

MINUTES
Board of Zoning Appeals
June 8, 2021

The Wyoming Board of Zoning Appeals met on June 8, 2021 at 6:00 p.m. in the Council Chambers of the City Building. The meeting was called to order at 6:00 p.m. by Jennifer Eismeier, Vice Chair. Attendance was as follows:

MEMBERS:

Lynn Bueckman
Jennifer Eismeier
Bob Kearns
Jeff LeRoy

ABSENT:

Charlie Jahnigen

STAFF:

Megan Statt Blake, Community Development Director
Tana Bere, Community Development Specialist

OTHERS:

Wendy Mentrup, representing Cowboy Cones
Brandon Victor, representing Cowboy Cones
Jessee Fatherree, 20 Springfield Pike

Approval of May 11, 2021 Meeting Minutes

Mr. Bueckman moved to approve the minutes as written. Mr. LeRoy seconded the motion. By voice vote, all voted yes, the motion carried.

508 Wyoming Avenue. Window signage-Case #4-21

Ms. Statt Blake provided the background. Cowboy Cones, represented by Managers Wendy Mentrup and Joseph (J.D.) Raphael, is requesting two variances from the Sign Code (Sections 1331.04(k)(2) and 1331.10) in order to keep the painted window signage that was recently added to the storefront, as shown in the referenced photos.

Per §1331.10 of the Sign Code, Cowboy Cones is permitted to have up to 28 square feet of total signage. The painted window signs considerably exceed this allowable area, being approximately 3 times the allowable total signage area.

Additionally, per §1331.04(k)(2) of the Sign Code, Cowboy Cones may cover up to 25% of their total window space of the building, and up to 50% of any single windowpane.

Temporary or permanent window signs shall be calculated when determining the square

footage of signage displayed by the business, shall be considered to reduce the total amount of signage allowed for a business, and shall also be subject to the limitations on the coverage of windows. As shown, the window signage covers approximately twice the allowable amount of total window area, and there are 4 windows which exceed the 50% coverage limit.

Ms. Mentrup was present and addressed the Members stating that she was unaware a permit was required for signage. She had hired a professional painter to do the work as a gift to the owners. She explained that the business is no longer operating with a lobby and as such, the menu is on the TV screen hanging from one of the windows. The former lobby area is now housing additional freezers to store more ice cream flavors, therefore customers are only able to be served via the walk up window. Ms. Mentrup stated that the Board of Health suggested that the new freezers not be placed directly in front of the windows as the heat from the sun works against the temperature and cannot keep the ice cream frozen. It was suggested to place a piece of metal or wooden board between the freezers and the windows to combat the sun exposure. The owners had chosen to erect a wooden fence panel inside the left window pane as a method to combat the sun exposure. The signs on the right side of the storefront are placed there with sticker type material for ice cream flavor names to come off and on as it changes. Ms. Mentrup stated that there is limited electricity across the front of the building and no outside lighting is available. A small TV was installed inside the space in the right upper window and is used for a menu. However, due to the glare of the sun, many times the screen cannot be seen. Therefore, the menu has been printed off and taped to the window. Additionally, there are two small windows that allow patrons to look inside and watch waffle cones being made. When the painter was hired, Ms. Mentrup stated that she tried to bring in to the business what the other businesses had, which is how she believed everything was tied in, and she did not know she needed a permit. The owners are looking for a more permanent sign solution but they will need to see if the business makes a profit this year. Luckily, they were able to remain open, with limitations, during most of the COVID shutdowns.

Mr. Bueckman asked if the fence was included in the signage calculations and whether the fence should be considered décor rather than signage. Ms. Mentrup explained that the fence is hiding the view of equipment and freezers.

Mr. Kearns asked why the business has not fully re-opened as the Governor and the Health Department orders have been lifted. Ms. Mentrup stated that the maximum capacity is eight persons and there are typically four to five employees working a shift, so there can be no more than three people in the store at once. With the inclusion of the equipment and freezers the space is even more restricted. Mr. Kearns asked if consideration was given to going back to the original configuration of the store and perhaps tinting the windows with solar tin to keep the heat down. Ms. Mentrup stated that the plumbing and electric were relocated to accommodate the equipment and freezers to make the arrangement work because, at the time, it was unknown as to how long the health orders would be in place.

Mr. LeRoy commented that he believed at one time there was an easel type or sandwich board sign out on the sidewalk in front of the store and asked if that is still being used. Ms. Mentrup stated that this type of signage also needs a permit and without exterior lighting, the signage is hard to see at night. With people standing in line to order and people trying to read the menus they were receiving complaints of people not practicing social distancing. Markings on the sidewalk were added to help distance the patrons.

Mr. LeRoy asked how the City was notified of the signage issues. Ms. Statt Blake commented that with the bright fluorescent colors, the signage was easily noticed. Mr. LeRoy asked if there is any historical significance behind the sign code provisions. Ms. Statt Blake explained that several years ago, the City had hired a consultant to do a review of the sign code to establish a level of control to keep the high character and aesthetics maintained and as part of that review a complete re-write of the Code was done. It is fairly detailed and can be difficult to navigate. In terms of the functional application of the code, you can have 28 square feet of signage and it is fairly generous if compared with other communities that have historic districts.

Discussion was held as to the definition of signage verses products placed in view of a window. Mr. LeRoy commented that the City had received one email message from a business owner and one phone call. Both provided similar feedback and concern about the 'loud' esthetics of the fluorescent painted signage and felt that it detracted from the design of the store. Everyone wants to be supportive of our local businesses and knows that these have been hard times.

Ms. Mentrup stated that she tried drawing inspiration from the other businesses and described what she sees at other businesses on the street. She explained that the painted signage ultimately is meant to keep heat and light out but to allow patrons to see inside the store and that the signage is a temporary measure. She stated that if the color of the signage is what is unacceptable it can be changed or taken down.

Ms. Eismeier asked what the time frame looks like if this is a temporary situation. Ms. Mentrup stated that she would like to leave the signage up until November. Ms. Eismeier asked if there is any alternative solution planned that meets the Sign Code. Ms. Mentrup stated that they would like to keep the interior fence panel in the window and they would like to have an internal sign with the menu items on it; right now, there is a frame with removable stickers indicating the flavors that are available, which is helpful during the day, but at night it cannot be seen. Ms. Eismeier asked if the walk up window will be a permanent fixture. Ms. Mentrup indicated that it is anticipated that customers will not be permitted to enter the store for the foreseeable future, and the walk up window will be the only means of serving the customers.

Mr. Kearns asked if the City has granted variances for temporary signage with a sunset clause identifying how long temporary lasts. Ms. Statt Blake stated that moving forward, we need to have a sign permit issued to the business and the Board can articulate a duration in its motion if it chooses.

Mr. Bueckman commented that he would consider what the other business are doing in the area. Mr. LeRoy commented that Cowboy Cones opening in September of 2019 and it is typically a spring, summer, fall industry; spring came and COVID shutdowns hit. He is empathetic to the challenges that it has brought to the food industry. He mentioned the closing of CWC, a food business partly lost to the pandemic. With being a small ice cream business, Cowboy Cones is competing with bigger companies, and the community wants Cowboy Cones to succeed.

Mr. Kearns asked the Members to consider if this type of signage fits into the historic district. He suggested allowing Cowboy Cones to continue to operate with it this season but the signage would need to be revisited and toned down for next season. He is not personally in favor of the colors that other business may have chosen but they are operating within the confines of the Sign Code.

Mr. Brandon Victor, owner of the business, addressed the members. He stated that it seems that a lot of attention is being paid to the brighter colors of the signs. The building is painted in a cow pattern and already stands out as it is but he realizes the fluorescent colors may not blend well in the downtown business district. He would consider toning down the colors or maintain the cowboy theme by keeping the horseshoes. Mr. Kearns stated that he understands the needs for the signage but he felt that it should be dialed down some and be more gaslight historic district looking. Mr. Kearns added that he felt that it is okay to leave it up during the current season.

Ms. Eismeier stated that she is sorry that the business had a difficult year due to COVID, however all businesses had difficulty, and ignorance is not an excuse for violating the sign code and review requirements. She recalls the sometimes heated conversations that were held when the mural was painted on the former CWC building and the CIC-owned building next door, as well as the ground signs at the Rec Center and Civic Center. She is delighted that the small business is surviving but business owners are responsible for becoming knowledgeable about the rules of their community prior to taking certain actions. Neighbors are not comfortable with what they have done with their excessive signage. It is rare for the Board to receive comments from two neighbors indicating their displeasure.

Mr. Bueckman stated that he is in favor of allowing the signage to remain for the season, but that an end to that time period should be established.

Mr. Kearns stated that someone wanting a storefront on Wyoming Avenue in the primary business district should go to the City first and ask what is allowed before just doing it. Mr. Bueckman agreed and added that the Code appears open to interpretation. Ms. Statt Blake stated that not all scenarios can be codified, though staff is available to discuss with businesses and guide them in applying the Sign Code.

Ms. Eismeier questioned if discussion was held with anyone at the City regarding the cow spots that were painted on the building. Mr. Victor stated that when the City conducted its final inspection of the space before the business opened the cow spots had been painted, though a conversation about them, or whether they were allowed or not, did not come up at the inspection.

There being no further questions or comments, Ms. Eismeier motioned that all signage currently affixed with tape or temporary adhesive except for the menu board items posted inside the building, must be removed immediately and that all other existing signage can remain until September 15 at which time the excessive signage is to be removed the business owners will proceed with a signage plan that meets all aspects of the Sign Code. Mr. Kearns seconded the motion. By roll call vote, 4-0, all voted yes. The motion carried.

20 Springfield Pike, Case #5-20, Front Yard Parking Issue

Jesse Fatherree, owner of 20 Springfield Pike, is requesting a variance that would grant him relief from the parking requirements prescribed by §1153.05 of the Zoning Code. The owner is proposing to create a paved area, approximately 20' x 20' in the front yard and entered from the existing driveway to allow for the parking of vehicles. §1153.05 of the Code states, among other things, that "all parking areas shall be to the rear of the front building line". Based on the design of this feature, the application cannot be administratively approved, and the applicant has elected to present his request to the Board. A survey-based site plan was presented at the start of the meeting by the applicant.

Mr. Fatherree stated that he has owned the house for 13 years and parking has never been easy living on Springfield Pike. He believed that the Springfield Pike road diet configuration would improve traffic flow by adding a parking lane however his house is directly adjacent to where two lanes become one lane which has increased the difficulty of backing out of his driveway. Mr. Fatherree stated that he reviewed several design options and shared pictures of five properties within three blocks of his home that have similar parking pads in the front yard area.

Mr. Fatherree explained that he is wanting to construct a 20'x20' parking pad that will be located 34 feet from the back edge of the public sidewalk. This space will leave enough room for him to plant flowers and shrubs to hide the pad and provide room for two cars to park or one car to park and one car to be able to make a three point turn in order to pull out on to Springfield Pike facing forward.

Mr. Fatherree added that he does not anticipate any negative storm water drainage issue; the yard slopes towards the street and the water supply to the house runs approximately four feet south of the proposed parking pad. He looked at placing a driveway along the north property line but his house is six feet from the property line and his neighbor's tree would have to be cut down or he would have to drive on the neighbor's property to get to the back of his house. On the south property line, his house sits three and a half feet from the property line and Mr. Fatherree noted that Mr. Bueckman is his next door neighbor to the south. As such, Mr. Bueckman recused himself from this case.

Ms. Statt Blake noted that the City has not received any comments from the adjoining property owners that were notified of the hearing.

Mr. Kearns stated that he understands the difficulties about backing out on a busy street as he lives on Fleming Road. He asked Mr. Fatherree if he had considered a single car width pad, not to be used for parking but rather as a way to turn a car around to pull out forward-facing. Mr. Fatherree explained with that method, no extra parking would be provided and the cars would remain stacked in the driveway, which would not help but he could make it work. Ultimately, he would prefer to have the additional parking space.

Mr. Kearns commented that the current homeowner may have sedan-type cars, however the next homeowner may own two large SUVs and whatever amount of shrubs and landscaping is planted will not hide that. He expressed concern with lining the yards on Springfield Pike with asphalt.

Ms. Eismeier commented that, in her estimation, there will be other residents on Springfield Pike that will come to the Board with similar requests and a 20'x20' pad is considered quite large even with landscaping attempting to shield it. There are many houses along Springfield Pike that do not have turn around areas as she expressed concern with starting a precedence regardless of what previous Boards have approved.

Ms. Statt Blake commented that the Code stipulates that a standard parking space is 10'x20'. Ms. Eismeier commented that landscaping is important and she asked what the paving surface will be. Mr. Fatherree stated that the driveway is asphalt and the pad will be the same. Ms. Eismeier asked clarification as to where the gutters outlet. Mr. Fatherree stated that the gutters on the north side of the property to a storm drain and there is a storm drain on the south side of the property along the property line with Mr. Bueckman.

Ms. Eismeier moved to approve a 10'x20' parking pad to be placed approximately 20' away from the front building line of the house, or placed as close to the house as possible to allow a car to be parked in front of the garage and be able to back into the parking pad and pull out of the driveway forward facing, with landscaping surrounding and a minimum

three foot high shrub that screens the pad from both the west and south sides to screen the parking stall. Mr. LeRoy seconded the motion. By roll call vote, 3-0, all voted yes with Mr. Bueckman abstaining, the motion carried.

Miscellaneous

Ms. Statt Blake reported that there will be two cases for the board to consider at the July 13 meeting.

Adjournment

With no further business before the Board, Mr. Bueckman moved to adjourn the meeting, seconded by Mr. LeRoy. By voice vote, the motion passed unanimously. The meeting adjourned at 7:30 p.m.

Respectfully submitted,

Debby Martin, Executive Assistant

Jennifer Eismeier, Vice Chair