



TOWN OF WELLINGTON
BOARD OF ADJUSTMENTS

REGULAR MEETING MINUTES October 27, 2022

1. CALL TO ORDER

The Board of Adjustments for the Town of Wellington, Colorado, met on October 27, 2022, at the Wilson Leeper Center at 7:00 p.m.

2. ROLL CALL

Members Present: Eric Stahl - Acting Chairman
Stephen Carman
Wyatt Knutson
Kathy Wydallis
Levi Killough

Members Absent: None

Town Staff Present: Cody Bird, Planning Director
Patty Lundy, Development Coordinator

3. ADDITIONS TO OR DELETIONS FROM THE AGENDA

None

4. PUBLIC FORUM

None

5. CONSIDERATION OF MINUTES

A. Meeting minutes of July 28, 2022

Member Wydallis moved to approve the regular meeting minutes of July 28, 2022. Member Carman seconded the motion.

Yeas – Wydallis, Knutson, Stahl, Carman, Killough

Nays – None

Motion carried.

6. NEW BUSINESS

A. Variance Request – Seeking relief from Section 3.04.0, Table of Dimensional Standards of the Land Use Code to increase the maximum building height from 45-FT to 70-FT, and Section 4.03.21-A, Use Specific Standards of the Land Use Code to reduce the minimum setback distance from a residential zone district from 1,000-FT to 800-FT.

Member Knutson disclosed that the company he works for does work with Connell Resources. He disclosed that he had reached out to the Town Attorney and received an opinion letter that there is not a substantial interest. No other conflicts of interest were reported. No ex parte communications were reported.

Cody Bird, Planning Director presented the staff report. The applicant requested a variance to increase the building/structure height to 70-FT. (from 45-FT) for installation of the batch plant silos, equipment common to the asphalt production industry. The applicant also requested a setback or separation variance to reduce the required 1,000-FT setback to 800-FT from the adjacent residential zone district. The applicant considers the required 1,000-FT setback a hardship as it would render use of the 1,200-FT wide industrial zoned property impractical for any permitted industrial use.

John Warren, Connell Resources, presented information about the existing asphalt plant at their Timnath location and a history of the business. He also explained his plan for the future site. They are a family owned and operated business for over 76 years and have over 265 employees. They would like to keep their site in Larimer County and have close access to their sand and gravel location which is in Carr, CO. He explained the day-to-day operations proposed and identified which roads the trucks would be driving on. He plans to comply with all of the Town's regulations as well as all the current agencies that they work with to get their permits.

Public hearing opened at 7:40pm.

Jason Waldo showed on the map that he is the closest residential property to the proposed project. He first didn't like what he was hearing. He was concerned about dust, hours of operation and Jake Brakes (engine braking). He then met with John Warren and said that his concerns were heard. He believes they will be a great neighbor and they will work to address his concerns.

Pat Cordova was interested in what the closest resident was to their Timnath plant when they started. He would like the members reach out to Buffalo Creek to hear their concerns. Their community is the closest right now.

Matt Mullett believes this is a great opportunity for businesses. This is a good location for this plant in our Town. He thinks they did everything they could and have done it right.

Meghan Molin is not against industry if it is done right. The concern is that the plant is close to the parks, schools and residential. Sound, light, wind, and erosion pollution are concerns. Wants to make sure we are planning well for the future.

Trisha Swift believes that the 1,000-foot setback was set for a reason. Agrees with Meghan about pollutants. Would like to see the Member with financial interest recuse himself from this request.

Jason would like to know where the advocacy for the members of the town was as the slideshow seemed heavy on advocating for the applicant.

Stephanie Ownes-Steven also believes that the person with the financial interests should be recused. Wanted to clarify the zoning. She said that she got together with several residents, and they would like them to respect the recently adopted Land Use Code.

Darin Ferguson stated he was not opposed to the plant. He is interested in how much water they would be using and what they would be doing about dust control.

James Schmidt said he is one of the closest houses in Buffalo Creek to the proposed project. He is concerned about the air pollutants. There is no way it goes down to 0. Same for traffic noise. He does not like the location for this.

Daniel is concerned about the park as the Town spend lots of money on it. He asked how close is the current plant to parks. He believes the applicant will use lots of water and how will they be held accountable.

Jason Schneider believes that the person who has financial gain should not be participating.

Jim Pieper said having Connell Resources at this location would be a plus for this community. He also thinks they would be a good neighbor in our community.

Public hearing closed at 8:23pm

The Members discussed different options to help address the concerns that were raised in the public comments. The Members identified the following conditions of approval:

- Site Plan approval by the Planning Commission
- The height variance is for just the one structure (silo)
- There needs to be a 15-foot landscaped berm on the west side
- No signage is allowed on the silo
- Limit use of "Jake Braking"
- Applicant must obtain all necessary Colorado permits for operation of an asphalt plant

The Members also had concerns about water use and recommended that the potable water source provided by the Town is reserved only for domestic indoor office uses including potable drinking fountains, kitchenette uses, and restroom uses.

The Members having had the discussion made the following findings:

- Positive – The relief requested is consistent with the Comprehensive Plan and the intent stated in this Land Use Code for the I – Industrial zone district.
- Positive – Strict application of the regulation will result in an unnecessary hardship and practical difficulties on all reasonable use of the land intended by the existing I – Industrial zone district since the 1,000 ft. setback applied on one side of the property line would make 80 percent of the site unusable for any uses allowed in the Industrial zone district.
- Positive – The need for the variance is due to specific and unique physical conditions on the site, and the site is the only area in Town with I – Industrial zoning classification.
- Positive – Strict application of the regulation deprives the applicant of reasonable use of the land because the 1,000 ft. setback applies to all uses within the I – Industrial zone district and the height limitation would restrict unique structures and equipment for operations of uses allowed within the I – Industrial zone district.
- Positive – Circumstances warranting the variance are not the result of actions by the applicant.
- Negative – Granting the variance would reduce the requirements for setbacks and heights that are intended to protect the public health, safety and welfare.
- Positive – Adverse impacts of visual appearance, odors, noise and traffic can be mitigated to protect the public health, safety and welfare with conditions of approval.

- Positive – The relief requested is the minimum necessary to alleviate the hardship and practical difficulties and the applicant has designed the site in a way that minimizes conflicts and has agreed to conditions that mitigate impacts.
- Positive – The relief requested is consistent with the intent of the zoning district regulations for the I – Industrial zone district and is consistent with the future land use map component of the Comprehensive Plan that proposes industrial land uses adjacent to the railroad.

Member Killough moved to approve with the conditions discussed by the Board.

Member Wydallis seconded the motion.

Yeas – Wydallis, Knutson, Carman, Stahl, Killough

Nays – None

Motion carried.

- B. Variance Request – Seeking relief from Section 2-14-70(a)(2)b. of the Wellington Municipal Code to allow a reduction of the minimum setback requirement of a retail or medical marijuana store license from a parcel zoned P – Public District from 500 feet to 233 feet on Lot 7, Wellington Business Center.

No conflicts of interest reported. No ex parte communications reported.

Bird presented the staff report. He showed on the screen from the packet the page that has the maps on it. The applicant would like the setback reduced for a marijuana store. The citizen referendum vote established a buffer of 2000 feet from schools and 500 feet from public zoned land. Tract F, Columbine Estates located south of the property is zoned Public. Tract F is the property that they are now showing 233 feet instead of the prior 173 feet from this property. The property is currently a pond and isn't used for the public like a park. The applicant also requested a zone change from Light Industrial to C-3 Mixed-Use Commercial District which was heard by the Planning Commission and approved.

Scoo Leary with Lacoste, LLC presented a slideshow. He addressed the findings from the last meeting. The negative finding was the relief requested is inconsistent with other prior variance approvals for setback reductions because the reduction requested in this case is a significantly higher proportion of the overall setback distance (65% reduction requested whereas other common setback reductions are closer to 20%). They have since been able to decrease the request to 237 feet which is a 47.4% setback reduction. He mentioned that the Planning Commission and the Board of Trustees both unanimously approved the zoning to change to C-3 zoning and that it aligned with the Comprehensive Plan. He showed a slide with the dispensary numbers and estimated benefits for the Town.

Public hearing opened at 10:05pm.

Aaron Bradley has a few concerns with the possible traffic increase if Water Lily Drive connects to Globeflower, how this type of business could influence the children in the neighborhood with its signage, that property values could go down, and the possibility of crime.

Tom Donnelly said he was representing a commercial business that has submitted for a marijuana license and does meet the setbacks. He also mentioned that just because the pond looks bad now, doesn't mean that it won't have kids playing in it every chance they get when it is dry. The voters voted by one vote for these distances. It isn't like the type of business doesn't have a location to go. They did it and can meet the setbacks.

Christine Gaitor would like this to go back to the voters to see what they would like to do about the distance and to also see if the voters want more than one marijuana store in town.

Phyllis Mortensen had several points she wanted to bring up along with some surveys she had read. There is already a pot shop and that is one too many. The voters have already voted for the distances, and they shouldn't go against the will of the voters. People can drive the short distance to Fort Collins if they want to buy marijuana. If we allow one store, then more will come. There shouldn't be drugs anywhere near kids. We should keep the citizens safe over money.

Karen Eifert is worried that if this passes that it will set a precedent and that other marijuana stores will come because if one was able to get a variance that others should too.

Public hearing closed at 10:20pm.

Leary addressed the public comments. He said that in Canada they blackout the windows and he is willing to do whatever the board would like. He is willing to make the signage as small as possible. He has seen statistics that show home values do go up. Looking at the pond he says that people shouldn't be in there with the keep out signs. The intent of the setbacks didn't address a property that couldn't be built on like a pond. His proposed business would be the mechanism that is kick starting 24 other businesses.

Bird addressed some of the comments. The potential for increased traffic is true for any kind of proposed development to this site. The property owner Matt Mullett was asked to address the connection of the commercial development to the residential subdivision, and he said that they never planned to connect them. Traffic would come off of the frontage road and leave on the frontage road. The last comment was that additional variance requests would be submitted if this case is approved. It is probably true that more variance applications could be expected, but the Board of Adjustment's responsibility is to consider the merits of that particular case. The circumstances might be different in each case. One approval doesn't have to influence the Board's decision on the next.

Acting Chairman Stahl wanted to know if there was a limit to the number of licenses that are given in Wellington. Bird said there is not a limit on the number of licenses.

Member Carman wanted to know if the applicant was the developer. Leary explained that he will own one of the units and is helping kick start the project so 24 more businesses can come.

Member Killough asked when did the narrative change. There was a meeting on July 28, 2022 and there were no properties where marijuana stores could meet all the requirements to be located, so was the property where a marijuana store received approval annexed before or after the July meeting? Bird replied that the documents approving the annexation and zoning were recorded on August 22nd, 2022.

The Members having had the discussion made the following findings:

- Positive – The relief requested is consistent with the intent of the Comprehensive Plan and intent of the C-3 – Mixed-use Commercial zone district.
- Negative – The relief requested is not consistent with the intent of the setback buffers incorporated into the Land Use Code by referendum vote of the residents of Wellington.
- Negative – Strict application of the regulation will not result in an unnecessary hardship and practical difficulties on all reasonable use of the land intended by the existing C-3 – Mixed-use Commercial zone district.
- Negative – Strict application of the regulation does not result in an unnecessary hardship and practical difficulties on all reasonable use of the land because the variance request is made based on a specific use and other uses are allowed within the zoning district.
- Negative – The need for the variance is not due to specific and unique physical conditions on the site, but instead the relief is requested due to the geographic location of the property that meet other land use requirements for the proposed specific land use.
- Negative – Strict application of the regulation does not deprive the applicant of reasonable use of the land because the need for a variance is related to only one tenant space of an overall multiple-tenant commercial development.
- Positive – Circumstances warranting the variance are not the result of actions by the applicant.
- Negative – Granting the variance would be detrimental to the public health, safety and welfare for use of the adjacent public property.
- Positive – The relief requested is the minimum necessary to alleviate the hardship and practical difficulties and applicant has made reasonable site design considerations to minimize the setback requested.
- Negative – The relief requested is inconsistent with other prior variance approvals for setback reductions.

**Member Carman moved to deny the request for a variance of the minimum setback requirement of a retail or medical marijuana store license from a parcel zoned P – Public District based on the negative findings.
Member Killough seconded the motion.**

Yeas – Wydallis, Knutson, Carman, Killough

Nays – Stahl

Motion carried.

7. ANNOUNCEMENTS

Bird announced there will not be a meeting until after the first of the year due to the holidays.

8. ADJOURNMENT

Acting Chairman Stahl closed the meeting at 11:10pm.

Approved this 27 day of April, 2023

PATTY LUNDY

Recording Secretary