how they would advertise their business.

Mr. Dunkle stated through social media and word of mouth.

Mr. Moore asked if they were working with someone to advertise the business.

Mr. Dunkle confirmed he was correct and they were.

Mr. Hall asked if there were plans for the remaining land with the property.

Mr. Dunkle said at this time they did not, but were open to ideas. He said that he may envision some type of recreational component to the project and they would work with the City.

Mr. Amburgey asked if the rental of the event space would be case by case and not an organization. Mr. Burkhardt confirmed that was correct, case by case rentals for events.

The Board discussed any events having alcohol and if there were any special requirements for a liquor permit. Joe Fitz, attorney for the project, came forward to speak for the project and was sworn in by Mr. Kash. Mr. Fitz explained the permitting for the liquor permit and stated that this development would compliment the Ryan Homes development nearby. He also stated that he's attended an India soccer match and that it would be a destination location to have that type of recreational use at the property in the future.

Hearing no other questions for the applicant, Mr. Moore opened the public hearing to those wishing to speak in opposition. Hearing none the public hearing was closed. Mr. Moore asked for the staff recommendation.

Ms. Wells stated that based on the staff report provided and compliance with the requirements outlined in the Middletown Development Code for a use variance, staff recommends APPROVAL of Use Variance Case #2-21 to allow for use as an Assembly Hall at the property located at 6459 Manchester Road.

Ms. Wells 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. Hall made a motion to accept staff's recommendation of approval. Mr. Daniel seconded the motion. The motion for approval carried through roll call.

The board thanked the applicant for attending the meeting.

VARIANCE REQUEST #3-21: USE VARIANCE – 2007 CENTRAL AVENUE

Mr. Moore presented Use Variance Case #3-21: A use variance request by applicant Matt King for approval to allow for use of the property located at 2007 Central Avenue as Residential. The property is zoned B-2 Community Business District where residential uses are prohibited except for Dwelling Units above Nonresidential Uses.

Ms. Wells displayed photos of the subject property.

Ms. Wells displayed a zoning map and explained per the Butler County Auditor, the building on the property was constructed in 1909 and is categorized as "Commercial – Restaurant, Cafeteria, and/or Bar" and is a total of 0.1377 acres. The property is located in the City's B-2 Community Business Zoning District where Residential Uses are prohibited except above Nonresidential Uses.

Ms. Wells explained that the applicant is interested in buying the property. Per the applicant, the property was previously used as residential and has been vacant for two (2) years. The applicant also said that the floorplan of the existing building is better suited for a residential

use and that the building was previously used as residential housing. The applicant stated that he owns a duplex on North Sutphin Street and would like to turn this property into a duplex with a gated parking lot in the rear.

Ms. Wells explained that per the water billing records indicate that the building was used as commercial in the past including a tax preparation business and an insurance agency. She stated that the property was rezoned in 2018 from B-1 Neighborhood Business District to B-2 Community Business District to allow for an expanded list of principally permitted commercial uses.

Ms. Wells stated that per the Middletown Development Code, the proposed use best fits in the Residential Uses Category under Household Living.

Ms. Wells noted that per the Middletown Development Code, the purpose of the B-2 Community Business District is to provide for areas of the City that will contain a wide variety of commercial and office uses to meet the needs of the City and region that require access to major arterial streets and are in close proximity to major residential neighborhoods.

Ms. Wells stated that per the Middletown Development Code, the requirement for legal notice for variance requests, 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 the following comment was received:

- From the owner of 2003-2005 Central Avenue – She is concerned about her commercial business and the loss of property value if the property at 2007 is allowed to be used as residential. She thinks properties hold their value better if they are around like properties. She also said there have been issues with the tenant on the upper floor at 2007 Central Avenue and she is concerned that more tenants will mean more issues.

Ms. Wells read Chapter 1226.10: Variances:

Per the Middletown Development Code, the purpose of a variance is to provide limited relief from the requirements of the code in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this code. It is not intended that a variance be granted merely to remove inconveniences or financial burdens that the requirements of this code may impose of property owners in general. Variances are intended to address extraordinary, exceptional, or unique situations that were not caused by the applicant's act or omission. Where an applicant seeks a use variance that would allow for a use not otherwise permitted in the applicable zoning district, said applicant shall be required to supply evidence that demonstrates that the literal enforcement of this code will result in an unnecessary hardship.

Ms. Wells displayed the Use Variance Review Criteria:

- A. The property cannot be put to any economically viable use under any of the permitted uses in the zoning district in which the property is located;
- B. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;
- C. The variance requested cannot otherwise be resolved by a zoning map amendment or a zoning map amendment is not the most beneficial approach;
- D. The essential character of the neighborhood will not be substantially altered as a result of

the variance;

E. There is an existing structure that cannot be reasonably used for a permitted use or a conditionally permitted use in the applicable zoning district;

F. The proposed use is listed in Table 1204-3;

G. The hardship condition is not created by actions of the applicant;

H. The granting of the variance will not adversely affect the rights of adjacent property owners or residents;

I. The granting of the variance will not adversely affect the public health, safety or general welfare;

J. The variance will be consistent with the general spirit and intent of this code;

K. The requested use is permitted in another district in this code; and

L. The variance sought is the minimum that will afford relief to the applicant.

Ms. Wells concluded her staff report.

Mr. Moore asked if there were any questions for Ms. Wells before opening the public hearing.

Mr. Kash asked if there was a history of the property available. He stated that the building was very unique building and stated that there had to be variances approved.

Ms. Wells stated that downtown properties were encouraged to have 0-foot setbacks to have buildings along the roadway.

Mr. Ward noted that there have been many buildings that have experienced vandalism and burglaries. He stated that buildings have bars on the windows. He noted that he would be abstaining from the vote.

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

Matt King, applicant, came forward to speak for the project. He was sworn in by Mr. Kash. Mr. King stated that he was under contract to purchase from the current owner. He stated that the owner has been trying to sell the property for quite some time. He noted that COVID has pushed people toward working from home. He explained he takes pride in his properties and lives nearby in the City of Middletown. He stated that the living units would be high end. He stated that he puts his name on everything and his business is King Properties.

Mr. Heidenreich asked about the number of living units. Mr. King stated that he would like the building to be at least 3-family and they are currently working on an analysis.

Alexandria Madison came forward to speak in opposition of the proposal, she was sworn in by Mr. Kash. Ms. Madison stated that the property should remain a commercial property and if approved as a residence would lower her property and other properties values.

Steven Hightower came forward to speak for the application. Mr. Hightower stated that he worked with Mr. King. He noted that Mr. King manages his properties well and that they are a value to the community. He asked that the board support the request.

Hearing no other questions for the applicant, Mr. Moore opened the public hearing to those wishing to speak in opposition. Hearing none the public hearing was closed. Mr. Moore asked

for the staff recommendation.

Ms. Wells stated that based on the staff report provided and lack of compliance with the requirements outlined in the Middletown Development Code for a use variance, staff recommends DENIAL of Use Variance Case #3-21 to allow for use of the property located at 2007 Central Avenue as residential.

Ms. Wells 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. Moore asked about the history of the Master Plan and if the 2021 Comprehensive Plan update still proposed commercial uses along the corridor. Ms. Combs confirmed that the Comprehensive Plan does continue to encourage and support commercial in this location.

The Board discussed other primary residences and which meet the Middletown Development Code currently. Ms. Wells explained that there are some primary residences grandfathered, however, after 12 months they revert back to only allowing residential on the second floor above commercial.

Mr. Daniel explained that he would like to see more residential buildings downtown.

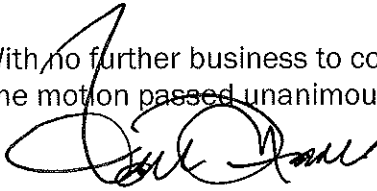
Mr. Heidenreich made a motion to deny the request. Mr. Hall seconded the motion for denial. The motion did not carry through roll call.

Mr. Kash made a motion to approve the variance request. Mr. Amburgey seconded the motion. The motion carried by majority vote. Mr. Ward abstained from the vote.


Mr. King thanked the board for their approval of his request.

ADJOURNMENT

With no further business to conduct, there was a motion to adjourn at 6:45 pm.
The motion passed unanimously.



Todd Moore
Chairman



Devra Wells
Zoning Administrator

*Full Meeting Recording Available in the Development Services Department.