

**COLERAIN TOWNSHIP BOARD OF ZONING APPEALS**

Regular Meeting Minutes

4200 Springdale Road - Cincinnati, Ohio 45251

**Wednesday, September 26, 2018 – 6:30 p.m.**

Meeting called to order: 6:30 p.m.

Pledge of Allegiance was led by Mr. Reininger.

The Explanation of Procedures were presented by Mr. Reininger.

Roll Call: Mr. Bartolt – aye, Ms. Wilson – aye, Mr. Roberto – absent, Mr. Reininger – aye.

Alternates Sam Hill and Mark Schupp were seated to take the places of Mr. Price and Mr. Roberto.

Also present were staff members Jenna LeCount, Marty Kohler and the Assistant Law Director, Scott Sollmann.

Swearing in: Mr. Reininger swore in the appellants, attorneys and all speakers in the cases.

Mr. Reininger asked for a change of the sequence of appeals.

Mr. Bartolt made a Motion to change the order of the agenda to bring case BZA2018-014 forward and the motion was seconded by Mr. Hill.

Roll Call: Ms. Wilson – aye, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Hill – aye, Mr. Reininger – aye.

Hearing of Appeals:

BZA2018-014	Request for a variance for temporary sign from Section 13.10.3(D)(3)(b) for additional time allowance.
Location:	9459 Colerain Avenue
Applicant/Owner:	T. Northgate PADS

Ms. LeCount summarized the variance request. The applicant has been issued a zoning certificate for a temporary sign for a Spirit of Halloween Store which expires on September 26. The size of the signs is less than 32 square feet. The applicant can apply for an additional two week permit after 30 days from the expiration of current permit. The justification for the request is that the Halloween Store is a temporary business that will close shortly after Halloween at the end of October. They open at different locations each year and do not wish to invest in permanent signs. Approving this variance request would allow the applicant uninterrupted temporary signage until the store closes for the year.

Staff findings are as follows:

1. The property in question would likely yield a reasonable return without the variance. The property can reasonably be identified with signs meeting current zoning regulations. The nature of the hardship in this case is that the applicant is not wanting to invest in a permanent wall sign for a temporary business.
2. The sign variances requested are substantial since the time allowance requested is twice the allowed time.
3. The granting of the variances would grant a consideration that is not available to other property owners in the neighborhood.
4. The granting of the variance would probably not have a negative impact on neighboring property but could create a precedent to allow for sign variances if requested by neighboring properties.
5. Approval of the sign variances would not affect the delivery of government services.
6. There are no topographic issues related to this property which would constrain the reasonable application of the sign regulations without additional expenses.
7. By taking into consideration the benefit to the applicant if the variance is granted, as weighed against the potential detriment to the health, safety and welfare of the neighborhood and broader community, staff finds that substantial justice would be done by granting the variance for additional time allowance for the temporary banner sign.

Staff Recommendation is for approval of the variance request to allow for the temporary signs from October 1, 2018 to October 31, 2018 with the decision to be effective immediately in order to meet time constraints.

With no questions for staff, Mr. Reininger opened the public hearing.

Wendy Smith, District Sales Manager for the Spirit of Halloween, having been sworn, noted that the store is temporary and will move out after October 31. The signs are the only way that customers have to find the store.

With no further people to speak in favor or against the request, a motion was made by Mr. Hill and seconded by Ms. Wilson to close the public hearing.

Roll Call: Ms. Wilson – aye, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Hill – aye, Mr. Reininger – aye.

With no further discussion from the Board a motion was made by Ms. Wilson and Seconded by Mr. Hill to approve the variance request according to staff recommendation with the decision to be effective immediately.

Roll Call: Ms. Wilson – aye, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Hill – aye, Mr. Reininger – aye.

BZA2018-012 – Request for a change of non-conforming use to allow processing of mulch and sales.

Location: 12075 East Miami River Road

Applicant/Owner: Jarrod Hendel / Ronald Yaeger

Ms. LeCount summarized the case. The applicant is requesting a substitution of non-conforming use from a diesel engine and truck repair business to a mulch and firewood processing and sales business. The business was started at this location in about 2006 according to the applicant. From aerials of the property it appears that in 2009 there was firewood stored on the property and mulch piles show in the 2015 aerial photos. A mulch fire started in May of 2018 and took about a month to extinguish which brought attention to zoning staff that the business was established without zoning approval. A notice of violation was issued which prompted the occupant to apply for the non-conforming use substitution.

Ms. LeCount reviewed location maps and surrounding land uses. The property is just under 4 acres but some of the operation is on adjacent properties. Ms. LeCount reviewed permitted uses in the Riverfront Zoning District. Flood plain maps show that the entire property is within the FEMA designated flood zone. A non-conforming certificate was issued for the diesel engine and truck repair business which was in business prior to Colerain zoning. That use is allowed in B-2 or I-1 zoning district with most of the activities occurring in enclosed buildings. The proposed mulch processing use would be permitted only in the I-1 zoning district due to flammable materials and outdoor storage.

The zoning resolution encourages the termination of non-conforming uses or transition of the uses to something that is more in keeping with the intent of the zoning district. To grant the substitution of non-conforming use, the BZA needs to find that the proposed use is more in keeping with the Riverfront Zoning District than the previous use.

Ms. LeCount summarized the nature of the zoning request noting that mulch piles would be 35 to 40 feet in height. Ms. LeCount showed photos of the property and neighborhood. In more recent years a parking area was added within the Right-of way of East Miami River Road. There are two older buildings on the property and concrete bins and a small shed has been added in recent years. The applicant provided a site plan that illustrates that space is tight on the property. Ms. LeCount noted that the Colerain Fire Chief provided a letter for the BZA packet that indicates that the Fire Department responded to 19 fires at this location since 2014. Ross Township provides mutual aid to the Colerain Fire Department when appropriate. The most

recent fire in May of 2018, caused one of the Ross stations to be put out of service temporarily. There has been traffic issues on US-27 due to heavy smoke from the fire. Cincinnati Water Works notified the Colerain Fire Department regarding a significant reduction in water supply due to the draw on the hydrants during the May fire.

Captain Mark Walsh with the Colerain Fire Department noted that they have been responding to fires at the site since 2009. Some of the responses have been confrontational resulting in the need for response by the Hamilton County Sheriff's officers as well. The mulch piles are getting bigger over time and it is difficult to get equipment in on the site to fight fires. The site is in violation of fire codes since access is required on all sides of the mulch piles.

Staff findings are as follows:

1. The non-conforming use change requested is substantial since mulch processing and firewood storage and sales tends to be a more intensive use than diesel engine and truck repair.
2. The granting of the non-conforming certificate would likely have a more adverse impact on the surrounding neighborhood than the previous business since it involves extensive outdoor storage, outdoor equipment operation, and processing of a flammable material. The washing of mulch, mulch, dye and firewood into the Great Miami River during severe rain or flood events could cause water pollution and a hazardous condition during an emergency.
3. The property in question would likely yield a reasonable return without the change of non-conforming use. It could have continued as a diesel engine and truck repair business or any other permitted use within the RF zone.
4. The nature of the business with extensive outdoor storage of loose mulch chips, potentially hazardous dyes, and firewood in the flood plain of the Great Miami River is not compatible since these materials could easily be washed into the river in a flood event.
5. Approval of the change will affect the delivery of government services. Colerain Fire Department has expended substantial resources to extinguish fires at this property on numerous occasions as well as Cincinnati Water Work notifications.
6. By taking into consideration the benefit to the applicant if the change is granted, as weighed against the potential detriment to the health, safety and welfare of the neighborhood and broader community, staff finds that substantial justice would be done by not allowing the change of use.

Staff's Recommendation is for denial of the request for the change of non-conforming use.

With no questions for staff Mr. Reininger opened the public hearing:

Jarrod Hendel, having been sworn, said that they have been on the property since 2006 and is an agricultural business. There are other agricultural businesses along the river. Mr. Yeager the property owner said the property was industrial and was changed without his knowledge. He used to allow dumping on the property for free when other people were charging so he got a lot of extra material. Coloring the mulch is safe since it is allowed around people's houses. This is

an unfair financial burden. This is not on Colerain Avenue. There is a gravel operation on one side and a trailer on the other. The building was built in the 1950s prior to zoning. There has not been a fire since May. The fire was because the material was dry and they can water it. Fires can happen in agricultural hay buildings and other buildings. They will not allow other people to dump anymore. This is unfair since Watson's is allowed next door.

With no further people to speak in favor or against the proposal, a motion was made by Mr. Bartolt and seconded by Ms. Wilson to close the public hearing.

Roll Call: Ms. Wilson – aye, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Hill – aye, Mr. Reininger – aye.

Mr. Hill asked Mr. Hendel if he had contacted the Township to determine if the use was permitted on the property. Mr. Hendel said that he did not but did not think that he needed to since there was already a business on the property. It was also a smaller operation with only firewood initially.

Mr. Schupp asked about the type of dye used on the mulch. Mr. Hendel said it is a water based dye that is used in all mulch. They are next to the river because they need water to dye the mulch and process the mulch. They also need the water to put out fires.

Mr. Bartolt asked staff where there are other industrial districts in the township. Ms. LeCount did not have a zoning map available but thought that the only areas were around Rumpke and along Harrison Avenue. Mr. Bartolt asked if there were other mulch operations in Colerain. Ms. LeCount said she did not have that information. Mr. Bartolt asked Mr. Hendel if he could comply with the requirement to have access for the fire department around the mulch piles. Mr. Hendel said he could but he would not be able to store as much mulch on the site as he currently has. Mr. Bartolt asked about the type of material being dumped on the property. Mr. Hendel said that he was allowing other tree services and people were dumping brush and chip in an unorganized way that made it hard to process.

Ms. Wilson asked about the prior fire department responses to the site. Mr. Hendel said that was only a couple times each year and most of the calls were from people who see smoke coming from his place from US-27. He initially was burning his own brush on the property before he learned that he was not allowed to do it. He can burn in Butler County. He said that the fire department response numbers are not correct. He did not start the mulch part of the operation until after 2010. He said that mulch fires are common. Ms. Wilson asked about the measures that would be taken to control fires included in the application. Mr. Hendel said that he will keep the piles to 35 to 40 feet in height and keep them away from concrete walls. Ms. Wilson asked about the setbacks from the river and road. Mr. Hendel said that he tries to keep a bobcat width along the river and noted that he goes boating on the Ohio River and sees logs in the river all the time. It is a natural product.

Mr. Reininger asked if the property was classified as a CAUV for agricultural purposes. Ms. LeCount said that there is no CAUV value given to this property by the County Auditor. Mr. Reininger said that this is not a grandfathered business since the previous business was an engine

repair business. Mr. Reininger said that he is concerned with the disagreement about the applicant's numbers for fire responses verses the Township numbers. Mr. Reininger is concerned that the applicant is not learning from all the previous responses and that the management practices are not being changed. Mr. Hendel said that he would stop the dumping. Mr. Reininger stated that the business is totally different from the engine repair business.

With no further discussion a motion was made by Mr. Bartolt and seconded by Ms. Wilson to deny the request for the change of non-conforming use. Ms. Wilson noted that the applicant should have checked the regulations prior to starting the operation.

Roll Call: Ms. Wilson – aye, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Hill – aye, Mr. Reininger – aye.

BZA2018-013 – Request for a variance for accessory structure from Section 10.2.3, Section 10.2.1(A)(9) and Section 10.2.3(B).

Location: 2775 Wilson Avenue

Applicant/Owner: Henry Ray Smith

Ms. LeCount summarized the case. This is a request for variances pertaining to a structure that was constructed without a zoning permit. Ms. LeCount stated that there would be a total allowance of 547 square feet of accessory structure. The accessory structure in violation measures 18 feet by 24 feet and is 13 feet 10 inches to the peak of the roof. The shed has 432 feet in gross floor area. At the time there were additional accessory structures on the property. On July 26, 2018 the applicant came in and applied for an accessory structure. On July 31, 2018, Zoning staff issued a letter of refusal due to the height and closeness of property. The lot coverage issue has been resolved do to recalculation and removal of the existing sheds. The only two issues are height and setback. The accessory structure is taller than the house by about 6 inches and the building is only two feet from the property line where five feet is required.

Ms. LeCount showed photos of the building under construction at which point the property owner was instructed to stop work and apply for a zoning certificate. Ms. LeCount showed the plot plan and building plan supplied by the applicant. The structure would also require a Building Permit from Hamilton County. Accessory buildings are permitted in residential zones as a use that is supplemental to residential structures. The definition is as follows:

16.2.2 Accessory Building or Use shall mean a building or use that is incidental to and customarily found in connection with a principal building or use; is subordinate to and serves a principal building or use; is subordinate in area, extent, or purpose to the principal building or use served; and is located on the same lot as the principal building or use served.

Section 10.2.1(A)(9) requires that an accessory building not cover an area greater than 30 percent of the rear yard area. Even though the house faces Wilson Ave. and has a Wilson Ave. address, by Section 12.1.5 of the Zoning Resolution, the rear yard is the area behind the narrowest portion of the lot, which in the case is the side of the property where the accessory building is located.

The area behind the house is technically the side yard. It is estimated that the rear yard area is about 1,824 square feet which allows for an accessory building with a maximum size of 547.2 square feet. The proposed size is 432 square feet. With the removal of the two prior shed in the rear yard the new shed meets the lot coverage requirement.

Section 10.2.3(B) restricts the height of accessory buildings to 15 feet but in no case exceed the height of the principle structure. Staff has measured the height of the accessory structure from the peak of the roof to the ground at 13 feet 10 inches. Staff also measured the height of the house at the west end to 13feet 4 inches from the roof peak to the ground. It appears that the accessory structure exceeds the height of the house by 6 inches.

Section 10.2.3(C) requires a minimum setback from side and rear property lines of 5 feet. The application plan indicates a setback of 2 feet which is 3 feet short of the minimum.

Staff findings are as follows:

1. The height variance requested is substantial since the proposed building exceeds the maximum height by about 6 inches. The proposed minimum rear yard setback of 2 feet is substantial since this is a 60% reduction from the required 5 feet.
2. The granting of the variance would grant a consideration that is not available to other property owners in the neighborhood.
3. The property in question would likely yield a reasonable return without the variance. The property can reasonably be used as a single family dwelling within the limits of the zoning regulations.
4. The granting of the variance would probably have a negative impact on neighboring property due to the height and close proximity to the neighboring property line.
5. Approval of the height and setback variances would not affect the delivery of government services.
6. There are no unusual topographic or site configuration issues related to this property which would prevent the reasonable application of the height and setback regulations.
7. By taking into consideration the benefit to the applicant if the variance is granted, as weighed against the potential detriment to the health, safety and welfare of the neighborhood and broader community, staff finds that substantial justice would be done by not granting the variance for additional height and reduced setback for an accessory building.

Staff Recommendation is for denial of the variance requests.

Mr. Bartolt asked how the height measurements were made. Ms. LeCount said the shed and house were measured with a tape measure. With no further questions for staff Mr. Reininger opened the public hearing.

Mike Bergmann said that he is providing legal representation for the property owner. He first apologized to the Zoning Department for behavior from a new family member during a

discussion of receiving the zoning violation on behalf of the property owners. He said that he will not be testifying but will be speaking. Mr. Bergmann provided a handout of a map showing the property location. Mr. Smith is wanting approval of an accessory building on his lot. Mr. Bergman provided an additional handout of an illustration for corner lot yards. Mr. Bergmann provided an additional handout of the previous illustration with the accessory building indicated. Mr. Bergmann noted that the accessory building is in the rear yard. Mr. Bergmann described the process for resolving the lot coverage issue.

Mr. Bergmann outlined his disagreements with staff's findings. He said there was some confusion regarding the height of the building. Mr. Bergmann disagreed with staff's method for measuring the height of the house and accessory building. Mr. Bergmann presented an additional handout with signatures of neighbors who did not object to the shed. Mr. Bergmann introduced that the variance request is for a minimal amount and that staff is in error and that the Zoning Department's appeal had an error relating to the size and location of the building and that the Zoning Department. Mr. Bergmann asked what methodology was used for measuring of the house and shed and mentioned that the house would be technically measured at 13 feet 10 inches due to a flower bed. Mr. Bergmann stated that the zoning department denied the permit from approximate measurements and not actual measurements. He stated that precise measurements would add an extra 6 inches to the house. He noted that the house does not comply with setbacks either which makes it necessary to approve the variances.

Mr. Bergmann believes other buildings throughout the neighborhood are in violation to setbacks and the Supreme Court says that this variance request should be allowed. Mr. Bergman stated that the Ohio Supreme Court has looked at many zoning related cases and there were a number of factors that can be considered. Mr. Bergman stated that the property owners have been at the property since 1986, long before the Zoning Resolution was adopted. Mr. Smith built a first structure on the property in the 1990s. He stated that he knows ignorance of law is no excuse, but stated that no one advised the property owners of the changes of the Zoning Resolution since there wasn't one when they built the previous structures.

Mr. Bergman recited Ms. LeCount's statement on this variance being a substantial variance and disagreed with the standpoint of percentages. He reiterated the definition of substantial and what the impact on the public and property owner could be if this variance is granted and whether or not 3 feet would really affect everything. He restated that the property would not comply to the zoning regulations today and that other properties around them are the same way. This limits improvements to the properties. He stated that Mr. Smith visually examined each house that had an accessory structure within 5 feet of the property line. Mr. Reininger interrupted and stated that he would like Mr. Bergman to focus on this lot only.

Mr. Rick Thomas, having been sworn, said that he is a neighbor and has no objections to the shed.

Mr. Charles List, having been sworn, said that he is also a neighbor and has known the Smiths for over 30 years. The new shed is nice and he has no objections.

Mr. Bergmann asked Mr. Kohler about his qualifications and ability to take measurements of the house and shed. Mr. Bergman presented another handout with a photo of the west end of the house. Mr. Bergmann asked several questions about the method for measuring the house and shed. Mr. Kohler responded to the questions.

Mr. Bergmann asked Mr. Smith to identify himself. Mr. Smith, having been sworn, identified several photos of his house which were presented by Mr. Bergmann to the Board. Mr. Bergmann asked Mr. Smith several questions pertaining to the description of the property. Mr. Bergmann also asked several questions of Mr. Smith regarding the progression of construction of previous sheds and the current shed with dimensions and costs. Mr. Bergmann presented another handout which was a map prepared by Mr. Smith showing locations of sheds in violation of zoning regulations. Mr. Bergmann asked Mr. Smith about his measurements of the house and shed noting that the house is taller than the shed.

With no further people to speak in favor or against the proposal, a motion was made by Ms. Wilson and seconded by Mr. Hill to close the public hearing.

Roll Call: Ms. Wilson – aye, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Hill – aye, Mr. Reininger – aye.

Mr. Hill asked Mr. Smith if he has a plot plan of the property showing actual setbacks. Mr. Smith said that he did his own measurements.

Ms. Wilson said she is concerned that the owner was not aware that he needed permits to construct the building had had no knowledge of zoning requirements. She is concerned that construction progressed after receiving notification of the violation and that the structure is not properly set back from the property line. She disagrees that other violations in the neighborhood is an excuse for further violations.

Mr. Bartolt asked Mr. Smith if he was aware that any permits were needed to build the shed or enclose a porch that was mentioned earlier. Mr. Smith said that he did not think he needed permits for either project. Mr. Bergmann said that the County Building Department is only concerned that the building meets code. Mr. Bartolt is concerned that even if a Zoning Permit were issued that the building may not meet Building Code. Mr. Bergmann said that the County was agreeable to work with Mr. Smith to approve the shed. Mr. Bartolt said he is concerned that they are reviewing the variance requests after the building is already constructed. He is also concerned that the Board is in a position of trying to resolve Mr. Smith's storage problems. Had Mr. Smith applied for the permit prior to construction, the design could have been adjusted to meet code.

Mr. Reininger asked about the amount of things that needs to be stored in the building. The Board should not be resolving Mr. Smith's storage needs. He is also concerned that there is no survey to determine the exact location of the property line. The only two issues are the height and setback of the building. The Board may want to separate these into separate motions. Mr. Sollmann agreed that it would be appropriate to separate the issues.

A motion was made by Mr. Bartolt and seconded by Ms. Wilson deny the setback variance request. Ms. Wilson asked if the building could be moved meet the setback. Mr. Smith said that moving the building would structurally not be possible.

Roll Call: Ms. Wilson – aye, Mr. Bartolt – aye, Mr. Schupp – nay, Mr. Hill – aye, Mr. Reininger – nay. The motion carries to deny the variance.

A motion was made by Mr. Bartolt and seconded by Mr. Schupp to approve the variance request for additional building height.

Roll Call: Ms. Wilson – nay, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Hill – nay, Mr. Reininger – aye. The motion carried to approve the building height.

Unfinished Business: None.

Approval of Minutes: August 22, 2018 Meeting. Staff requested that the approval of the minutes be deferred to the October 24 meeting since they were not included in the Board packet.

Next Meeting: October 24, 2018.

Administrative Matters:

Mr. Reininger asked if staff could write a letter of appreciation for the Board's signature thanking Mr. Price for his service on the Board. Ms. LeCount agreed. She noted that the Trustees will be reviewing applications for new members and will be making appointments for terms starting in 2019.

With no further business, a motion was made by Ms. Wilson and seconded by Mr. Hill to adjourn the meeting at 9:14 p.m. The motion passed unanimously.

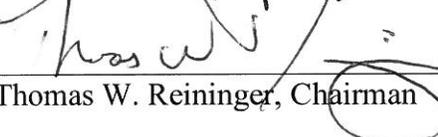
Respectfully Submitted:

  
\_\_\_\_\_  
Jesse Urbancsik, Planner

Secretary:

  
\_\_\_\_\_  
Robert A. Bartolt, Secretary

Accepted by:

  
\_\_\_\_\_  
Thomas W. Reininger, Chairman