

APPLICATION FOR ZONING ACTION

TO:

- Boone County Planning Commission
- City of Florence Board of Adjustment
- Boone County Board of Adjustment
- City of Union Board of Adjustment
- City of Walton Board of Adjustment
- Zoning Enforcement Officer

FOR:

- Zoning Text Amendment
- Comprehensive Plan Change
- Preliminary Plat Review
- Conditional Use Permit
- Concept Development Plan Change
- Preliminary Development Plan
- Change of Non-Conforming Use
- Design Review Board and Certificate of Appropriateness
- Zoning Map Amendment
- Planned Development Overlay Change
- Improvement Plat Review
- Final or Deed Plat Review
- Site Plan Review
- Historic District Overlay
- Appeal or Variance
- Sign or Zoning Permit

Mahavir Enterprises, Inc.

Applicant: Anil R. Shah and ~~Thomas Nelson~~ Pravin C. Shah

- Owner
- Agent

Address: 7915 Stillwell Road

Cincinnati, Ohio 45237

Telephone: 761-8703 or 821-7425 work

Location: 8400 U.S. Hwy 42 and Village Drive Florence, KY 45042 721-0212 work

Name of Property Owner: Mahavir Enterprises Inc.

Address of Property Owner: 7915 Stillwell Road, Cincinnati, Ohio 45237

Zoning District: C-2 Area in Acres: 1.56

Deed Book: 339 Page Number: 156 Group Number:

Description of Request:

Variance from 50' To 32'-2"

Applicant's Signature: Pravin C. Shah

Property Owner's Signature: Pravin C. Shah Pres Mahavir Ent. Inc.

Application Fee: 265 FOR PLANNING COMMISSION USE ONLY Date Received: 11/10/86 By: TWR

Referred To: Florence Board Meeting Date: Dec 10

Action Taken: Date of Action:

2nd application #81 for 11/14/87 meeting

Staff Report

APPLICANT: Mahavir Enterprises, Inc.

LOCATION: 8400 U.S. 42, Florence

ZONE: Commercial Two (C-2)

DATE: December 10, 1986

REMARKS:

January 14, 1987

change date

The applicant is requesting a rear yard Variance of 17 feet, 10 inches to allow an accessory structure to be used for principally permitted uses. The required rear yard setback is 50 feet; the garage has been built 32 feet, 2 inches from the rear line.

History of the site

① On October 1, 1982 Wajih Safi received Planning Commission approval for the retail building furthest from Village Drive. The second retail structure, that which is closest to Village Drive, was approved February 1, 1984. However, the minutes for that request were not approved at the next meeting because a storm water retention basin from the first building had not been built. This second building was finally approved on March 21, 1984 after Mr. Safi met the requirements of the original site plan.

②
③ On May 28, 1985, Mr. Safi was given permission to construct a garage for storage of the plaza's maintenance equipment. Mr. Safi was made to understand that the building could not be used for any commercial purpose, including commercial storage. A violation of this condition arose when a tenant of the building applied for an Occupational License from the City of Florence. Mr. Shah, the new owner, was unaware that he could not use his garage commercially. In an attempt to allow him to do so, he submitted a revised site plan to the Boone County Planning Commission. During the November 5, 1986 business meeting, Mr. Shah's request was granted an indefinite deferral to allow the issue of rear yard setback to be settled.

④
The 1,155 square foot garage was constructed 32 feet, 2 inches from the rear property line. The zoning regulations require a 50 foot setback for principally permitted structures in the C-2 zoning district when abutting a residential zone. Since this building was designed for accessory use only, the 50 foot setback was not required. To convert its use from accessory to principally permitted, however, a variance is needed.

Although currently unfinished, the applicant has indicated

that the interior will be remodeled to suit the needs of prospective clients. The front of the garage, the side facing the parking lot, has two overhead doors and two walk-through doors. It has only one window facing Village Drive. Directly behind the garage is a 20 foot wide stone lined storm water retention basin. The back wall of this basin, which is covered in sod, drops off about 3 feet to the level of the rear yard of the first house on Village Drive. The closest corner of this house is approximately 35 feet from Mr. Shah's rear property line. No barrier, such as fence or shrubbery, exists between this house and the garage.

The following reviews the four standards which must be found before the Board can grant a Variance:

1. The special circumstance that an accessory structure was built so close to an property line does not apply to land in the general vicinity.
2. Strict application of the zoning regulations would create an unnecessary hardship on the applicant. Mr. Shah based the purchase of the site partially on the understanding that the garage could be used for commercial purposes.
3. Mr. Shah is not responsible for the location of the building: therefore, the special circumstance is not the result of actions taken by the applicant after the adoption of the zoning regulations.
4. A Variance, if granted, will not adversely affect the public health, safety, and welfare. Since the garage has been constructed, and since it could be used for accessory purposes, a variance will not alter the essential character of the vicinity. With the proper treatment, the variance will not cause a hazard or a nuisance to the public.

Should the Board decide to grant a Variance, staff would recommend the following conditions:

1. On his revised Site Plan, the applicant has indicated that a single row of 4 foot white pines, 10 foot on center will be planted across the rear property line. To further screen the garage, staff recommends that Mr. Shah also construct a privacy fence directly behind the garage. This fence should be similar in appearance to the fence which

exists along the left portion of his rear property line.

2. That no doors or windows be added to the rear portion of the building during remodeling, except as required by the Building Inspector or Fire Chief for safety reasons.
3. That the applicant make a commitment to rent the structure to businesses whose uses will not create a nuisance (by reasons of noise, trash, odors etc.) to adjoining properties.
4. That free standing signage be limited to additions to existing signs and that building mounted signage be allowed in accordance to Article 19, Section 1912.

Respectfully submitted,



Thomas W. Breidenstein

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FLORENCE BOARD OF ADJUSTMENT

MEETING MINUTES

JANUARY 14, 1987

7:30 P.M.

Chairman Charles Holland called the meeting to order. Roll call was taken by staff member Dee Ann Brewer. 3 members present. Absent: Mr. White. Staff members Tom Breidenstein and Dee Ann Brewer were present. Atty. Dale Wilson was also present.

Minutes of the December 10, 1986 Florence Board of Adjustment meeting were considered. Mr. White stated he had noticed a mistake but could not locate it at the present time. Chairman Holland stated the Minutes would be considered at the end of the meeting.

Chairman Holland proceeded to the item on the agenda.

Variance

A request of Mahavir Enterprises, Inc. for a rear yard Variance of 17 feet, 10 inches in order to allow the use of an accessory structure for principally permitted uses. The 1.56 acre site, which is zoned Commercial Two, is located at the intersection of Village Drive and U.S. 42, Florence, Kentucky.

Staff member Tom Breidenstein briefly presented the Staff Report. (See Staff Report) Mr. Breidenstein noted that the adjoining property owners had been notified by registered mail as requested by the Board at their last meeting, which resulted in none of the adjoining property owners attending the present meeting.

Chairman Holland inquired of any support, opposition or comments on the proposed request.

Hearing none, Chairman Holland inquired if the applicant knew what type of business would be renting the building. Mr. Anil Shah, representative for the applicant, stated no.

Atty. Wilson reminded the Board that one concern at the last meeting was that some of the principally permitted uses allowed in the current zone may be inappropriate uses because of the building being located so close to the existing residences.

Chairman Holland noted that some of the principally

permitted uses were types of businesses that would not be able to operate out of such a small building.

Mr. Breidenstein stated that an appropriate principally permitted use for such a small building would be the office use which would not create a nuisance to the adjoining property owners.

Chairman Holland stated he hoped the applicant would use good judgement in renting out the building to an appropriate type of use. Chairman Holland referred to the use of motorcycle sales going in the building and noted he would be opposed to that type of use.

Mr. Breidenstein stated the building was permitted by Planning and Zoning because the garage was to be used for accessory uses, formal Site Plan by the Planning Commission was not required. Mr. Breidenstein further explained that permission to build the building was granted by the Planning Commission staff, with the understanding that the building could not be used for principally permitted uses. Mr. Breidenstein noted that accessory structures, at that time, were not subject to any setback requirements.

Chairman Holland inquired that if the Variance was granted would the building no longer be an accessory use. Mr. Wilder stated that was correct. Atty. Wilson stated if the Variance was granted, the building could be used for Principally Permitted Uses.

Mr. Breidenstein explained that the building was 67 feet from the closest adjoining property owner's house located in the rear yard and that the house sat at a lower level than the building. Mr. Breidenstein noted that he suggested in his report that the applicant could construct a privacy fence the entire length of the rear yard.

Atty. Wilson stated that if the Variance was approved the principally permitted use could go in the building without coming back before the Board but a Conditional Use Permit would have to come back before the Board.

Mr. Wilder referred to condition #1 of the four findings of facts necessary for granting a Variance and he inquired of the "uniqueness" of the requested Variance. Atty. Wilson noted condition #1 was part of the change in Chapter 100 which no longer required "uniqueness" but rather "special conditions".

Chairman Holland inquired of a way to limit the principally permitted uses that could go into the building. Atty. Wilson stated the Board could restrict the Variance to some of the principally permitted uses that the Board felt would be

appropriate uses for the building.

Mr. Wilder requested the applicant to address the following four (4) findings of fact necessary for granting a Variance.

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone; Mr. Helson, representative for the applicant, responded that the building had not been constructed to only store lawn equipment and he did not know of any other buildings built so close to the rear property line.
2. The strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant. Mr. Helson responded he felt the strict application of the provisions of the regulations would deprive the buyer of the use of the building.
3. Such special circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulations. Mr. Helson responded that the applicant had not built the building but rather the seller of the building.
4. Reasons that the variance will not adversely affect the public health, safety and welfare, and will not alter the essential character of the general vicinity, and will not cause a hazard or a nuisance to the public. Mr. Helson responded that none of the adjoining property owners had appeared for the meeting after being notified.

Mr. Wilder stated he did not find favor with the fact that there was deception on the part of the seller and he did not feel the deception should be at the applicant's expense, but he stated the Board had to work within the regulations.

Atty. Wilson stated the Board needed to apply the statutory criteria addressed and then decide if the request met the statutory criteria.

Atty. Wilson explained that condition #1 of the findings of fact did no longer require "uniqueness" but rather "special circumstances" which he felt softened the requirements. Atty. Wilson stated that his understanding of the Staff Report was that the building was presently an accessory use and the applicant was requesting the building to be used as a principally permitted use. Mr. Helson concurred. Mr. Breidenstein described accessory uses the building could be used for if the request was denied.

Mr. Wilder inquired what happened if the applicant enlarged

the building. Atty. Wilson stated if the Variance was conditioned on restricted exclusive uses even if they added onto the building the applicant would have to come back before the Board for the exclusive use and as long as the applicant had to utilize the Variance they would have to observe the uses.

After further discussion, Mr. Wilder stated he still had not heard to his satisfaction the four findings of fact necessary for granting a Variance, therefore, he moved to deny the request of Mahavir Enterprises, Inc. for a rear yard Variance of 17 feet, 10 inches in order to allow the use of an accessory structure for principally permitted uses. The 1.56 acre site which is zoned Commercial Two, is located at the intersection of Village Drive and U.S. 42, Florence. The motion was seconded by Chairman Holland. The motion carried unanimously..

Mr. Helson stated he had been informed that there would be a law suit regarding the building and he inquired of the Board any other avenues to be taken to resolve the situation of the building. Atty. Wilson informed Mr. Helson that the applicant could submit another application for something new or appeal the Board's decision to the Boone County Circuit Court. Atty. Wilson informed Mr. Helson that the new application must show all of the four findings of facts necessary for granting a Variance.

Administration

Chairman Holland referred back to the Minutes of the December 10, 1986 Florence Board of Adjustment meeting being considered. Mr. Wilder noted that on page 5, second paragraph, it should read: "if the vehicles coming out of the proposed site were permitted to make left hand turns onto Mall Road." After further discussion, Chairman Holland moved to approve the December 10, 1986 Florence Board of Adjustment minutes as corrected. The motion was seconded by Ms. Lanigan. The motion carried unanimously.

Chairman Holland moved the meeting adjourn. The motion was seconded by Ms. Lanigan. The motion carried unanimously.

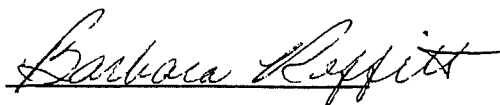
The meeting adjourned.

APPROVED:



CHARLES HOLLAND
CHAIRMAN

ATTEST:



BARBARA REFFITT
RECORDING CLERK