

MINUTES OF THE
FAIRFIELD BOARD OF ZONING APPEALS
August 4, 2021

Scott Lepsky called the Board of Zoning Appeals hearing to order at 6:00 p.m. at the Fairfield Municipal Building, 5350 Pleasant Avenue.

Roll Call

Maria Mullen, Secretary, called the roll of the Board of Zoning Appeals. Present members were Mark Rhodus (MR), Tony Rawe (TR), Scott Lepsky (SL), and Erin Simons (ES), and Dale Paullus. Leland Rosato (LR), Building Official and Steve Wolterman (SW), Law Director were also present. SL made motion to excuse Chad Whitmore and Mary Stier, and was passed by the Board.

Pledge of Allegiance

Minutes of the Previous Meeting

The minutes were approved from the Board of Zoning Appeals meeting held on June 2, 2021.

Old Business

Case No. BZA-21-5 – Fence Exceeding 6 Feet Tall and Accessory Off-Street Parking – 4325 Muhlhauser Rd

A variance request submitted by Joshua Lewis of iVCP Muhlhauser 2 LLC, for the property located at 4325 Muhlhauser Rd, Lot No. 13271, in the M-2 zoning district.

The applicant requested the case be removed from the table and dismissed.

Board Action

Scott Lepsky made a motion to remove the case from the table. The motion was seconded by Erin Simons. Motion carried 5-0. Scott Lepsky made a motion to remove the case from the agenda. Dale Paullus seconded the motion. The motion carried 5-0.

New Business

Case No. BZA-21-12 – Accessory Structure with Metal Siding - 5854 Red Oak Drive

A variance request submitted by Alger and June Cable, for the property located at 5854 Red Oak Drive, Lot No. 7741, in the R-0 zoning district.

Section 1143.06 (a) of the zoning code states, "The exterior wall surface of an accessory building or structure, if greater than 100 square feet, shall not be made of metal..."

The homeowners are requesting a variance for the metal siding on their existing 192 SF shed.

LR gave a summary and notes on this variance request:

- Single-family residence property
- One (1) variance sought:
 - Detached accessory building (16x12 Shed) with METAL siding
 - Violates no metal siding for accessory structures over 100sf ordinance

- The intent of this ordinance goes back many years ago when sheds were made of metal. The metal use in the 1970s and 1980s was not a high-quality metal, and easily rusted. The ordinance was put in place to eliminate those type of metal sheds.
- Metal roofs are allowed.
- **Size/Area Variance** is requested.

Timeline:

- 12-14-2020, the owner, Mr. Cable came to our office to apply for a shed permit. He indicated that it would be a 16 ft x 12 ft pre-made shed.
- 12-16-2020, Brian approved the location of the shed. With the approved site plan, Brian also attached paperwork for an anchoring system and the standard conditions for sheds.
- 12-17-2020, Mr. Cable was notified by our office the permit was ready to issue. The owner purchased the shed and installed it without the permit and paperwork.
- 1-7-2021, our zoning inspector noticed the metal-sided shed was installed. The shed is not positively attached to the ground and was very unstable.
- Staff made several attempts to contact the owners. Per our protocol, a zoning letter was also sent to the owner.
- 2-25-2021, Mr. Cable came to our office to pay for the permit.
- The owners worked hard to rectify the unstable base.
- The shed was purchased and delivered with the metal siding, so the owner's only recourse was to request the variance to keep the metal sided shed.

Technical Staff Notes:

- One (1) notice of objection from neighbor three doors down.
- Other sheds in the area: 200-300 sf sheds very common (1 every 4 or 5 properties)
- Comparatively large lot – 115 ft (wide) x 152 ft (deep)
- In spite of the disputes, incorrect execution of procedures, and/or miscommunications between the applicant and Staff since initial application:
 - Applicant has indeed initiated many efforts to do right by this project
 - Rectified unstable supports
 - Relocated shed to a more inconspicuous / hidden location
 - Metal siding is the same metal as the metal roof. Very durable and higher quality.
 - Not an excessive amount over the area limit
- Technical Staff would not object to approval. We recommend painting the red trim a more neutral or earthy color.

LR answered questions from the Board.

- SL asked how the applicant was notified the permit was ready to be issued, and were they told there are plans/documents for them to pick up.
 - Our office clerk contacted the owner by phone, and he was informed the permit and plans were ready to be issued.
- TR asked what documentation was given to the owner when he applied.
 - We give them an application and a site plan for the owner to mark where they want to put the shed. It is reviewed, and the site plan and conditions are part of the permit documents.

- DP asked LR if he was okay with the shed, but just had an issue with the red trim.
 - LR confirmed this to be his opinion. DP said he agreed with him.
- LR pointed out the chocolate color of the shed does match the house, and if they painted the red trim a lighter color, or the same color as the shed, it would blend better.
- SL asked if the conditions were included in the plans that were available to pick up on December 17.
 - The conditions were included with the approved site plan.
 - As stated earlier, there was a miscommunication between our office and the owner. It could be that when the owner received the call from our office, he may have thought it was okay to purchase the shed and install it.
- MR noticed on the initial picture of the shed, the shed was not on stable ground. The most recent photo does show the new location, but not the new foundation or footings.
 - LR believes the location is further down the hill from the original location. The final location is closer to the tree line, adequately hidden from all neighbors, except the neighbor to the right of the Cables property.

Property Owner Comments and Discussion

June and Alger Cable spoke on behalf of their variance request.

- LR gave an accurate summary of the variance request.
- Their shed has an excellent warranty (40 years/20 year - no rust). They are very happy with the product.
- Since it was first installed, they have moved it to a foundation with a drain.
- It was a misunderstanding between them and the building/zoning office.
- They asked what they could do to make it right, and were told to stabilize the shed and apply for a variance for the metal siding.
- Mrs. Cable likes the red trim, but they will paint it if the Board recommends it.
- The neighbors next to them have no issues with the shed.
- They were told by their new neighbors that the neighbor that complained about their shed, always complains.
- They love living in Fairfield; great community and good neighbors.
- There was a definitely a miscommunication.

Public Comments

No one came forth.

Board Action

SL explained to the Cables that the Board has to take into consideration the area/size variance questions, and their concern with setting precedent. The Cables were given a copy of the area/size variance conditions. SL would normally have an issue approving metal siding. SL agrees that there must have been a communication breakdown based LR thoughts and timeline. Given that the fact that applicant has been so helpful with regard to moving the structure to a more suitable location with a better base, he would be okay approving the shed if the red trim were painted to match the shed color.

ES commented that this a bit of a struggle for her, because she is always concerned about setting a precedent. ES is concerned about approvals after the fact. They see too often there is no responsiveness from the applicants and no willingness to work within the guidelines. Clearly, Mr. and Mrs. Cable have worked very hard to bring the shed into compliance. They do not want to set a precedent that they are okay with bad

behavior on the front end. On the other hand, there shouldn't be a penalty, or there should be some recognition for trying to do the right thing after the fact. TR agreed and is also struggling with approving this variance.

SL agrees and plans to speak with LR about how we can make sure residents and contractors receive the guidelines on the front end of the application process. To give the information to the applicant when they apply rather than with the approval. LR agree we need to be more proactive.

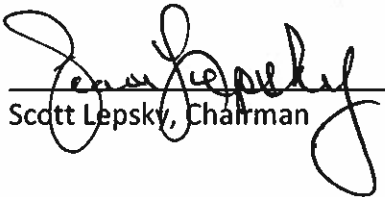
Scott Lepsky made a motion to approve the metal siding on the shed with the stipulation the red trim must be painted to match the shed or match the house. Dale Paullus seconded the motion. The motion carried 4-1 with Tony Rawe dissenting.

General Discussion

SL asked for an update on 118 Palm Springs. There was discussion about the next steps. Tracy Hawkins, the owners' council is aware they need to respond to the City, and SW is waiting for their response. SW will be following up with Ms. Hawkins. Council is aware of the issues on this case. Enforcement is not with the Board of Zoning Appeals, it is with Administration. Enforcement will be through the direction of Greg Kathman, City Council and the City Manager. Enforcement action may entail litigation, and if there were some type of settlement it would occur at that level. SW made it clear that the owners' appeal time has expired. An ADA action would fall under a Federal District court.

Adjournment

SL made a motion to adjourn, seconded by ES. The motion carried 5-0.


Scott Lepsky, Chairman


Maria K. Mullen, Secretary