

PITTSFIELD TOWNSHIP ZONING BOARD OF APPEALS MINUTES

Members Present: Dennis Ward, Robert Grosshans, Ishwar Naik, Kenneth Brostrom.

Members Absent: Alayna Stagg.

Others Present: Joseph Phillips, Sylvie Adams, Claes Fornell, Assistant Planner Suzanne McCoy, Planning Director Bruce E. Fowler, and Recording Secretary Laura Ford.

1.0 Call Meeting to Order/Determination of a Quorum

Chairperson Naik called the meeting to order at 6:35 p.m. A quorum was present.

2.0 Approval of Agenda

Motion by Member Ward, supported by Member Grosshans, to remove Item 5.0 and approve the agenda, as amended.

MOTION CARRIED

3.0 Communications and Announcements

None.

4.0 Items from the Floor

None.

5.0 Election of Chairperson, Vice Chairperson, and Secretary

Item removed from agenda per Item 2.0.

6.0 Old Business

None.

7.0 New Business

7.1 ZBA 06-02 CFI Group/Fornell Associates
[submitted for a variance]

Chairperson Naik explained to the applicant that there are only four ZBA members present. He asked the applicant if they would like to continue with the hearing.

Joe Phillips, attorney representing the applicant, stated that they would like to proceed with the hearing. He said that CFI is requesting to fly the flags of 13 nations where they have offices. He said that these are not corporate or commercial flags. He mentioned that each of the CFI offices has the 13 flags displayed. He added that this has been a long time tradition, and it is done as a sign of respect to the countries CFI does business with. He said that when the owner bought the building in 1998, there were flagpoles existing on the roof. He said that the owners had no reason to believe that the existing building was not in conformity with the Ordinance. He said that they had been using the flagpoles until 2003, when they had to renovate the building. He said that it is their understanding during discussions with other tenants of Avis Business Park that both previous owners used the flagpoles.

Mr. Phillips stated that he asked Director Fowler that if the flagpoles were non-conforming how were they installed to begin with. He said that Director Fowler told him that he could not find anything for the permitting process or a variance. He said that they have no knowledge that the Township ever complained to the previous tenants or the current tenants. He said that before the major renovations were completed there were minor repairs made to windows where they applied for a permit. He said that Township officials gave their approval for the building permit, and saw the flagpoles. He added that nothing was said to the tenants at that time. He said that they found in 2003, that the building needed major renovations because water was entering from the flagpole locations.

Mr Phillips stated that they replaced the roof and the building envelope. He said that they decided to move the flagpoles to the ground. He said that the owners did not think this would be a problem, and they thought it was more aesthetically pleasing. He said that when the flagpoles were reinstalled the owners were red flagged. He said that they applied for a building permit and it was denied. He said that the Zoning Administrator determined that they were not grandfathered in. He said that they then applied for a variance and received a report from the planning staff that was very negative. He said that in single-family residential districts flags other than corporate or commercial flags shall be permitted without restrictions. He said that homeowners can install the flags, but if you are a corporate business, you cannot do it.

Chairperson Naik stated that the ZBA is here to administer the Zoning Ordinance as it is stated. He said that pointing out the deficiencies to this board will not help.

Mr. Phillips discussed the Planner's Report and the findings. He asked if the first finding should be applied to these circumstances, because this application does not involve the items listed in the findings. He stated that this has to do with the flags. He said that denying them the right to do what the previous owners did is unnecessarily burdensome. He said that they tried to do the right thing and improve the property and now they are being penalized for this. He reviewed finding #2. He said that it is unnecessarily burdensome because of the nature of their business, and because they bought the property relying on the fact that the flagpoles were already there. He reviewed finding #3. He said

that he does not believe that any inequity would be granted, as long as the variance was tailored to suit what they are requesting. He said that the Ordinance could protect the Township from visual clutter caused by commercial and corporate flags. He said that flags of souvenir nations do not meet this criterion, and they should be treated differently. He said that they do not believe that this would set a precedent for other businesses within the Township.

Mr. Phillips stated that the Township is concerned about residential and auto dealers flying their flags. He said that if they narrowed the variance they could not say it was a precedent. He reviewed finding #4. He said that there are unique circumstances to the property. He said that the flagpoles were already there, and this was unique to their purposes. He said that it is important that when people are visiting from other countries they can see their flags being flown. He said that because something is not permitted in the Ordinance does not mean that it was a self-created situation. He added that this was not self-created. He mentioned that no one from the Township cared that the flags were there. He reviewed finding #5. He said that they thought this was a grandfathered use. He said that the building was built in 1987, long after the Ordinance went into effect. He said that regulations regarding flags have been in the Ordinance since it was created. He said that the ZBA has the discretion to take in consideration that they tried to improve the building and the appearance of the flagpoles. He reviewed finding #6. He said that there would not be an impact on public safety. He said that renovations did improve the public safety. He said that the Ordinance is concerned about visual clutter. He reviewed Section 60.09 mentioning that if the ZBA was not inclined to grant a variance, they can consider granting a substitution of a nonconforming use. He said that they have tried to be a good corporate citizen.

Assistant Planner Suzanne McCoy reviewed her report. She stated that the applicant is requesting ten (10) to fifteen (15) flagpoles on the property. She said that the applicant applied for a building permit to install ten (10) to fifteen (15) flagpoles. She said that several of the flagpoles had been installed prior to the applicant applying for the building permit. She added that some of the flagpoles remain onsite. She said that the building permit was denied because it did not meet the regulations in Section 53.03 E 4 of the Zoning Ordinance. She reviewed Section 53.03 E 4 and stated, "Up to three flags of any combination but not more than one corporate flag shall be permitted on each public street frontage of any lot, shopping center, or business center." She said that the applicant submitted a variance application and appeared on the November 8, 2005 agenda. She added that the ZBA and the applicant agreed to postpone that meeting because of two member absences. She said that the applicant withdrew the application prior to the next meeting on January 9, 2006. She said that the applicant again submitted a variance application and additional information and photographs. She reviewed the findings the members would be considering.

Member Grosshans asked when the applicant renovated the building, and when they took down the flags.

Mr. Phillips replied in the summer of 2003.

Member Grosshans asked if there were discussions regarding the flagpoles with the Township before 2003.

Sylvie Adams, Manager for CFI, replied no. She mentioned that they purchased the building in 1998.

Member Grosshans asked if before 2003 was there any record of the flags being a nuisance to the Township.

Ms. Adams replied no. She stated that there was work done in 2000, and the Township approved the work. She said that when the inspectors from the Township were at the building they never said anything about the flagpoles. She said that they were told in August that they needed a permit. She said that they were not told directly about needing the permit. She added that they found out about needing the permit in a fax from the company installing the flagpoles.

Member Grosshans asked Ms. Adams if she knew the use was non-conforming.

Ms. Adams replied no.

Member Grosshans asked if these non-conformities should have been in the agreement when the building was purchased.

Planner McCoy stated that things are not always disclosed by realtors.

Member Grosshans discussed a business that wanted to use a pole sign and they were turned down.

Member Brostrom asked how old the building is.

Mr. Phillips stated that it was built around 1987.

Member Brostrom asked if this was more recent than the date of the original Ordinance.

Mr. Phillips stated that his understanding is that the provision for the flags has been there since the first Zoning Ordinance. He said that he tried to find out how they were allowed to have the flagpoles on the building when it was first built, if it was a non-conforming use.

Planner McCoy stated that the building was built in 1988. She said that photographs taken from then and the site plan do not show the flagpoles. She said that there are photographs of the building from 1993 and no flags are shown. She said that it is unclear when the flags were installed, and the Township has no indication of them receiving a

permit or having it approved on a site plan. She said that she would look into other Ordinance violations.

Chairperson Naik asked why the applicant withdrew their previous petition.

Mr. Phillips replied under the advice of counsel. He said that they tried to get a predevelopment meeting with the Township to see if there was a basis for discussing something that would be acceptable to the Township. He said that they received a letter stating that the Township was not interested in having this meeting.

Chairperson Naik asked the applicant what kind of business they are engaged in.

Claes Fornell, Founder of CFI, stated that they have a measurement system that was developed for customer satisfaction. He said that they advise their clients on how to measure and improve it.

Chairperson Naik asked which countries CFI does business in.

Mr. Fornell stated China, France, Italy, Sweden, Korea, Brazil, and Argentina.

Chairperson Naik asked if they plan to expand to other countries.

Mr. Fornell stated that they would like to expand to some of the major countries.

Chairperson Naik discussed how other businesses have offices and operations in other countries. He asked if they started the expansion in the other nations to show respect.

Mr. Fornell stated that respect is part of doing international business. He said that they show the flags to promote better relationships and business deals.

Chairperson Naik stated that the World Bank in Washington keeps many flags in their lobby.

Mr. Fornell stated that he finds it hard to explain to international business partners why it is not allowed in the U.S. to fly their flags, although it is allowed in stricter countries.

Member Brostrom asked for whose benefit the flags are flown.

Mr. Fornell stated that the benefit is for the international business of CFI. He said that it is easier to do business with other countries when you show respect for them.

Member Brostrom stated that they are flying the flags primarily for commercial reasons, and because it is good for business. He said that this is why every company wants to fly flags, because they think it will improve business.

Mr. Fornell discussed the economic challenges facing Michigan.

Member Brostrom stated that the Township is not saying they do not want CFI to succeed. He said that it is not clear how flying these flags outside is critical. He asked if something could be done in the interior of the building to show respect that would not violate the Ordinance.

Mr. Fornell replied yes. He said that the other (CFI) offices have the flags outside and they used to have their flags outside. He said it is difficult to explain to the international business partners.

Member Grosshans discussed the flags at the Bill Crispin Chevrolet site.
Planner McCoy discussed the Bill Crispin Chevrolet site.

Motion by Member Grosshans, supported by Member Brostrom, to grant ZBA 06-02 CFI Group/Fornell Associates.

Chairperson Naik reviewed the findings:

- A. That strict compliance with the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render the conformity with such regulations unnecessarily burdensome.**

The applicant is petitioning for a variance from a section of the Zoning Ordinance that does not involve these specific regulations. It is the opinion of staff that conforming to the regulations regarding the permitted number of flags does not prevent the owner from reasonably using the property for a permitted use, nor is it unnecessarily burdensome to restrict the number of flags that may be displayed on the property.

Commissioner Ward stated that the applicant cannot establish the date when the flags were installed. He said that the flagpoles were installed and this caused the roof to leak. He said that he reviewed CSPA 03-12 and there were never flagpoles shown on the site plans. He said that this does not prevent the applicant from using the property for the permitted use.

Member Grosshans stated that there are other ways the flags can be shown on the property.

Member Brostrom stated that restricting the flagpoles does not prevent the applicant from using the property. He added that there are other solutions that should be explored.

Chairperson Naik stated that because the Township failed to complain it does not mean that the property owner had the right to continue with the violation.

Agree: None.

Disagree: Grosshans, Ward, Brostrom, Naik.

- B. That the granting of a variance would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property and be more consistent with justice to other property owners.**

Although granting the variance may do substantial justice for the applicant, it will create an inequity with other owners in the district and elsewhere in the Township. A lesser relaxation will still result in inequity, and may result in a precedent as described in number 6, below.

Member Ward stated that this is not a unique situation. He said that most companies will fly the host nation and corporate flags at their location.

Member Grosshans stated that there are other international companies in the area that do not have the same problems.

Member Brostrom stated that there is an inequity created with granting the variance.

Chairperson Naik stated that there are several area businesses with strong international presence.

Agree: None.

Disagree: Ward, Grosshans, Brostrom, Naik.

- C. That the plight of the applicant is due to unique circumstances of the property and not to general conditions in the area.**

There are no unique circumstances or conditions of the property that cause the proclaimed plight of the applicant. The applicant states that because of the nature of their business dealings with international clients they would like to display the flags of multiple other countries. This refers to business dealings and not to the physical conditions of the property.

Member Ward stated that the flagpoles were already installed and they were non-conforming. He said that because an inspector came to the site does not mean that they knew the flagpoles were non-conforming.

Member Grosshans stated that it is hard to believe that the applicant purchased the property because the flagpoles were there.

Member Brostrom agreed with Member Ward and Member Grosshans.

Chairperson Naik stated that there is nothing unique about the property or the conditions in the area.

Agree: None.
Disagree: Ward, Grosshans, Brostrom, Naik.

D. That the plight or problem is not self-created.

The problem is self-created by the applicant's desire to have more flags displayed on the property than are permitted in the Zoning Ordinance.

Member Ward stated that the flagpoles were never brought forth on the site plans, not the original plan, or the renovation plans. He said that there is no evidence to suggest that this use should have been grandfathered.

Member Grosshans stated that when they did the external renovations they should have pointed out that they were moving the flagpoles from the roof and would be placing them somewhere else on the property. He said that this is a self-created problem.

Member Brostrom stated that the action taken here is appropriate. He said that this had to be considered when the renovation began.

Agree: None.
Disagree: Ward, Grosshans, Brostrom, Naik.

E. That no non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

Staff notes that in the petition, the applicant states that prior to renovations of the building, there were 10 to 15 building-mounted flag poles with flags displayed. This was not conforming to the regulations of the Zoning Ordinance and should not be considered as a factor for granting a variance. As well, there is not a building permit on file for the flag poles, nor is there any indication of them on any site plans on file.

Member Ward stated that the building is in non-conformance with the site plan.

Member Grosshans stated that there are other properties that are not in non-conformance and this is a precedence.

Member Brostrom stated that in the past they have not considered other non-conformities as grounds for issuing a variance.

Chairperson Naik stated the ZBA is not taking the other non-conformities into consideration.

Agree: Grosshans.
Disagree: Ward, Brostrom, Naik.

F. That the variance observes the spirit of the Ordinance, secures public safety, and does substantial justice.

Granting the variance would not impact public safety. Staff has not determined that granting the variance would provide any type of substantial justice for the applicant. The Zoning Ordinance applies a variety of regulations that intend to limit the visual clutter in the Township. Staff feels that granting a variance in this instance would go against the spirit of the Ordinance; as well, it could set a precedent for allowing quantities of flags on not only commercial properties but also residential developments. Often builders would like to display large quantities of flags at the entrances of residential developments in the Township. Granting this variance may set a precedent for future requests for numerous flags on these developments as well as other business establishments.

Member Ward stated that he does not see how the flags improve public safety, as the applicant suggested. He said that Section 60.09 of the Ordinance should have been applied when CSPA 03-12 was brought to the Planning Commission. He strongly encouraged the applicant to work with the Township on revising the Ordinance.

Member Grosshans stated that he likes the concept of the flags outside, although the Zoning Ordinance does not permit that use.

Member Brostrom stated that he is concerned about setting a precedent.

Chairperson Naik stated that the applicant mentioned that the variance should be narrowly defined for their purpose. He said that the ZBA operates on the general principles of the Ordinance.

Agree: None.
Disagree: Ward, Grosshans, Brostrom, Naik.

ROLL CALL:

YES: NONE.
NO: WARD, GROSSHANS, NAIK, BROSTROM.
ABSENT: STAGG.
ABSTAIN: NONE.

MOTION FAILS

8.0 Zoning Administrator's Report

8.1 Review of By-laws.

Member Ward discussed Article 4 regarding alternate members. He also discussed the elections of officers and the Communications and Announcements item of the agenda.

The Members and staff discussed the elections and alternate members.

9.0 Member's Report

None.

10.0 Secretary's Report

None.

11.0 Chairperson's Report

None.

12.0 Approval of Prior Minutes

12.1 Minutes of February 27, 2006

Motion by Member Ward, supported by Member Grosshans, to approve the minutes, as corrected.

MOTION CARRIED

13.0 Adjournment

Motion by Member Ward, supported by Member Grosshans, to adjourn the meeting.

MOTION CARRIED

Chairperson Naik adjourned the meeting at 8:26 p.m.