

BOARD OF ZONING APPEALS MEETING
THURSDAY, August 24, 2023 5:30 P.M.
COUNCIL CHAMBERS
40 W MAIN ST, NEWARK, OH 43055

MINUTES
PUBLIC HEARING

1. CALL TO ORDER

CALL TO ORDER- Steve Layman Board Chair called the Thursday August 24, 2023 Board of Zoning Appeals Meeting to order.

Present:

George Carter	Zoning Inspector
Eddie Hunt	Member
Steve Layman	Board Chair
John Paul	Member
Jack Gienger	Member

Absent:

Phil Claggett	Member
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2. APPROVAL OF MINUTES

Minutes of the July 27, 2023 meeting

Motion and second to approve minutes of July 27, 2023, motion passed by acclamation

3. OLD BUSINESS

4. NEW BUSINESS

APPLICATION BZA-23-31

Applicant: Whits Frozen Custard
Owner: Swordfish City LLC
Location: 919 N. 21st Street
Project: Freestanding Sign
Reference: 135.7/135.8

Gary and Ann Lowe - We own the original Whits frozen custard in Granville, the one in Heath, which after 10 years a lot of people still don't know about because we're buried in the Heath Plaza and people just can't find us. You would be surprised how many people just do not know we're there because we're in the strip center and the response is, Oh when did you open, July of 2013, but because of the signage that is there one pile of all red and white people just go by. We are one of about 90 to 100 stores now, they've expanded into about 10 states, Chuck Whitman founded it and we bought it in October of 2012. We've had a lot of

customers and others inquiring as to when we were coming to Newark, we had to wait for the right opportunity at the right time. We have another store that we opened first in Dublin on Franz Road in a strip center, that unfortunately after 5 years closed, we were paying that one off for a long time, again a signage issue. We found the building on 21st Street, it's been in the works for probably 2 years and we are very close to opening, but it is crucial to us to get signage. I think we all realize, particularly you gentlemen involved in real estate, location, location, location, but signage is 1A. I'm a CPA by background, a CFO for a company in 5 states, 1500 people, signage was huge for us and it is for our Whits Frozen Custard as well. So, we're asking for 2 variances, one is that there is a sign pole out in front of where our store will be in that building. There is no sign currently on it, there is one down about 60 feet away which is further apart than most of the other signs for businesses on 21st Street, it only is setback 15 feet from the property line I believe and the code requires 20 feet. If it were to be set back 20 feet, it would be in the parking lot and we have precious few parking spaces in that parking lot, we really can't afford to lose one. We have a handicap ramp in front of our building which will obviously not allow for a parking spot there and the building is set way to close to 21st Street. But obviously is not going to get picked up and moved back. In terms of again the code does say one sign per lot, my opinion is that is affable to those centers that have 8,9 or 10 locations, there are only 3 in our building, the post is already there, there is another sign there that just has to get the blank changed out for another tenant or possibly 2 on that one. This would allow us to have changeable letters to advertise our flavor of the week, monthly specials etc. and to be more easily seen. It would've been great to put up a standalone building, in order to find any land, we would've had to go north of Deo and then we're talking $\frac{3}{4}$ to a million dollars and the business model just really doesn't support that. So we feel there is precedent, Plaza 21 has two signs on one lot, so we're not asking for anything any different than what has previously been approved for others on 21st Street. Our signage would be lower than the code restrictions. We are again my wife and I franchisees and we are making a big commitment to Newark with this store. We are also one of the first tenants to sign for a spot in the Arcade, this will drive that. Hopefully if it comes out profitable we will be able to get that one open as well. We're going to be right beside the Buckeye Winery at the main entrance there on Third Street. So, we are making again just the two of us a huge commitment to Newark. We want to do it right. We have a lot of good interesting ideas to make the Arcade a really featured location there. We will not be allowed to have signage there, that is a five year restriction due to Historical Society requirements on any historical building that gets rehabilitated, so it's vitally important for us to have this 21st Street store get good profitability as quick as we can. Basically what we're asking for is give us a fighting chance. We need the signage so people can find us quickly and get this thing off the ground and get it profitable as soon as

possible and get into the Arcade here within the next year or so whenever Fred Ernest gets that thing ready to go as well. If there were to be a multi-tenant sign there, costs range from \$20 - \$30 thousand for that excluding any electrical work at all. So that would be quite onerous, I don't believe that's in our rent fees, other gentlemen here might know better than me, but I don't believe that's in our rent costs, so that would be quite a financial burden to have to share any of those costs at all.

Mr. Layman - So, you have the pylon that's already there, the other sign is going to be for the other tenants.

Mr. Lowe - Yes.

Mr. Gienger - Is there going to be a sign on the building too?

Mr. Lowe - Over the entrance, that building has an entrance that comes out and there's a handicap ramp there.

Mr. Layman - How big is the sign on the building?

Mr. Lowe - It just goes on that one section over top of it, it may be 25 or 26, over the doorway is all it is.

Mr. Carter - His original signs are all to code. It's going to be 39 square feet.

Mr. Lowe - That's if there is a box there, but it's a channel sign. Again a street sign is essential to get people's attention going up and down the road. Again what we've found and what they've found across the Whits system is being in a strip center is not beneficial at all people just tend to drive by.

Mr. Paul - How long have you been working on this?

Mr. Lowe - The lease has been about two years, we started construction and then ran into truss issues at our end of the building of course. So those have put us back by about 2 and a half months. We had hoped to be open by July 1st, but there were some significant truss issues that needed to be fixed.

Mr. Paul - If signage is that important why is it one of the last things you're dealing with?

Mr. Carter - We've been working on it for a while.

Mr. Paul - Okay, but on my end, if it's that important it should be on the top of the list.

Mr. Carter - We've been working on this 4 or 5 months now.

Mr. Paul - My thing is, if this is an important issue then you bring it up to the top. If he's getting ready to open and it's at the bottom. I don't have an issue with it, that's just my thoughts.

Motion to approve, second, motion passed 4-0, variance is approved.

Mr. Layman - There is a house at 360 Myrtle Avenue that was annexed into the City a while ago in 1997. Anyway, it's still zoned R-1, which doesn't exist. They would like an interpretation on the map that it should read RM which is single family medium density, so we're just correcting the map.

Motion and a second to interpret the map, motion passed

Mr. Layman - Let's talk about real quick, we have an issue on the Table with the cell tower. Just to resolve this thing. This is the permit, the sign was going to go back here and George is talking about bringing it out to the road, which I'm not in favor. What I would like to tell them is they could put it in the northwest corner of the Kroger lot.

Mr. Carter - I think their thought process is that they have moved it like 200 more feet away from the neighborhood.

Mr. Layman - I'm not going to put it out along the road.

Mr. Geinger - No, I will not, there is no if in me I will not.

Mr. Carter - I know Steve and I have talked about this kind of creating a policy for the board of how long items can remain on the Table and this has been probably 4 or 5 months it's been on the Table and every month I get about 2 or 3 emails asking if this is on the docket and I tell them no and I think Steve and I were throwing around after 60 days, a Tabled issue be brought back off the Table and if they're not ready yet then it's denied and they can re-apply or you guys as a board discuss whether it's 90 days or 120 days, but I don't think things should be setting out there on the Table for 5 months. It does not specify in the code, maybe in the Charter, I haven't looked at the Charter, but as far as the powers of the board it's very clear that things like that come down to the precedent set.

Mr. Layman - Do you think we have the power or authority to take it off the Table? There is no right answer.

Mr. Carter - I think the board does have the right to bring things off the Table. It's your board. I think if the board feels strongly enough that they want to take something off the Table, not at the applicants request.

Mr. Paul - But my point is this, that's never been a viable solution, we should just vote it down and save everybody the trouble because it's never going there, I don't believe. I understand a sign near the road, but a cell tower near the road is no. You're not bullying us in this town. You should've came to somebody and in the next town go to somebody who knows what's going on. Don't show up.

Mr. Hunt - My read on them when they were here was that they had spent so much time on that location they didn't want to go anywhere else.

Mr. Paul - But that doesn't matter, it doesn't.

Mr. Layman - But then to your point, if this is important it should come first.

Mr. Paul - You made it a point to tell me how important it was, shouldn't that have been the first thing you worked on, not the last?

Mr. Carter - Regardless if it's a great idea or a bad idea I think we have to look at what is the right of the applicant. I have the right to bring bad ideas in front of the board all day every day and you guys can tell me it's a bad idea, but I think the question is, the applicant requested it to be Tabled, does the applicant have to request that it be brought off the Table or is that a power of the board.

Mr. Layman - I think that's a power of the board.

Mr. Carter - I still think it's the power of the board after a reasonable time frame.

Mr. Paul - You say every month you're getting the residents that were complaining wanting to know what's going on?

Mr. Carter - There are some.

Mr. Paul - Now they're tying up your time because we let it go too long.

Mr. Carter - It's Mona Fine and her neighbor.

Mr. Paul - I'm saying if it's lingering and it's causing you grief that it shouldn't be perhaps we need to look at that too.

Mr. Layman - Let me ask you guys a question. So, the pond is here, Baker Blvd. is here and then this ground is owned by NASA, Newark Area Soccer. It comes back to just beyond the pond. So, if we were to say to them could we grant a variance for that location without a public hearing.

Mr. Carter - No.

Motion to take it off the Table, second, Motion passed 4-0

Mr. Carter - The only comment I have on this is that it's coming back regardless.

Mr. Layman - Is there a motion to approve the original location or a motion to disapprove the original location.

Mr. Hunt - I think you have to do it I the positive don't you?

Mr. Carter - Well, we call it a motion to deny, I have been doing negative motions for the last three years and will continue until someone tells me different.

Motion to deny application for the variance to put a cell tower at the southwest corner of the Kroger property on 21st Street, Second by John Paul, motion to deny passed 4-0

Mr. Layman - George if you're talking to these people and if you tell them that if they go back on the northwest corner or on the NASA property we are more than likely to approve it, if they come anywhere on the south side of Kroger we're not going to approve it. They can bring anything they want back to the board, but if they move that to the frontage on 21st Street it's not going to be approved.

THE NEXT SCHEDULED BOARD OF ZONING APPEALS MEETING WILL BE HELD ON THURSDAY, September 28, 2023, 5:30 P.M. THE DEADLINE FOR AGENDA ITEM SUBMITTAL IS September 1, 2023, 4:30PM.

5. ADJOURNMENT

Chairman, Board of Zoning Appeals

Secretary, Board of Zoning Appeals