

BOARD OF ZONING APPEALS

The regular meeting of the Board of Zoning Appeals was held on May 2, 2019, at 7:00 p.m. in the Public Safety Building located at 500 Quincy Street.

President Shultz called the meeting to order at 7:00 p.m.

ROLL CALL OF MEMBERS

Present

Board Member Manchin (arrived late)
Board Member Ragan
Board Member Majic
Board Member Bolyard
President Shultz

Absent

Board Member Deasy

Board Member Majic motioned to excuse Board Member Deasy from to night's meeting.
Board Member Ragan seconded the motion.
Motion carried 4-0

City Staff Present

City Planner, Sandra Scaffidi
Senior Staff Assistant, Maria Cipolla

APPROVAL OF MINUTES

March 7, 2019 and March 14, 2019

Commissioner Majic motioned to approve the minutes from March 7, 2019.
Commissioner Ragan seconded the motion.
Motion carried 4-0

Commissioner Ragan motioned to approve the minutes from March 14, 2019.
Commissioner Majic seconded the motion.
Motion carried 4-0

PUBLIC HEARINGS FOR May 2, 2019

1. Christina Mickey, President of the Marion County Humane Society requests a conditional use permit to allow for the establishment of an outdoor kennel in the Industrial Zoning District. The proposed action is located off Business Park Drive and is identified as tax parcel 4-19A-105.

President Shultz asked if there was anyone here to speak for this request.

Christina Mickey, President of the Marion County Humane Society, stated the current shelter is running off of a septic tank and a propane heating system; both are expensive to operate. The location they are looking at is their preferred location because it is easy access and has public utilities.

Frankie Spatafore and Casey Johnson signed the sign-in list to show their support for this request, but did not speak.

Donna Long, Grant Writer and Board Member for the Humane Society, said they have worked very hard to keep their current location maintained and meet the needs of the animals and the community, but they can no longer meet those needs at their current location.

Commissioner Manchin arrived at 7:06 pm.

Charlie Reese said he feels this would be an excellent addition to the Business Park, to the City of Fairmont, and Marion County. He helped develop the business park where the humane society wants to build their new location.

President Shultz asked if there was anyone to speak against this request.

Mike Martin, managing member of VIP Ventures, stated his business is located right next to the proposed location of the animal shelter. He feels this is not a business that is like the rest of the businesses. He also feels this business could be very distracting. He supports the Humane Society's business, but doesn't support it being located in this business park. He said the barking dogs and the ordors coming from it could be a problem for the employees. He is also concerned for the dogs because of the noise from the trucks. He feels the covenant in the business park would not permit this use because of these potential problems.

Commissioner Majic wants to know the distance from the proposed building to VIP Ventures?

Christina Mickey told them she does not know exactly how far the new building would be from VIP Ventures. They have strict cleaning guidelines that they follow. Shelters are now built to be sound proof and have modern facilities. They do not want to move in an area where they are not wanted; we want to be supported. We have been good neighbors where we are now. In their current locations, it is an old building and the dogs are not agitated by the trucks going by. They close at 5:00 o'clock. They are working with an architect that will be taking everything into consideration; sprinkler system, noise, etc.

Jeff Anderson, Mustang Extreme Environmental Services, said is a supporter of the Humane Society, but they are trucking supplies in and out 24 hours a day, every day of the year. He is concerned about the noise from their trucks disrupting the animals.

President Shultz asked for a motion to close the public hearing

Commissioner Majic motioned to close the public hearing.

Commissioner Ragan seconded the motion.

Motion carried 4-0

President Shultz asked if there are any comments from any of the agencies (police, water, sewer, fire department, Gas Company, etc.)

Maria Cipolla informed them that there are no negative comments on this request.

President Shultz asked for the Staff report.

Sandra Scaffidi: The applicant is requesting a conditional use permit for to allow an outdoor kennel in an Industrial Zoning District. They need to meet the criteria listed in Article 4.16 General Requirements.

1. The use is consistent with the policies and intent of the corresponding purpose for the zoning district in which it lies.

2. The use is physically and operationally compatible with the surrounding neighborhood and surrounding existing uses. Conditions may be imposed on a proposed Conditional Use to ensure that potential significant

adverse impacts on surrounding uses will be reduced to the maximum extent feasible, including but not limited to, conditions or measures addressing:

- A. Location on a site of activities that generate potential adverse impacts such as noise and glare;
- B. Hours of operation and deliveries;
- C. Location of loading and delivery zones;
- D. Light intensity and hours of full illumination;
- E. Placement of outdoor vending machines;
- F. Loitering;
- G. Litter control;
- H. Placement of trash receptacles;
- I. On-site parking configuration and facilities;
- J. On-site circulation;
- K. Privacy concerns of adjacent uses.

3. The use can generally be accommodated on the site consistent with any architectural and design standards set forth in the applicable district regulations of this Code, and in conformance with all dimensional, site development, grading/drainage, performance, and other standards for the district in which it will be located.

4. To the maximum extent feasible, access points to the property are located as far as possible, in keeping with accepted engineering practice, from road intersections and adequate sight distances' are maintained for motorists entering and leaving the property proposed for the use.

5. The use will be adequately served by public facilities and services. Public facilities and services that may be considered in light of this standard include but are not limited to water, sewer, electric, schools, streets, fire and police protection, storm drainage.

6. The use provides adequate off-street parking on the same property as the use in compliance with standards set forth in this Code.

8. Unless addressed in the Use Standards, the use will be screened with fencing and/or landscaping in excess of what is required for the district as appropriate, if the use may otherwise result in an adverse impact on adjacent property benefiting from such screening.

9. Conditional Use decisions are made by the Board of Zoning Appeals. In considering the proposed Conditional Use the Board must determine whether all General Requirements and Special Conditions have been met.

10. The Board may impose additional conditions and safeguards deemed necessary. There are no special regulations in this case.

11. The breach of any condition, safeguard or requirement shall be considered a violation of the Conditional Use approval. The board, following notice to the property owner, shall have the authority to revoke, after public hearing held in the same manner as the original approval, any Conditional Use if the applicant fails to comply with any of the applicable requirements in this Section or any other applicable sections of this ordinance.

The Marion County Humane Society attended a Development Review Committee meeting to discuss the possibility of relocating their kennel to the Marion Business Park. This property is zoned industrial. There are no nearby residences or known 24 hour businesses that may be affected by relocation of a kennel facility. Staff supports the Conditional Use request to allow the property to be used a kennel as long as the applicant meets the requirements as identified in Section 4.16. The covenants mentioned in the discussion of this hearing are not part of this Board recommendation. That would be between the property owner and the purchaser of the property. This is not a variance; it is a conditional use. The Board of Zoning Appeals may add additional restrictions if they feel it is necessary or they can deny this request. However, staff does support this request as long as they can meet the requirements in Article 4.16. The Industrial zoning is the only zoning district that allows outdoor kennels as a conditional use within the city.

The Commissioners had a lengthy and detailed discussion on this request.

Commissioner Majic motioned to table this request until they could get the Board additional information on the noise decibels from the animal shelter and the truck traffic.

Commissioner Manchin seconded the motion.

Motion carried 4-0

2. Brandon Kruse and Julie Maxey request a variance from City Code Section 505.15, Keeping of Livestock. The applicants request a variance to keep 5 hens and 1 duck on their property which is identified as 108 Cochran Street and is also known by 05-1-90.

President Shultz asked if there was anyone to speak in favor of this request.

Brandon Kruse stated they currently have 5 hens and one duck at their property. They have had them for nearly a year. They obtained them to help their daughters learn from them. They did not know they could not have them; now they are requesting a variance. He stated he has corrected the problem of the chickens get lose in the neighborhood.

Lisa Straight, a neighbor across the street, said she doesn't have a problem with them. The chickens are adorable. Her son mows the applicant's grass and doesn't have a problem with the chickens.

President Shultz asked if there was anyone to speak against this request.

Kelly Brett, lives on Cochran Street, has had a problem because of how close the chickens will be to other residents' homes. He has also had problems with the chickens being loose on the street in the last two weeks since the posting on the front yard of this public hearing. The smell isn't an issue, but the noise is because they had other animals in the past.

Michael Bogdan explained he lives in a very nice neighborhood and he want to keep it that way.

President Shultz asked for a motion to close the public hearing

Board Member Ragan motioned to close the public hearing.

Board Member Bolyard seconded the motion.

Motion carried 4-0

President Shultz asked if there are any comments from any of the agencies (police, water, sewer, fire department, Gas Company, etc.)

Maria Cipolla informed them that there are no negative comments on this request.

President Shultz asked for the staff report from the **City Planner, Sandra Scaffidi**.

Sandra Scaffidi read her Staff Report.

Staff Comment: The applicant was found to have poultry on his property by Code Enforcement. When presented with the knowledge that the keeping of chickens and ducks in the City limits were prohibited, he spoke to the Interim City Manager Bruce McDaniel and Building Inspector Ken Fletcher. It was determined he could ask for a variance from the Board of Zoning Appeals.

505.15 KEEPING OF LIVESTOCK.

- (a) Definitions. For purposes of this section the following terms shall have the assigned meaning.
- (1) "Livestock" means cattle, goats, mules, hogs, sheep, horses and poultry.
 - (2) "Keeping" means to maintain, tend, harbor, feed and shelter by stable, barn, pen or other enclosure.
- (b) Nuisance. The keeping of livestock, except as regulated herein, is hereby declared a public nuisance because of the resulting sounds, smells, filth and vermin detrimental to the peace, comfort and health of numerous surrounding inhabitants, and protection of the public way.
- (c) Regulation. No person shall keep livestock within fifty yards of any dwelling, church, school, hospital or any other building which, from time to time, is used for human occupancy, or any public street. Provided, however, that in the sound discretion of the Board of Adjustment, livestock may be kept in such numbers as will not create a health hazard or hazard to the public way in an enclosure maintained in a clean and sanitary condition and free from all refuse. No person shall permit any decaying food, or any refuse of any kind to remain in such enclosure. Refuse, when swept up or collected, shall be kept in airtight containers and disposed of in accordance with the solid waste disposal regulations of the City. No person shall permit any such refuse to remain uncovered (Ord. 569. Passed 6-29-82).

To reiterate, livestock is not allowed within 150 feet of any building occupied by humans or a public street. The applicant's house is located in a busy suburban area with at least 14 additional buildings located within a 150 foot buffer radius.

This applicant went against City Code in installing livestock in his back yard, constructed a chicken coop without a building permit with questionable setbacks, the illegal chickens on the property are not contained and we have received neighbor complaints.

This request is directly contrary to the City Code and does not meet the requirements as outlined in the Code. Additionally, in 2014, this Board of Zoning Appeals voted against allowing poultry in the City limits to a property owner that owned four acres in the City limits. It is my recommendation to deny this variance request.

RECOMMENDATION

It is my recommendation that the variance to allow livestock at 108 Cochran Street be denied. Section 8.9.7.B of the Planning and Zoning Code states the BZA may grant a variance from the Zoning Ordinance if it finds that the variance meets ALL of the following findings:

1. Will not adversely affect the public health, safety or welfare of the rights of adjacent property owners, residents or the neighborhood;

Staff Analysis: The property does not meet the minimum standards to allow for a variance from this code. The rights of the adjacent property owners will be affected by the sounds and smells of multiple poultry and fowl.

2. Arises from special conditions or attributes which pertain to the property seeking the variance;

Staff Analysis: There are no special conditions or attributes which pertain to the property.

3. Would eliminate an unnecessary hardship and permit a reasonable use of the land;

Staff Analysis: There is no unnecessary hardship to be eliminated. The land is located in a well-developed residential neighborhood.

4. Will allow the intent of the Zoning Ordinance to be observed and substantial justice done;

Staff Analysis: No.

5. Is the minimum variance that will accomplish this purpose;

Staff Analysis: It appears so.

The Commissioner and the City Planner had a detailed, lengthy discussion about this request. Sandra reminded the Commissioners that it is important to note that the BZA must answer affirmatively to all five of the findings in order to approve a variance request.

President Shultz asked for a motion on this request.

Commissioner Ragan motioned to deny this request.

Commissioner Majic seconded

Motion carried 4-0

Sandra Scaffidi informed the applicant that he will need to remove the livestock from his property within 30 days of today.

DISPOSITION OF PAST CASES

None

NEW BUSINESS

Sandra Scaffidi asked if the Commissioners would be available for a Special Session on May 20th. The Commissioners agreed to the Special Session.

OTHER BUSINESS

None

ADJOURNMENT

President Shultz asked for a motion to adjourn.

Board Member motioned to adjourn.

Board Member seconded the motion.

Motion carried 5-0