

MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD ON OCTOBER 21, 2021

The meeting was called to order by Vice-Chairman Ken Gibbs at 7:30 PM.

Roll call was taken: **Present: Goessling, Poettker, Boothman, Loerch and Gibbs.**
Absent: Hartman.

Vice-Chairman Gibbs asked if there were any additions or corrections to the minutes of the August 19, 2021 meeting. The following changes were recommended:

- Roll Call – Goessling and Hagenow were not present. Goessling was absent and Hagenow has resigned.
- Under Petition Z-21-08-02 – Loerch is misspelled. Correction to change “*Leorch*” to “*Loerch*”.
- Under Petition Z-21-08-04 – Cornerstone Laine is misspelled three times. Correction to change “*Cornerstone Lane*” (mentioned twice) and “*Cornerstone Land*” to “*Cornerstone Laine*”.
- The publication date in the Republic Times is misstated. The date should be “*July 28, 2021*” and not “*July 27, 2021*”. Correct publication day should be changed on Petition Z-21-08-01, Z-21-08-03 and Z-21-08-04.

A motion was made by Loerch and seconded by Goessling to approve the minutes of the August 19, 2021 as amended. Motion carried.

The Vice-Chairman asked if there were any citizens to address the Zoning Board of Appeals. There were none.

The Vice-Chairman also asked if there were any corrections or deletions to the agenda. There were none.

OLD BUSINESS:

The Chairman asked if there was any old business. There was none.

PETITIONS:

Z-21-10-01 Review and Comment on a Petition by Adrian and Leisa Martinez to consider a Special Use Permit to allow for the operation of a Recovery Residence at 228 Mueller Lane. (Parcel No. 07-25-101-025-000 and 07-25-101-026-000, and 07-25-101-016-000).

The Vice-Chairman reminded everyone that this is a public hearing. Hence, anyone speaking this evening will need to state his or her name and be sworn in. In addition, there will be a two-minute time limit on speaking. The Vice-Chairman mentioned that all documents and public comments from previous meetings, in regards to this Special Use permit, would be part of the record for this Special Use request. Therefore, it will not be necessary to restate your position and/or comments unless your opinion has changed.

The Vice-Chairman commented that the agenda for this evening would be:

- Swearing in the Martinez's, asking them to read their letter of intent and for them to reference any deferments from previous discussions.
- New public comments in favor of the petition.
- New public comments against the petition.
- The Zoning Administrator will then read any recent letters and/or comments he received regarding the petition.
- A letter from Abigail Southerland, with the American Center for Law and Justice, will be read.
- The Board of Appeals will review the petition conditions that were established by this board at the July 21, 2021 meeting.
- The Board will then summarize any changes made to the conditions and call for a vote to approve.

The Zoning Administrator stated that per the Zoning Code, an affirmative vote of at least 4 members shall be necessary to authorize any action of the Board. The Zoning Administrator also stated the certified mailings were sent to the adjoining property owners and four were returned. The other three adjoining property owners were contacted, and stated they did receive their certified mailings. Lastly, the Zoning Administrator commented that the public notice for this petition was published in the Waterloo Republic Times on October 6, 2021.

Mrs. Leisa Martinez, petitioner, read their letter of intent (a copy of which is included in these minutes).

Ms. Abigail Southerland, Senior Litigation Counsel from American Center for Law and Justice, stated she represents the Martinez's and Cornerstone Laine Recovery Center. She thanked the Board for their service and appreciated the decision making process they will be undertaking.

Ms. Southerland stated that there are two matters she would like to address:

1. Petition Submission - The original petition was submitted for two parcels of property, not three. Only the two parcels that contain the existing building should be considered. The Martinez's are not sure what they will do with Parcel 07-25-101-016-000. Their intent is not to use this parcel (07-25-101-016-000) as part of the recovery residence.
2. Privacy Fence Requirement – The Martinez's request that the Board remove the fence requirement. The 6-foot privacy fence necessitates significant setback requirements and at a significant cost.

The Zoning Administrator stated that throughout the duration of these procedures, it was fully talked about using the third parcel as the backyard. He added that although the parcel was not included on the original application, the letter of intent and discussions led him to believe that the third parcel was a part of this project, and no one mentioned or led him to believe that the parcel was not to be included. In addition, without the third parcel, there is no backyard for the residents and a fence would be a moot point. The Zoning Administrator also mentioned that the Special Use Permit application, and the original letter of intent, do not contain a requirement to include parcel numbers. Ms. Southerland commented that the Martinez's have decided to not

include this third tract as the required fence would make the lot impractical for any other use. Therefore, the Martinez's have no plan to use the parcel as part of Cornerstone Laine. There was much discussion regarding this third lot. Mrs. Martinez stated she did not want to include the third lot in the Special Use Permit in case they decided to do something different with the lot. She added that she did not mention it earlier as she knew there were additional meetings where it could later be addressed. With the 40 foot setback requirement, they would lose a lot of the functionality of the third lot. Ms. Southerland added that the third parcel was intentionally left off the petition, and she pointed out that other businesses are not required to erect a fence. This was followed up with more discussion on perimeter security. It was concluded that the fence would actually add more security for the residents, and protection for the women.

The Zoning Administrator stated that he assumed the third parcel was part of the original petition, and acknowledge this was a misunderstanding. He added that the application was not completed correctly, and that theoretically he should have rejected the application.

The Vice-Chairman commented that the exclusion of the third parcel was an unexpected problem/situation. He added that the Planning Commission did not budge on the fencing requirement at their meeting that the fence was viewed as a security and obscurity measure for the Cornerstone Laine residents. Without the third parcel there will be no backyard for the clients.

Mr. Dan Hayes, Waterloo City Attorney, read a letter from Ms. Abigail Southerland, of the American Center for Law and Justice (a copy of which is included in these minutes) dated October 21, 2021. Mr. Hayes pointed out the correct acronym for the Zoning Board of Appeals is "ZBA", not "BZA" as cited in the letter, and that he would read the letter with the corrected acronym. The letter contains several case citations and its purpose is stated: "to make the BZA aware of the federal laws that apply to protect the Martinezes throughout the zoning process, as legal requirements are an important consideration for the BZA in its review" (*note: the ZBA secretary is quoting the sentence verbatim from the letter and therefore did not correct any acronym inaccuracies*).

The Vice-Chairman mentioned that the Board is aware of the potential for a discrimination lawsuit. The Vice-Chairman stated he had two comments to make in regards to Ms. Southerland's letter.

1. Usage of the Property – The letter states the desired use of the property is "practically identical" to that of the prior owner. The prior owner's use of the property was described as an independent senior apartment for people 55+ years of age. It does not appear that a recovery residence is "practically identical" to an independent senior apartment.
2. Privacy Fence – The letter mentions, "privacy fences and extensive shrubbery have not been required of other recovery residences in the County". There are no other recovery residences in the County, and there are numerous examples of recovery residences in the surrounding counties with privacy fences.

Ms. Southerland responded that in comment number 1 the only real difference was in the age of the clients and in comment number 2, there are group homes in the county where fencing is not required.

Ms. Southerland remarked that she just spoke to the Martinez's, and they now agree to have all three lots included in the Special Use Permit in order to avoid any further confusion. They will address the third parcel issue at a later point if or when a fence is required.

The Zoning Administrator stated that per the ordinance, four additional parking spaces would be required. No action needs to be taken by the Board on any parking variances as parking requirements will be implemented by City ordinance.

The Vice-Chairman asked if anyone was present to speak for the petition:

- Ms. Kacie Luhr, 1527 Lakeview Dr., Waterloo, IL., stated with regard to the fence requirement, you have a better chance of being bit by a dog versus an addict in treatment leaving the facility to steal from you. These women are daughters, wives, mothers and sisters who want treatment. We should worry more about the addicts on the streets who don't want treatment than the women who desire help.
Zoning Board Member Boothman clarified that the fencing/security systems are also for the protection of the residents.
- Mr. Steve Boorsma, 1000 Cottonwood Lane, Waterloo, IL., mentioned we have a building that could be used for stewardship and to take care of what we have. We know we have drug issues/problems within our community. With this facility, we could be on the cutting edge in making a difference in people's lives within our community.
- Ms. Amanda Sweigert, 110 Magnolia, Waterloo, IL., stated she was a licensed counselor and has worked in the field of substance abuse for four years. There appears to be a false stigma on the fear of addicts that are actually in recovery.
- Mr. Dan Flaum, 3355 Keim, Waterloo, IL., commented that he has friends and family that have struggled with substance abuse. He expressed the importance to have a facility like this to help those in need.

The Vice-Chairman asked if anyone was present to speak against the petition:

- Mr. Larry Lauer, 3019 Hanover, Columbia, IL., stated that Ordinance 1813 seems to have been designed to hear this petition again. Regarding a fencing supply issue, he called Trost Plastics today, and they had plenty of fencing material available.
- Mr. Jim Duckwitz, 318 Mockingbird Lane, Waterloo, IL., commented that he was indifferent to this petition. The October 12, 2021 Planning Commission meeting, that was the first time he heard the petitioners say they did not want a fence. Mr. Duckwitz proceeded to quote various correspondences where the Martinez's mentioned there would be a fence. Mr. Duckwitz stated he would supply copies of the correspondence for the record.
- Mr. Jim Hopkins, 1046 Creekside Drive, Waterloo, IL., remarked that zoning is also designed to protect the neighbors, and that he is the representing alderman for Ward 2 where this recovery residence is being proposed. He believes that City has the right to request a fence as a condition for the petition. Mr. Hopkins requested that the Board of Appeals deny this petition.
- The Zoning Administrator read two letters that were submitted to him in opposition to the petition. The letters were from Mr. & Mrs. Jim Bowles, West View Acres residents and from Mr. & Mrs. Clay Dietz, also West View Acres residents.

Mr. Boothman commented that fencing around a business is not unique. He cited the 6-foot privacy fencing behind Dobbs Tire and Auto Center, and the privacy fencing behind Quality Collision.

Conditions reviewed:

1. **All clients shall be female.**

No changes to this requirement

2. **There shall be no external signage**

No changes to this requirement.

3. **The proposed privacy fence shall be 6' high, of vinyl construction and installed in compliance with City codes, easements and setbacks. Additional exterior security measures shall include natural barrier evergreen landscaping that will grow to a minimum of 10 feet between the fence and the established property easements.**

The Vice-Chairman noted that the Planning Commission stipulated a 6-foot tall vinyl privacy fence that meets all city codes and setbacks requirement. They also stipulated that the fence will be installed no later than one year after the certificate of occupancy has been issued. The Planning Commission did not see the need for any flora or evergreen landscaping. Ms. Southland commented that the Martinez's would prefer a natural barrier of evergreens versus a fence. The Vice-Chairman stated that he thought the fence should be an essential requirement for operation and its installation should be part of the occupancy permit. The Zoning Board members agreed with the Vice-Chairman. The Zoning Board members also agreed to remove the natural barrier of evergreen landscaping from this condition.

Change to read:

The proposed privacy fence shall be 6' high, of vinyl construction and installed in compliance with City codes, easements and setbacks.

4. **The facility shall be inspected at six-month intervals by the City of Waterloo Building Inspector to assure building code compliance, operating compliance in accord with the definition of "Recovery Residence", and compliance with all conditions as included in the Special Use Permit.**

Change to read:

The facility shall be inspected a minimum of two times per year by the City of Waterloo Building Inspector to assure building code compliance, operating compliance in accord with the definition of "Recovery Residence", and compliance with all conditions as included in the Special Use Permit.

Ms. Abigail Southerland, Counsel for the Martinez's, classified this as a pragmatic condition if this is not required for similar B-2 business like hotels and motels.

City Attorney Dan Hayes commented that the Martinez's agreed to the inspections in the past and inquired what changed. Mrs. Martinez stated that they have since sought legal counsel and have realized how discriminatory some of these conditions are. Ms. Southerland stated the Martinez's felt they needed to comply with the original

stipulations in order for their petition to be approved. They are now aware of their legal rights and are asking for fair and equal treatment. There is no intent to mislead anyone.

5. **A professionally installed security system shall be installed which shall include alarm sensors on all windows and doors, security cameras in all internal common areas, and outdoor cameras to monitor the building perimeter and outside property.**
No changes to this requirement.
6. **The facility is understood to be a non-medical facility. All medications inside the facility shall be stored in a locked medication-only cabinet located in a locked office.**
No changes to this requirement.
7. **All visitors shall be prescreened and approved by facility management prior to entry.**
No changes to this requirement.
8. **Clients shall not enter the program unless they have documentation that they have been detoxed from a state or certified facility and will be drug tested upon entry to the facility.**
No changes to this requirement.
9. **Clients shall not be permitted to work outside of the program.**
No changes to this requirement.
10. **Clients shall not have a vehicle, a cell phone or internet access.**
No changes to this requirement.
11. **Clients shall agree to only leave the facility for scheduled and supervised outings.**
No changes to this requirement.
12. **Clients shall be allowed one visitor per week on strictly a rotating Saturday and Sunday schedule and only after successfully completing 30 days in the program.**
Mrs. Martinez commented they would not limit visitors to only one person. Parents may come to visit or a client may have children or a husband and a child may visit. A group of visitors, however, would not be allowed.
Propose to change:
Clients shall be allowed one visitation per week on strictly a rotating Saturday and Sunday schedule and only after successfully completing 30 days in the program.
13. **The Special Use Permit shall be limited to the current petitioners and shall cease 6 months after ceasing operations or putting the property for sale.**
It was noted that the Planning Commission decided they would not add this as a condition to the petition. The Vice-Chairman read Zoning Code 40-9-7 (c) that the Board

may apply conditions or restrictions on the location or operations of the Special Use. The Board is just trying to protect the City from someone operating a program that doesn't match the work of the Martinez's.

After much discussion on how this should be phrased, it was decided to change the wording to:

The Special Use Permit shall be limited to the operation of the current petitioners, and will immediately terminate once the petitioners cease operations.

The recording secretary, Mechelle Childers read the conditions back to Board members for voting clarification.

1. **All clients shall be female.**
2. **There shall be no external signage**
3. **The proposed privacy fence shall be 6' high, of vinyl construction and installed in compliance with City codes, easements and setbacks.**
4. **The facility shall be inspected a minimum of two times per year by the City of Waterloo Building Inspector to assure building code compliance, operating compliance in accord with the definition of "Recovery Residence", and compliance with all conditions as included in the Special Use Permit.**
5. **A professionally installed security system shall be installed which shall include alarm sensors on all windows and doors, security cameras in all internal common areas, and outdoor cameras to monitor the building perimeter and outside property.**
6. **The facility is understood to be a non-medical facility. All medications inside the facility shall be stored in a locked medication only cabinet located in a locked office.**
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11. **Clients shall agree to only leave the facility for scheduled and supervised outings.**
12. **Clients shall be allowed one visitation per week on strictly a rotating Saturday and Sunday schedule and only after successfully completing 30 days in the program.**

13. The Special Use Permit shall be limited to the operation of the current petitioners, and will immediately terminate once the petitioners cease operations.

The City Attorney asked Ms. Southerland which of the 13 conditions mentioned, besides the fence, is there an objection. Ms. Southerland stated that the fence would be an objection, and the twice-yearly inspections, if not a standard for similar facilities, is objectionable.

Motion was made by Loerch and seconded by Poettker to recommend approval on a Petition by Adrian and Leisa Martinez to consider a Special Use Permit to allow for the operation of a Recovery Residence at 228 Mueller Lane. (Parcel No. 07-25-101-025-000 and 07-25-101-026-000, and 07-25-101-016-000) with the thirteen (13) conditions that were read by Mechelle Childers.

**Members voted as follows: YES –Loerch and Poettker.
NO – Goessling, Boothman, Gibbs.**

Motion failed by a vote of 2 to 3.

Motion to adjourn the meeting at 10:07 PM was made by Loerch and seconded by Poettker.

Motion carried.

Minutes respectfully submitted by Mechelle Childers.