

**FLORENCE BOARD OF ADJUSTMENT
FLORENCE GOVERNMENT CENTER
BUSINESS MEETING
DECEMBER 11, 2019
7:30 P.M.**

Mr. Pieper called the meeting to order at 7:30 P.M.

BOARD MEMBERS PRESENT

Mr. Timothy Pieper, Chairman
Ms. Dee Begley
Ms. Lois Evans, Vice-Chairwoman
Mrs. Linda Schaffer
Mr. Kenny Vaught

LEGAL COUNSEL PRESENT

Mr. Dale Wilson

APPROVAL OF THE MINUTES

Mr. Pieper stated the Board members received copies of the minutes of the Florence Board of Adjustment meeting of November 13, 2019. He asked if there were any comments or corrections? Mrs. Schaffer said she would abstain since she wasn't present at that meeting. Ms. Begley made a motion to approve the minutes as written and Ms. Evans seconded the motion. Mr. Pieper called for a vote and it carried unanimously.

AGENDA ITEMS

1. Request of Susan Houp for Wright Brothers for a Change in Nonconforming Use. The Change in Nonconforming Use is to allow an outside gas cylinder storage area to be expanded to 24' x 41' and covered with a roof. The approximate 4.84 acre site is located at 8169 Mall Road, Florence, Kentucky and is zoned Commercial Two/Planned Development/Mall Road Overlay District (C-2/PD/MR).

Staff Member, Todd Morgan, AICP, presented the Staff Report which included a PowerPoint presentation (see Staff Report).

Mr. Vaught asked if Wright Brothers was turned down to build the 24' x 20' enclosure or if they just constructed it without asking? Mr. Morgan said he believes they just constructed it without getting the proper approvals.

Ms. Begley said she wants to clarify that the existing 24' x 41' chain link compound also wasn't approved and they are asking to keep it and cover it with a roof? Mr. Morgan responded that was correct.

Mrs. Schaffer asked if the PowerPoint photos were showing the 24' x 41' compound? Mr. Morgan responded that was correct.

Mr. Wilson said he would like to read one paragraph of the pertinent case law into the record. This is in the land use and zoning Kentucky book. "However, note that expansion of a nonconforming use was allowed where another law required it. In Carruthers versus City of Louisville a nonconforming milk plant was allowed to be expanded as required by the Health Department and where there was no evidence tending to show that the alteration

would increase or create any additional noise, smoke, or other inconveniences.” He explained that the case involved a small family dairy that had expanded over the years and included them making butter. A Health Department official told them they needed to enclose the area where they cleaned the equipment and as a result they needed to expand the building.

Mrs. Schaffer asked which sat at a higher elevation, the houses on Airview Drive or the cylinder storage area? Mr. Morgan said the houses are at a higher elevation. She also asked what type of buffer was in place? Mr. Morgan said a substantial tree buffer was in place between the parking lot and houses and most of the trees were on the subject lot. He reviewed the slides from the PowerPoint presentation. Mrs. Schaffer asked if the adjoining residential property owners can see the fence compound? Mr. Morgan said he didn't believe any neighbors would be able to see the compound because of the change in topography and tree line. He added that he didn't receive any phone calls from anybody on Airview Drive. Mrs. Schaffer asked if the adjoining property owners received notice? Mr. Morgan replied they did. Mr. Vaught said he visited the site and agrees with Mr. Morgan that the adjoining residential property owners will not see the compound.

Mr. Pieper asked if the roof cover will make the outside storage area any more obtrusive to the residential neighbors? Mr. Morgan said the fencing is 8' tall and the proposed roof is 14'-8" tall. Mr. Morgan said he still doesn't believe the neighbors will see the structure. Mr. Vaught agreed.

Mr. Vaught said he visited the site and noticed they had video surveillance. He asked if the video feed went to the store and allowed them to keep an eye on the fence compound? Mr. Morgan said he walked into the store and observed that they watching the fence compound video feed.

Ms. Susan Houp, with Wright Brothers, said she was present to answer questions.

Ms. Evans asked if Wright Brothers does anything else other than sell gasses? Ms. Houp said they also have a welding store. They sell hard goods, such as regulators and helmets. The majority of their business is selling gasses.

Ms. Evans asked if the gas cylinder compound was full? Ms. Houp responded it was full and the cylinders were kept on skids. They have a driver come in every two week and he takes the empties and replaces them with refilled cylinders. The Fire Marshal has inspected it. Ms. Evans asked if there was any room for additional expansion? Ms. Houp said there wasn't.

Ms. Evans asked what color the metal roofing would be? Ms. Houp said it would be silver. Ms. Evans asked Mr. Morgan what he thought about that? Mr. Morgan said he would prefer an earth tone, like green, to eliminate the possibility of glare or reflectivity. Ms. Houp said they can certainly look into different colors. Ms. Evans said she would like to add a condition if the request is approved to require the roof to be green or another earth tone color.

Mr. Pieper asked if any permits are required to store the gas back there? Ms. Houp said

she wasn't aware of any required permits.

Mr. Pieper asked what was the purpose of the roof enclosure? Ms. Houp responded that it's to protect the cylinders from the weather and to add more security. Twisted Cream was in the strip center when they first contemplated the roof. They sold alcoholic beverages and had a deck behind the strip center. They were worried the someone would try to climb the fence and get in. The roof would make it more difficult.

Ms. Evans asked if they had any alarms on the enclosure? Ms. Houp said they just updated all their security cameras and they are attached to their phones. They also have security inside the store. They don't have any alarms on the enclosure. She can ask the owner to look into that.

Ms. Begley asked if there had been any issues with the enclosure since she worked there? Ms. Houp said she started in March 2018 and she has not witnessed any issues. The one thing she has noticed over the last couple is more traffic in the strip center.

Mr. Vaught asked for their store hours? Ms. Houp said they are open Monday-Friday from 8:00 A.M. to 4:30 P.M.

Mr. Vaught added that the Fire Marshal commented that they do not exceed any storage limits for the gasses and routinely file the Tier II paperwork as required.

Mrs. Schaffer asked for clarification that the video system wouldn't set an alarm off? Ms. Houp said the system only records. The enclosure has two locks for added security. Most of the cylinders weigh over 50 pounds and would be difficult to get over the fence.

Mr. Pieper said the drawing shows the enclosure is located on a couple of parking places. He asked if there was any issue with that? Mr. Morgan said there is no issue. The back and side parking lots have always been empty any time he has gone back there over the years.

Mrs. Schaffer asked if the enclosure was too small when it was 20' x 24'? Ms. Houp said they are seeing more customers and sales. They will not expand the compound anymore.

Mrs. Schaffer said she agrees with Mr. Vaught regarding the Fire Marshal's comments. She asked if the Board should impose a condition which requires them to file their Tier II paperwork? Mr. Vaught said it wouldn't be a bad idea. Mr. Vaught said they are in Tier II now and shouldn't exceed it. Mr. Morgan asked who handles that? Mr. Vaught said it is handed down by the Federal Government and is administered by the local Fire Department.

Mrs. Schaffer said she would also recommend adding onto Staff recommendation 4B. She would like to add some additional language indicating that no cylinders would be stored outside the compound.

Mrs. Schaffer said there also shouldn't be anymore outside storage. Mr. Morgan said they should only limit outside storage for the Wright Brothers because they are the nonconforming use. He worded a condition which would require them to come back through this process if they want to add onto the gas cylinder compound. Mrs. Schaffer said that only covers gas cylinders. Mr. Morgan said they can't enlarge the nonconforming

use without coming back through this process.

Mrs. Schaffer said she would also like a condition requiring 24 hour security video. It sounds like they are going to do that anyway. They also discussed another potential condition earlier which would require a green or other earth tone colored roof. She would also like to add another condition which would require the enclosure to be maintained and kept in good repair.

Mr. Pieper asked if any of the other Board members felt that Wright Brother had circumvented the rules when they built and then expanded the fence compound? He said he doesn't know how they could determine that. Mrs. Schaffer said Ms. Houp wouldn't know because the 24' x 41' enclosure was constructed before she was employed with Wright Brothers. Ms. Houp agreed. Mr. Vaught said that is why he asked the question earlier if they had a plan turned down or if they just constructed it without knowing. He feels like they are on notice now. Ms. Begley said they are asking for the 24' x 41' to be enclosed after the fact and also allow it to be covered with a roof.

Ms. Begley asked if any of the Board members have any concerns about lightning and safety. Ms. Evans added that they want to add a metal roof. Ms. Begley asked what would happen if there was a lightning strike? Ms. Houp said they have panic button on their desks. They would see something as soon as it happens because there is a big monitor displaying the back lot. Ms. Evans said the Board's concern is when Wright Brothers isn't open for business. Ms. Houp said she doesn't have an answer for that. She can go back to the owner of the business and discuss that.

Ms. Evans asked if the Fire Department would have any recommendations for a fire retardant system in the roof? Mr. Vaught said the fire department has already visited the site and assessed it and they indicated they have no issue. Mr. Vaught said that gives him comfort because they have an emergency plan in place. Mr. Pieper said he didn't think there would be an issue if lightning hit the metal roof because the roof will be grounded.

Mr. Pieper asked if anybody in the audience wanted to speak regarding the request?

Mr. Josh Hunt, Director of Development with the City of Florence, said he has the following questions:

1. The first deals with the change in nonconforming use. Mr. Wilson read the state law which allows a nonconforming use which was established before 2015. His question is since the storage area has been expanded without permission in 2017 how is that protected? Mr. Morgan said that improvement is not protected. They are asking for approval for forgiveness and want the existing 24' x 41' enclosure approved with an added roof.
2. Are chainlink fences permitted in the Mall Road Overlay District? Mr. Morgan said they are typically not permitted but this is a Change in Nonconforming Use application. He said he would also like to go back and read the Mall Road District Study. Mr. Hunt asked when the chainlink fence was installed? Mr. Morgan replied that the 20' x 24' enclosure was constructed 2017 and it was expanded in 2018. Mr. Morgan said the fencing is not visible from any right-of-ways or adjoining properties. Mr. Hunt said chainlink fencing is not allowed anywhere on Mall Road.

3. Are exposed roof rafters permitted anywhere in the Mall Road overlay district?
Mr. Morgan said he doesn't believe they are typically permitted. However, he believes the Mall Road District Study gives some latitude when an improvement isn't visible from an adjoining property. He would need to go back and read the Study. Mr. Hunt said he believes that is very important for the Board to know before acting on the application. The Mall Road District Study has strict architectural standards and they should be held to.

Mr. Josh Wice, City Coordinator with the City of Florence, said there was outside storage on site prior to 2014. The City did initiate code enforcement action when they had the temporary storage trailers. The business then got a Temporary Trailer Storage Permit which expired. The Florence Code Enforcement Board continued with action when the trailers were not removed and the trailers were removed and the issue was closed. In 2017, the business installed a 20' x 24' enclosure without any Planning Commission or Board or Adjustment approvals. It could be argued that the business should have known that they needed approvals when they just went through the code enforcement process. He believes they circumvented the approval process. Then in 2018, they expanded the enclosure to 24' x 41'. He feels they need more information and they need to know how the proposal relates to the Mall Road District Study. He also questions if they abandoned the pre-existing nonconforming use after 2014. He believes Wright Brothers could ask for a Zone Change or Concept Development Plan approval.

Ms. Evans said she understands the trailers were removed and the issue was closed by the City of Florence in 2014. She asked if there was any follow up after that? Mr. Wice said the City doesn't want code enforcement to be an adversarial process. They just want properties to come into compliance with code. The City first gives the property owner a notice of violation. This is basically a warning letter where the City tries to work with the property owner before issuing a citation. The Code Enforcement Officers will normally move on to other issues as a matter is closed. Most issues are complaint driven versus them just proactively driving the City.

Mr. Vaught asked Mr. Wice if he thought the nonconforming use was abandoned when the storage trailers were removed in 2014? Mr. Wice responded that would be his position. He also believes that Wright Brothers would have been familiar with the approval process to obtain a Change in Nonconforming Use, Zone Change, or Concept Plan. He also believes the former and current landlords are familiar with these processes as well.

Mrs. Schaffer asked where Wright Brothers should store gas cylinders if they want to stay in business? Mr. Wice said he didn't think they should be permitted to store any gas cylinders outside. Mrs. Schaffer said they were storing them inside in 2005 and the Florence Fire Department made them move them outside. In 2013, they were then told to move their storage area because they were too close to a daycare. In 2014, they were told to remove their temporary storage trailers. She asked where they stored the cylinders between 2014 and 2017? Mr. Wice said that's a good question and why he believes more information is needed. He added the entire nature of their business changed. When he was a teenager he got his mountain bikes from their store. They have since turned into a gas cylinder and welding supply store. The gas sales have become the principal use. This would only be permitted in an Industrial One (I-1) zone in the City of Florence. Mrs. Schaffer said they stopped selling bicycle back in 2005 so the nonconformity has existed

for more than 10 years. Mr. Wice said he would argue that the outside cylinder storage area was abandoned in 2014 with the information they have here tonight. They don't know what happened between 2014 and 2017.

Mr. Vaught said Speedway and Murphy's have outside storage of propane tanks. Menard's also has outside storage. Mr. Wice replied that Speedway and Murphy's aren't in the Mall Road District Study limits and Menard's went through the Concept Development Plan application process and was approved by City Council. He added that Wright Brothers could come in today and ask for a Zone Change or Concept Plan.

Mr. Wice said he would like to see some additional information. He doesn't want Wright Brothers to leave the City of Florence or their current location.

Mr. Morgan said he would like to add one additional thing. The 2016 aerial map shows that Wright Brothers was storing gas cylinders in a temporary storage trailer. He doesn't like the fact that Wright Brothers was doing it but the aerial shows that it was occurring after the Code Board acted and the City closed the case. Mr. Wice said that makes it clear that they knew the rules and did not care to follow them. Mr. Morgan said he is not excusing that. He believes that Wright Brothers did just about everything wrong.

Mr. Vaught said the Fire Department isn't going to have any say on the chainlink fence. They are only looking at it from a security and safety perspective. Mr. Wice agreed.

Ms. Begley said it sounds like the City is asking for a continuance? Mr. Wice said that is completely up to Board. Ms. Begley said that Wright Brothers should have the proper people at the next meeting to answer the questions. Ms. Houp said the owner can come to the next meeting.

Ms. Evans asked what would be acceptable construction to the City if the application is approved? She feels like the City told them to move the cylinders outside and then told them to remove the trailers. This didn't leave them with an option and the business has been in existence for 30 years. She thinks Board and City should try to work with them even though there has been some unclear communication.

Mrs. Schaffer said every situation is unique. This storage area is behind the building and isn't visible. This would be a completely different situation if this was occurring at the Mall. She would like to come up with a solution that works for everyone. Ms. Begley said she hopes that Wright Brothers can be approved at their current location.

Mr. Vaught said it is key to him that Wright Brothers is on notice now but he would also like to hear from the owner. Ms. Evans said the Board needs to look forward and come up with a solution.

Mr. Pieper asked what was the pleasure of the Board?

Ms. Evans asked if the Board needs direction from the City? Mr. Morgan said he can certainly bring more information back about the Mall Road District Study and the City can weigh in what they would like to see if the application is approved. If the Board feels that something is important they can impose conditions on an approval.

Ms. Begley asked what type of fencing Bengal Tots constructed? Mr. Morgan replied it was chainlink fencing. He will go back and look at that approval as well.

Mr. Vaught made a motion to table the request to January 15, 2020, at 7:30 P.M., so more information could be provided from the business owner. Ms. Begley seconded the motion and it carried unanimously.

OTHER

Mr. Vaught said he wanted to thank to Planning Commission for listening to Ms. Begley's recommendation. Staff Reports will be sent out electronically starting with the next meeting. This will give the Board members more time to review the reports. Ms. Begley asked if hard copies will still be provided at the meeting? Mr. Morgan said they would..

ADJOURNMENT

Mr. Pieper asked for a motion to adjourn. Mrs. Schaffer so moved and Mr. Vaught seconded the motion. Mr. Pieper called for a vote and the meeting adjourned by unanimous consent at 8:37 P.M.

APPROVED

Timothy L. Pieper, Chairman

ATTEST:

**Todd K. Morgan, AICP
Senior Planner, Zoning Services**