

## HARRISONBURG BOARD OF ZONING APPEALS

The Harrisonburg Board of Zoning Appeals met in regular session in the City Council Chambers on Monday, March 1, 2021, in order to consider the following request which was duly posted. Members present were Matthew Phillippi, Thomas Jenkins, Patrick Ressler, Glen Stoltzfus, and Jim Orndoff. Also present were Christopher Perez-Leon, Zoning Technician; Alison Banks, Senior Planner; and Wesley Russ, Assistant City Attorney.

Chair Phillippi called the meeting to order at 4:00 PM.

Chair Phillippi: This meeting will be held as an electronic meeting due to the emergency and disaster represented by the spread of COVID-19. This meeting will be conducted by the following electronic communication means: electronically through GoToMeeting and Granicus. The public had the opportunity to provide comments in advance via email and will have the opportunity to provide comments by phone at designated times during this meeting. Because calls are taken in the order that they are received, we ask that the public not call the comment line until the item you are interested in is being presented or discussed.

Are there any corrections, comments or a motion regarding the minutes from January 4, 2021?

Mr. Stoltzfus: I move to approve the January 4, 2021 meeting minutes.

Mr. Jenkins: I second.

WHEREAS: Chairman Phillippi called for a roll call vote: Mr. Jenkins: Aye; Mr. Orndoff: Aye; Mr. Ressler: Aye; Mr. Stoltzfus: Aye; Chairman Phillippi: Aye, and,

BE IT, THEREFORE, RESOLVED: The Board approved the minutes from January 4, 2021.

NEW BUSINESS:

The first item of business is the variance request for 930 Pleasant Valley Road. Mr. Perez-Leon read the following request:

The subject property at 930 Pleasant Valley Road is a manufacturing business specializing in the production of packaging products and currently complies with the required setbacks per Zoning Ordinance Section 10-3-98, Area and dimensional regulations for the M-1 General Industrial District. The applicant, Packaging Corporation of America, built the structure in 1967, and several building additions have been added in subsequent years including one in 2013 where the subject loading dock is located.

The applicant is requesting a variance of 14.06-feet from the required 30-foot front setback to permit the construction of a canopy over the subject loading dock. The front setback variance would only apply to the proposed 15-foot by 24-foot canopy and would not be applied to the entire side of the property adjacent to Willow Spring Road. The applicant is requesting this variance due to a safety concern arising from the absence of a canopy over the loading dock. The applicant describes that during inclement weather such as wet or snowy conditions, forklifts used to unload materials slide causing safety hazards for employees as well as potential for property damage, and that without the canopy, materials would have to unload from another dock which adds 170-feet of extra travel through production areas within the building. Forklift operators can access this other dock due to it having a covered railroad dock siding.

Note that if the variance is approved, the subject property's front yard setback, where the canopy would be placed, would be reduced to 15.94 feet.

Approving the request means that the BZA finds there is a restriction on the reasonable utilization of the property which would be alleviated by a variance from the required front yard setback. Denying the request means that the BZA finds there is no restriction on the reasonable utilization of the property. No setback variance can occur.

Chair Phillippi asked if there were any questions from the Board to staff regarding this request.

Mr. Jenkins: It sounded like this portion of the building was built in 2013.

Mr. Perez-Leon: That is correct.

Mr. Jenkins: What were the requirements? Were they any different in 2013 than they are now in terms of that loading dock being built.?

Mr. Perez-Leon: I believe they were the same.

Ms. Dang: Could you clarify your question? They are asking to add a new canopy with this request. The building met the setbacks in 2013, which was the same as today.

Mr. Jenkins: Did the loading dock meet the setback requirements in 2013?

Ms. Dang: Mr. Perez-Leon, please share the picture of the loading dock. There was no structure that was covering that loading dock area.

Mr. Perez-Leon displayed a picture of the loading dock.

Mr. Jenkins: Is the loading dock considered a structure in itself?

Ms. Dang: It is not. We do not consider that area as a structure. The face of the building would be where the structure begins.

Mr. Ressler: The Zoning Ordinance is being updated now. Are they considering reducing the setbacks?

Ms. Dang: We are considering reducing setbacks. The focus primarily has been discussions around residential reduction in setbacks. I cannot speak to what it would be like in the future zoning district for industrial uses.

Mr. Stoltzfus: Do we have a picture of the proposed booth that would be built there.

Mr. Perez-Leon displayed pictures of the proposed canopy. It will be placed about halfway down this wall.

Mr. Stoltzfus: How far out does it come?

Mr. Perez-Leon: It comes out about 15 feet.

Mr. Stoltzfus: Is that primarily a dock that a tractor trailer would back up against or is that part of the driveway.

Mr. Perez-Leon: There is a truck parked next to the dock.

Mr. Stoltzfus: That roof would be supported by columns about 15 feet out from the building?

Mr. Perez-Leon: I believe so.

Mr. Stoltzfus: If that roof did not require the columns and could be supported in some other way, would that be acceptable?

Mr. Perez-Leon: It would not.

Mr. Stoltzfus: We had a situation one time where there was a porch roof or something that came out and the portion that was beyond from the columns back to the house was the part that was considered in violation. The part that was out beyond the columns was not, if I remember correctly. There was something having to do with a roof that is not supported by columns was not counted as part of the setback portion.

Mr. Perez-Leon: I do not think that is accurate. I think that it will still count.

Mr. Jenkins: It looks like on the map and at the site visit, that existing fire tank or water tank is currently within that 30-foot setback. Was that approved at some point, a variance for that?

Mr. Perez-Leon: I am not aware of that. It is an accessory structure, so it probably would not be held to the same setback requirements as the main structure.

Mr. Ressler: Is it anticipated that zoning may change there at some point in the future that would allow the setback to be closer?

Ms. Dang: I am unable to speculate or guess what the outcome of the future draft Zoning Ordinance will be for the general industrial district setback requirements at this time.

Mr. Jenkins: Has staff received any comments from the public.

Mr. Perez-Leon: We have not received any comments.

Chair Phillippi asked if there were any more questions from the Board to the staff. Hearing none, he opened the public hearing portion of the meeting and invited the applicant or applicant's representative to speak to the request.

Brian Wilson, Production Manager, PCA, spoke in support of the request.

Mr. Wilson: The reason we want to add this canopy is mainly due to safety reasons. As you can see, the ice on the dock. When it rains, it is slick with water. It has created a lot of issues with safety concerns. Our business has grown which means that the demand for this loading dock has grown along with it. There is more traffic on the dock than there used to be. We want to keep our employees safe. If you look right there (referencing a picture), you can see where the tire marks are going into the roll room. The tires were wet which carries the unsafe condition into our building. The canopy will not exceed more than six inches past the guardrail. It should be within three or four inches.

Randy Aikens, General Manager, PCA, spoke in support of the request.

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Mr. Aikens: I have been associated with this facility about 25 years out of my 42 with PCA. We continue to be blessed with business and good customers. Our business has expanded to a point that we are using this dock a lot more than anticipated. The safety aspect comes in, as this picture shows, with the snow. Those big rolls of paper that you saw on another slide can weigh anywhere from a ton and a half to three tons. When you have to bring those clear through our work in process, around other people and equipment, it is very hazardous. Our simple request is to add a canopy to protect that area so that our forklifts could safely travel out there with their forklift tires, which are slick, and then go 20 or 30 feet in to drop the paper, rather than traversing clear through the plant. It was not a missed plan. It was a growth plan that we want to utilize this dock in another fashion to provide for all the growth with our customers in the Shenandoah Valley and beyond. Do you have any questions?

Mr. Ressler: With inclement weather, snow and rain when it is windy, sometimes it can blow in there. Are you concerned that even with an overhang you would get bad conditions in there?

Mr. Aikens: That is possible. A truck will block it from the west. That door faces the south. We would have to deal with a little inclement weather rather than a lot. We could shovel a little snow off. Here we had to do a lot of snow removal. If it is just moist, that is not an issue, but rain. If you had no tread on your car tires, you would hydroplane. That could happen with a forklift easily with the wheels. We would still take precautions of some type. It would not be as many, or we would not have to preplan as much.

Mr. Stoltzfus: It appears that that dock on the west side where the truck is backed up to it is the height of the back of the truck. Where it comes straight out from the door, is that a hill where another vehicle could drive up to that door or inside the building?

Mr. Aikens: (Referring to the picture on the screen.) Is this where you are talking about, where you could go straight in? We could. We do not receive that way. We normally have a guardrail there. If they were to slide, they would be protected. It happens to be out right now because we were trying to get rid of all the snow. We would normally have the guardrail there for safety purposes.

Mr. Stoltzfus: If you were granted this addition, would you then want to enclose that area some time so that it would be better in inclement weather?

Mr. Aikens: That is a very good idea. That is not our plan right now. I do not know if that is permissible. This canopy was not a means to that end. You bring up a good point that it would help us more, but we are just trying to get some space over the top. I guess if we covered it or wanted to, we could ask you if we could. We were not going to do that without permission. We had not thought about that.

Mr. Stoltzfus: My question to staff is, would granting this also make it so that they could enclose that without having to come back?

Mr. Perez-Leon: Yes, it would.

Mr. Stoltzfus: It would be a matter of having a building permit that would allow for that to be done.

Mr. Perez-Leon: That is correct.

Mr. Jenkins: To build on Mr. Stoltzfus' point, that variance if it were granted at over 14 feet, that would run the entire length of that portion of the property. Is that correct? Or is it just for the width of that canopy.

Mr. Aikens: It is for the width of that canopy. We are not asking for the length of the building.

Mr. Jenkins: If we grant the variance, does it automatically run that whole line of the property.

Mr. Perez-Leon: No, they are just requesting for the space where the canopy will be built.

Chair Phillippi asked if there were any more questions for the applicant. As there were no more callers, he closed the public comment portion and opened the matter for discussion.

Mr. Stoltzfus: I move to approve the request.

Mr. Ressler: I second the motion.

Mr. Jenkins: Looking at everything, I am leaning towards granting this variance. I know that we always want to be looking at the six things that help guide us and steer us. I think that one could argue for each one of these is being supported. That is how I am leaning at this point. I would like to hear if anyone else has any other thoughts.

Mr. Stoltzfus: It looks to me like, as they identified to us, a safety issue. If I would vote to deny and an accident would happen there, which looks like it certainly could, I would not feel good about something like that. I know how businesses can grow and evolve into something that was not initially anticipated. Because of the area that it is in, I also do not see issues other than the fact it is something that needs special attention by us.

Chair Phillippi: In the post-Cochran world, we have not just the things to guide us but the requirements that are set forth and the case law to meet for a variance request. The unfortunate situation is that while I see this as a very reasonable request and I think that it will be a very helpful thing, the guidance that we have from the courts on this does not allow that exception on safety. They are still able to use the facility. They talk about going through the building in another direction to haul things in inclement weather. It does not meet the requirements under Cochran for us to grant the variance. According to the law, we do not have the authority to grant a variance in this situation.

Mr. Ressler: The safety aspect is valid. I do not think that they would have much benefit from adding it other than safety. It might be that they have another option that can be used, but it seems to me that this will likely still be used, like it was in the pictures, then we would still have a safety issue in Harrisonburg. I am leaning towards approving, as well. It seems like something that is in the best interest of the workers.

Mr. Stoltzfus: Would the Fire Department, or any other department of the City, have any issues with that canopy being out there in that position.

Ms. Dang: Unless the applicant has reached out to the Fire Department, which they were not required to do, I do not think that we can comment on that. If this is approved and they submit a building permit, the Fire Department would be part of the review process and would review the building permit at that time.

Mr. Ressler: That makes me think that it might be a case for it not to be enclosed. As long as it is open, they could still get fire hoses and things in there. If you close it off, it might change the Fire Department's access.

Mr. Stoltzfus: That is what I was thinking. Since there is a hill directly out from that opening and the guardrail could be taken away, a large door being put there might still suffice, as far as the Fire Department is concerned. I think that would be one thing they take a look at before investing in that to make sure that the Fire Department would be good with that.

Mr. Ressler: Mr. Aiken, would adding this change how that door or access point is used?

Mr. Aiken: It would increase the activity of unloading those rolls of paper. It would safely expedite the unloading of those big rolls of paper. We would unload more of those from that dock.

Mr. Ressler: You would not use it in any different way than what you are now?

Mr. Aiken: We would use it for the intended purpose.

WHEREAS: Chairman Phillippi called for a roll call vote: Mr. Stoltzfus: Aye; Mr. Ressler: Aye; Mr. Orndoff: Aye; Mr. Jenkins: Aye; Chairman Phillippi: No, and,

BE IT, THEREFORE, RESOLVED: The Board voiced a decision of 4-1. The motion passed and the request is approved.

OLD BUSINESS:

None.

OTHER MATTERS:

Mr. Jenkins: I have a question for staff, to understand the process a little more. I am intrigued that a structure of that size and magnitude of that big fire and water tank goes on as an accessory structure. I am surprised that it would not require something more considering the size and magnitude.

Mr. Perez-Leon: We only require something that is added to the main structure to comply with the setbacks. We have separate setback requirements for accessory structures. Even though it is very large, it is not part of the main structure. People are not working in there. It is for a secondary use.

Mr. Ressler: If have a house and I wanted to add a water tank, could I do that?

Mr. Perez-Leon: If that is part of your operation, perhaps yes.

Mr. Stoltzfus: It would have something to do with whether it is in front of the house or beside the house or in the rear. Is that right? You could not add it in the front yard.

Mr. Perez-Leon: That is correct.

Ms. Dang: We will take a closer look at this and the water tank. If we find out any information that might shed some light on how that got approved or provides clarification, we would be happy to share that.

With no further business, the meeting adjourned at 4:35 PM.

\_\_\_\_\_ Chairman

Respectfully submitted,

\_\_\_\_\_ Vice-Chairman

Nyrma Soffel

Staff representative

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