

**FLORENCE BOARD OF ADJUSTMENT
FLORENCE GOVERNMENT CENTER
BUSINESS MEETING
JANUARY 15, 2020
7:30 P.M.**

Mr. Pieper called the meeting to order at 7:34 P.M.

BOARD MEMBERS PRESENT

Mr. Timothy Pieper, Chairman
Ms. Lois Evans, Vice-Chairwoman
Mrs. Linda Schaffer
Ms. Dee Begley
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 December 11, 2019. He asked if there were any comments or corrections? Ms. Evans made a motion to approve the minutes as written and Mr. Vaught seconded the motion. Mr. Pieper called for a vote and it carried unanimously.

AGENDA ITEMS

1. Request of Susan Houpp 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).

Mr. Pieper said he would like a motion to remove the request from the table. Ms. Begley made a motion to remove the meeting from the table and Mrs. Schaffer seconded the motion. Mr. Pieper called for the vote and it carried unanimously.

Mr. Wilson said he would like to give a quick summary as to how they got to where they are tonight. Based on the record made at the hearing last month, the outdoor storage as a use is a protected pre-existing nonconforming use. There has been outside storage in existence going back to 1990. There are aerial photographs showing it going back to 1994 and the Staff Report notes that it started in 1990. The request before the Board is to allow the outdoor storage area to be expanded to 24' x 41'. The test is whether the proposal is any more objectionable than what was there before. Staff member, Mr. Todd Morgan, said the only thing that he would add to Mr. Wilson's statement is the applicant is also asking for the 24' x 41' outdoor cylinder storage area to be covered with a roof.

Mr. Morgan said he would like to submit two items into the record (see Exhibits 1 and 2). The first was an email he received from Josh Hunt, with the City of Florence, yesterday. The second is some key passages from the Mall Road District Study. Page 4.1 includes a paragraph that gives the Zoning Administrator some latitude when reviewing a proposal. Page 4.4 includes the screening requirements that are referenced in Mr. Hunt's email.

Mr. Morgan said the Board can certainly impose conditions on this request if they feel that an enhanced enclosure or screening is necessary to make the project no more objectionable than the pre-existing nonconforming condition.

Ms. Begley asked for the security system to be explained more thoroughly. Mr. Pieper asked the applicant's team who would like to speak?

Mr. Eric Fegan said he was the current landlord. He said he did not have a lot of historical reference but may be able to answer some questions. Ms. Susan Houp, with Wright Brothers, said she called their security company and there is no way to put a camera inside the fence because there is no electric out there. They do have cameras mounted on the building so they can see the fence compound. Ms. Begley asked if a wireless system could be used. Ms. Houp said the company they are using didn't mention that as an alternative.

Mr. Fegan said they bought the property from a fireman. They were worried about these gas cylinders when they were doing their environmental reports because of the proximity of the enclosure to other tenants. The previous owner said they were not storing dangerous gasses.

Ms. Begley said there are also residents that live in close proximity up on the hill. She would like to see the residents notified if there was a problem. Another issue they discussed at the last meeting was that there was no monitoring after hours. Mr. Fegan said the way it was explained to him was that the gasses would just go up in the air if there was a problem. He added that they wouldn't have bought the property if there was an increased fire risk because of the liability.

Ms. Nikki Little said she has been with Wright Brothers for about 6.5 years. She is the longest tenured person that can answer questions about this store. She added that all the cylinders have caps on them. These caps prevent anything from happening if a cylinder were to fall over. There are a lot of cylinders that fall over at the fill plant in Ohio and nothing ever happens with them.

Ms. Begley asked if the cage was being expanded? Mr. Morgan said they are basically asking for forgiveness to keep it at the size it is now (24' x 41'). The request would also allow them to cover the enclosure with a roof. Ms. Little said the roof would help with weather issues and security.

Mrs. Schaffer asked if the PowerPoint slides from the last meeting could be shown again? She would like to see the roof specifications. She asked how tall the fence would come up? Ms. Houp said the fence is 8' tall. Mr. Fegan said there would be a 2' gap between the top of the fence and bottom of the roof based on the sketch. Mr. Morgan agreed. Ms. Houp said they could reduce the gap if it's an issue for the Board.

Mr. Vaught said he agrees with what the former landlord said regarding the gas cylinders. The chemicals are audited each year by the Florence Fire Department and they are extremely professional. He added that any tank issues would involve hissing and flaming but would not involve an explosion.

Mr. Pieper said one of the big issues the City had with the proposal was the open gables. He asked if they be closed off? Ms. Houpp responded that could be done.

Mr. Pieper said another issue the City had was the chainlink fencing. He asked if another type of fencing could be used that would screen the cylinders? Mr. Vaught said he would like to see a compromise made between the City Staff and Wright Brothers in terms of the fencing. Ms. Denise Beck, with Wright Brothers, said she has a concern with limiting visibility into the chainlink enclosure. Currently, an employee will go out into the compound with a customer and another employee will watch what is happening from inside the store. They could create a safety issue because they do not always know their customers. Ms. Evans asked where the cameras were now. Ms. Beck indicated they were mounted to the building. Mr. Morgan reviewed the PowerPoint slides and Ms. Beck identified the two camera locations. Mr. Pieper said he was glad they brought up the safety issue. He believes that is more important than the aesthetic issue. Mr. Vaught said he agrees. The structure is in the back of the strip center and can't be seen from Mall Road or the residents on Airview Drive.

Ms. Begley asked if the original enclosure was chainlink fencing? Ms. Little said it was the same material it is now but the original location was behind the former daycare (Karate school now).

Mrs. Schaffer asked if they could have the gas cylinder enclosure closer to the store? Ms. Houpp said they did have it there at once point and the Fire Marshal said no because of the proximity to the building. Some locations closer to the store also wouldn't be good because they would be visible from the front parking lot. The State Fire Marshal also made them move the location in the back because of the proximity to the building and the former daycare. Mr. Fegan said the current location is in the corner of the parking lot that is furthest from the building.

Ms. Begley said one issue that was brought up last time was if Wright Brothers could be notified if something went wrong after hours. Ms. Evans said that isn't an issue to her if there is no real danger of fire or explosions. Ms. Houpp said their video system records 24 hours a day and they watch the videos as far back as 3 or 4 months. They can also log in and watch the video feeds from their cell phones. They can get alerts on their phones but they would be alerted of everything, including insects. Ms. Begley asked when they watch the video. Ms. Houpp responded they usually watch it on Monday to see if anything happened over the weekend. They watched it more when Twisted Cream was located in the center. They had a back deck and there was more activity in the rear. They added a second lock to the cage at this time. Mrs. Schaffer asked if the Board was okay with the 24 hour security system? Ms. Begley said she was fine with it. Ms. Houpp said she would be notified if the security system goes off in their store.

Ms. Houpp said it was presented last month that they had temporary storage trailers after they were told not to have them. That was not the case. The temporary storage trailer shown in the 2016 aerial did not belong to them. Ms. Little added that they moved all the cylinders inside the store after they were told they couldn't have the temporary storage trailers. They were then told they couldn't have the cylinders inside the store. Mrs. Schaffer asked if they stored the gas cylinders inside between 2014 and 2017? Mrs. Little responded that was correct. She added that they started using the temporary storage trailers because they were too close to the daycare.

Ms. Begley asked Ms. Little if she was at the store when they expanded the fence compound from 24' x 20' to 24' x 41'? She said she did work for Wright Brothers but was not aware of the expansion. Mr. Fegan said he has no reference because he didn't own the property at that time. He imagines that the former landlord spoke with the fire department.

Mr. Vaught said he believes all of that is probably a moot issue because of the case law that has been presented to them. Mr. Wilson said he provided the name of the case and a little background at the last meeting. When a non-zoning agency, like the Fire Marshal, comes in and says you cannot have the gas cylinders inside and they have to be moved outside that establishes the pre-existing status. Unless there is some evidence of some abandonment of that protected right then the protected right may continue. The burden would be on the City to prove that there was an abandonment.

Mr. Vaught asked if they had a list of the extra conditions that were discussed at the last meeting. Mr. Morgan reviewed the conditions that were discussed at the previous meeting and the Staff recommendations in the Staff Report.

Ms. Begley made a motion to approve the request with the following conditions:

- 1. The gas cylinder storage enclosure shall be limited to 24' x 41' and be kept in the approved location.**
- 2. Gas cylinders shall not be stored in temporary storage trailers.**
- 3. Any future proposal to expand the gas cylinder storage enclosure shall be approved by the Florence Board of Adjustment through the Change in Nonconforming Use application process.**
- 4. The fence enclosure and roof shall be removed if Wright Brothers does not renew their lease and vacates the premises.**
- 5. No gas cylinders shall be stored outside the 24' x 41' fence enclosure.**
- 6. The applicant shall be required to submit any required Tier II paperwork to Florence Fire Department each year.**
- 7. A 24 hour video security system shall be required to monitor the 24' x 41' fence enclosure.**
- 8. The metal roof which will cover the 24' x 41' fence enclosure shall be an earth tone color.**
- 9. Architectural finishes shall be required on the gable ends of the roof. The finishes shall match the roof color.**

Ms. Begley asked if the conditions are checked prior to construction? Mr. Morgan said Wright Brothers next step would be to submit a Minor Site Plan application and he would make sure the submitted plans complied with the conditions before granting approval.

Ms. Evans seconded the motion. Mr. Piper called for the vote and it carried unanimously.

OTHER

Mr. Morgan said the Board should elect officers since it's the first meeting of the year. He said that Mr. Pieper is currently Chairman and Ms. Evans is Vice-Chairwoman. A former Board member, Mrs. Jamies Nieves, was the last Secretary/Treasurer. He said that someone could nominate a slate of officers or they could take each office one by one. Mr. Wilson said the Board could also think about it and elect officers at the next meeting. Mrs. Schaffer made a motion for Mr. Pieper to remain Chairman, Ms. Evans to remain as Vice-Chairwoman, and for Ms. Begley to be Secretary/Treasurer. Mr. Vaught seconded the motion. Mr. Pieper called for the vote and it carried unanimously.

ADJOURNMENT

Mr. Pieper asked for a motion to adjourn. Mrs. Schaffer so moved and Ms. Begley seconded the motion. Mr. Pieper called for a vote and the meeting adjourned by unanimous consent at 8:15 P.M.

APPROVED

Timothy L. Pieper, Chairman

ATTEST:

Todd K. Morgan, AICP
Senior Planner, Zoning Services

Exhibits

1. 1/14/20 Email from Josh Hunt
2. Passages From Mall Road District Study