

CITY OF DELAWARE
BOARD OF ZONING APPEALS
AGENDA

MEETING TO BE HELD VIRTUALLY VIA CISCO Webex **
6:30 P.M.

REGULAR MEETING

April 14, 2021

1. ROLL CALL
2. ELECTION of OFFICERS
 - a. Chairperson
 - b. Vice-Chairperson
3. APPROVAL of the Motion Summary of the Board of Zoning Appeals meeting held on March 10, 2021, as recorded and transcribed.
4. REGULAR BUSINESS
 - A. 2021-0895: A request by Karah Katenkamp for approval to Chapter 1151.03 (d) (2) Substitution of Less Nonconforming Use for 73 East William Street on property zoned R-3 (One-Family Residential District).

Anticipated Process

- a. Swearing in of all applicants and members of the public relating to this case
- b. Staff Presentation
- c. Applicant Presentation
- d. Public Testimony

PUBLIC HEARING COMMENT OPTIONS:

- o **JOIN VIRTUAL MEETING:** To provide live public comment please email emccloskey@delawareohio.net or call 740-203-1013 to sign up by 3 p.m. the date of the meeting. **Name and address are required for public comment.** Comments are limited to 3 minutes.
- o **EMAIL, LETTER, PETITION:** written public comment, maximum of 500 words, is to be received by 3 p.m. the date of the meeting to be presented to the Commission for submission and read into the record. **Name and address are required.**
- o **FACEBOOK:** Comments received on Facebook will not be presented during the meeting and will be addressed by staff subsequent to the meeting as appropriate.
- e. Commission Action

5. BOARD MEMBER COMMENTS AND DISCUSSION

6. NEXT REGULAR MEETING: May 12, 2021

7. ADJOURNMENT

** This meeting will be a virtual meeting. Residents are encouraged to view online through the City of Delaware Facebook page. To comply with the CDC recommendation prohibiting group meetings, no in person attendance by Council, staff, or the public will be available.

BOARD OF ZONING APPEALS
MOTION SUMMARY
March 10, 2021

ITEM 1. Roll Call

Chairman Dick called the virtual meeting to order at 6:44 p.m.

Members Present Virtually: Ben Dariano, Beth Fisher, Adam Vaughn, Todd Daughenbaugh, Robert Whitmore, Councilman Cory Hoffman, and Chairman Matt Dick

Staff Present Virtually: Lance Schultz, Zoning Administrator

ITEM 2. ELECTION of OFFICERS

Due to the computer technical issues and the late start to the meeting the election of officers was held following all regular business items.

A. Chairperson

Motion: Councilman Hoffman motioned to nominate Mr. Dick as Chairperson, seconded by Mr. Vaughn. There were no other nominations. Motion approved by a 6-0-1 (Dick) vote.

B. Vice-Chairperson

Motion: Chairman Dick motioned to nominate Mr. Vaughn as Vice-Chairperson, seconded by Ms. Fisher. Motion approved by a 7-0 vote.

ITEM 3. Approval of the Motion Summary of the Board of Zoning Appeals meeting held on December 9, 2020, as recorded and transcribed.

Motion: Councilman Hoffman moved to approve the Motion Summary for the Board of Zoning Appeals held on December 9, 2020 meeting, seconded by Mr. Whitmore. Motion approved by a 6-0-1 (Fisher) vote.

ITEM 4. REGULAR BUSINESS

A. 2021-0331: A request by Salvation Army Central Ohio for approval of a building setback and parking setback variance for a Building Expansion and Parking Lot Expansion at 89 Cheshire Street for The Salvation Army Delaware Worship and Service Center on approximately 0.707 acres and zoned R-4 (Medium Density Residential District).

Anticipated Process

- a. Swearing in of all applicants and members of the public relating to this case
- b. Staff Presentation

Mr. Schultz reviewed the staff report that was provided to the Commission. He reviewed the location of the property, current zoning, existing conditions and proposed expansion.

- c. Applicant Presentation

Chairman Dick swore in the following individuals:

Dave Plunkett
525 South Lazelle Street
Columbus, Ohio

- d. Public Testimony

The Clerk informed the Commission that there were no public comment requests or emails/letters received.

- e. Commission Action

Motion: Mr. Dariano motioned to approve application 2021-0331, along with all staff conditions numbers 1-12 in the staff report, finding beyond a reasonable doubt that the decision factors necessary for approval of a Variance according to Chapter 1128 of the Planning and Zoning Code are met, seconded by Ms. Fisher. Motion approved by a 7-0 vote.

- B. 2021-0433: A request by DGH LLC for approval of a variance to Chapter 1151.02 (a) Enlargement/ Alteration of Nonconforming Building or Structure for a building enlargement at 152 West Central Street on property zoned R-3 (One-Family Residential District).

Anticipated Process

- a. Swearing in of all applicants and members of the public relating to this case
- b. Staff Presentation

Mr. Schultz provided the staff report and presentation to the Commission which included current zoning and location. He reviewed the Applicant's proposal for demolition and new construction.

- c. Applicant Presentation

Chairman Dick swore in the following individuals:
Dimitri Hatzifotinos
1160 Goodale Blvd
Columbus, Ohio

Rich Brown
Brown Calabretta Architects
1126 Stanhope Drive
Columbus, Ohio

d. Public Testimony

Chairman Dick swore in the following individuals for public testimony:

Barbara Adams
11 Woodland Avenue
Delaware, Ohio

Anthony Pezutti
158 West Central Avenue
Delaware, Ohio

The Clerk confirmed from participants Nikki Hogarth and Matt Walls that they did not wish to provide public testimony.

The Clerk read the following emails that were received into the record:

Nena Smale
Carl Piatt
141 W. Central Avenue

Arthur Sisler
146 West Central Avenue
Delaware, Ohio

Mary Ann Davis
138 West Central Avenue
Delaware, Ohio

Tory Mueller
Kaleb Walker
136 West Central Avenue
Delaware, Ohio

Kathy Laughlin
David Laughlin
24 Darlington Road
Delaware, Ohio

Kaity Hord
185 West Central Avenue
Delaware, Ohio

Anthony Pezzutti
158 West Central Avenue

Delaware, Ohio

Northwest Neighborhood Association
Lisa Ho, President
Nikki Hogarth, Vice-President
Glenda Nieto-Cubas, Secretary
Erinn Nicley, Treasurer
Delaware, Ohio

Lucy Sessa-Dunn
Michael Dunn
19 Woodland Avenue
Delaware, Ohio

e. Commission Action

Motion: Mr. Hoffman motioned for the approval of the variance for Case 2021-0433 with the conditions laid out in the staff report, finding beyond a reasonable doubt that the decision factors established in Section Chapter 1128 of the Planning and Zoning Code with the granting of a variance have been met. Mr. Schultz clarified to the Commission that this case would not go forward to Council and that this is the last step if approved and the remaining steps would be administrative for building, engineering. This motion was seconded Mr. Daughenbaugh. Motion failed with a 3-4 (Dariano, Fisher, Vaughn, Dick) vote.

ITEM 5. BOARD MEMBER COMMENTS AND DISCUSSION

ITEM 6. NEXT REGULAR MEETING: April 14, 2021.

ITEM 7. ADJOURNMENT

Motion: Councilman Hoffman moved to adjourn the Board of Zoning Appeals meeting, seconded by Ms. Fisher. The Board of Zoning Appeals meeting adjourned at 8:25 p.m.

Matt Dick, Chairman

Elaine McCloskey, Clerk



BOARD OF ZONING APPEALS / STAFF REPORT

CASE NUMBERS: 2021-0895
REQUEST: Use Variance
PROJECT: 73 East William Street
MEETING DATE: April 14, 2021

APPLICANT/OWNER

Karah Katenkamp
5795 Marion Waldo Road
Marion, Ohio 43302

REQUEST

2021-0895: A request by Karah Katenkamp for approval to Chapter 1151.03 (d) (2) Substitution of Less Nonconforming Use for 73 East William Street on property zoned R-3 (One-Family Residential District).

PROPERTY LOCATION & DESCRIPTION

The subject property is zoned R-3 as are the properties to the east and west. To the north the property is zoned B-2 (Central Business District) and to the south the property across East William Street is zoned R-6 (Multi-Family Residential District). The subject site is also located in the Downtown Historic Overlay with a sub-district designation of residential. Therefore, any exterior renovations would require compliance with the Architectural Standards for the Downtown Historic District.

BACKGROUND/PROPOSAL

In 1999 the Board of Zoning Appeals (BZA) approved a substitution use variance to allow a mortgage broker to utilize the subject property (the use on the second floor was not documented). Apparently sometime during or after 1999, a message therapy enterprise was located at this location without BZA approval per the 2002 minutes for BZA Case 02-122. Then in 2002 (Case 02-122) the BZA approved a photography studio on the first floor and residential on the second through a substitution use variance.

In March 2021, the new owner purchased the subject house and is requesting to utilize the first and second floors as separate residential units. As mentioned above, currently the first floor is permitted to be a photography studio while the second floor is residential. The subject 2,116 square foot house was constructed in 1920 and remodeled in 2003 per the Delaware County Auditor. The house appears to have two entrances to the first floor (front and side) and one entrance to the second floor (front) along with two separate water meters and air condition units. There is a detached two-car garage and a gravel parking lot with four parking spaces in the rear of the building accessed from an alley that extends to Union Street. Therefore, the subject structure functions as two separate units within one building which is conducive to the two residential units as proposed.

The existing zoning on the interior of this block is R-3 and the properties immediately to the east and west are single family uses that achieves compliance with the zoning code but the two single family houses further west have multiple residential units in the R-3 zoning district which appear to be legal non-conforming uses. The zoning for the corner lots on this block is B-3 (Community Business District) and B-2 (Central Business District) east and west respectively so this block on busy East William Street is transitioning from single-family to multi-family and commercial per the existing land uses in this area. The current comprehensive land use plan designates this area of downtown for mixed uses while the proposed new comprehensive land use plan designates this area also as downtown with mixed uses. Therefore, the proposed two-unit residential use is consistent from a land use perspective.

STAFF ANALYSIS

• **PROPOSED USE VARIANCE:**

Change or Substitution of Use.

- Chapter 1151.03(d)(2) - Substitution of "Less Nonconforming" Use. If no structural alterations are made other than those required by enforcement of other codes or ordinances or those necessary for maintenance, a nonconforming use may be changed to another nonconforming use of a less nonconforming, more appropriate nature for the district in which it is located. The Board of Zoning Appeals shall determine if the proposed use is of a less nonconforming, more appropriate nature by using its variance procedures.

- The request of substituting the commercial use (photography studio) for the residential use with the interpretation that commercial uses are more intense than residential uses at this location where the subject house is surrounded by residential uses to east and west would meet the intent of the above definition of substitution of less nonconforming use. Staff is supportive of this request given the overall mixed-use nature of the surrounding area.
- Also, in 1999 and 2002 the BZA approved substitution use variance at this location to allow commercial on the first floor and residential on the second floor (in the 1999 BZA case the second floor use was not documented) which is currently permitted at this location. This structure has been a legal nonconforming use since at least 1999.
- **VARIANCE REVIEW:** Use Variance - In order to grant a use variance, the Board of Zoning Appeals shall determine that strict compliance with the terms of this Ordinance will result in unnecessary hardship to the applicant. The applicant must demonstrate such hardship by clear and convincing evidence that all of the following criteria are satisfied:
 - The property cannot be put to any economically viable use under any of the permitted uses in the zoning district in which the property is located.
 - *The current R-3 zoning district only allows single-family uses and a commercial use on the first floor (photography use) per BZA approval in 2002. The owner apparently believes a residential use is more in demand than a commercial use at this location.*
 - The variance requested stems from a condition which is unique to the property at issue and not ordinarily found elsewhere in the same zone or district.
 - *The permitting of the current two tenant uses, one of which has been a commercial use since at least 1999 is unique to the subject property or any property in a R-3 zoning district. Actually, the request for all residential uses would lessen the intensity of the use by eliminating any future commercial uses (unless they receive a future variance from the BZA or if the property is rezoned). Two structures on this block are zoned R-3 but have at least two residential units within the structure (59 and 65 East William Street respectively).*
 - The hardship condition is not created by actions of the applicant.
 - *The owner purchased the property in March 2021 with the subject two tenant uses permitted (commercial on first floor and residential on second floor) as a legal use at the time of purchase. The applicant wishes to convert one tenant space that has been commercial since at least 1999 to residential. This represents a more conforming outcome to the code as the site is zoned residential and the surrounding uses to the east and west are residential.*
 - The granting of the variance will not adversely affect the rights of adjacent property owners or residents.
 - *The granting of the use variance to only residential uses would not likely have a negative impact on the adjacent residences. It would eliminate the commercial use and align the proposed residential uses with the surrounding residential uses and decrease the intensity of the historic degree of non-conformity that exists now.*
 - The granting of the variance will not adversely affect the public health, safety or general welfare.
 - *There would not be any adverse impacts to the public health, safety or general welfare with the granting of the use variance because currently there are two tenant uses allowed at this location.*

- The variance will be consistent with the general spirit and intent of the Ordinance.
 - *Chapter 1151.03 (d) (2) Substitution of Less Nonconforming Use allows for the requested use variance. Also, the R-3 zoning district only allows residential uses and the use variance would only permit residential uses at this location if approved (unless they receive a future variance from the BZA or a zone change).*
- The variance sought is the minimum that will afford relief to the applicant.
 - *The use variance to only residential would allow the owner to utilize the two tenant units without an increase in tenant uses or building footprint either horizontally or vertically. The only other option would be to rezone the property to a more intense residential zoning district (likely multi-family) which could allow the potential expansion of the use rather than specifically require up to only two tenant residential spaces as proposed. Thus, though rarely sought and very strictly examined by staff, a use variance is the minimum and best way to provide reasonable relief to the applicant while ensuring to the extent practical the protection of the surrounding properties.*

CONCLUSION

Staff typically would never support a use variance as a change to the zoning of a property is the most appropriate vehicle to seek such change. However, in this unique and long standing circumstance as to the uses on this site and the fact BZA approved two substitution uses at this location in the past, Staff supports the proposed use variance request for the following reasons: 1. The use variance to only residential uses would lessen the intensity of the subject building for the adjacent residents and therefore make it more conforming to the residential district the site is in today; 2. The size and footprint of the existing house would not be increased either horizontally or vertically per the current non-conforming enlargement/alteration of non-conforming building or structure requirements; 3. The residential only uses would be consistent with the residential uses to the east and west; 4. Because the subject structure is located within the Downtown Historic Overlay District, any exterior renovations would have to achieve compliance with the Architectural Standards for the Downtown Historic District

STAFF RECOMMENDATION – VARIANCE (2021-0895)

Staff recommends approval of a request by Karah Katenkamp to Chapter 1151.03 (d) (2) Substitution of Less Nonconforming Use for 73 East William Street on property zoned R-3 (One-Family Residential District), with the following conditions:

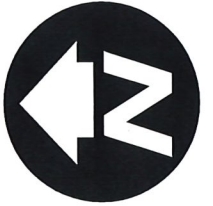
1. The two tenant units (on the first and second floor respectively) shall be for single dwelling unit residential uses only.
2. The size and footprint of the existing structure including all the subsequent additions shall not be increased either horizontally or vertically per the current non-conforming enlargement/alteration of non-conforming building or structure requirements. However, the use and structure could be rebuilt to the extent they exist today – as allowed by this use variance - if destroyed by an act of God and thus would not be considered for the purposes of Zoning to be non-conforming.
3. Any exterior renovations shall achieve compliance with the Architectural Standards for the Downtown Historic District chapter of the zoning code.

COMMISSION NOTES:

MOTION: _____ *1st* _____ *2nd* *approved* *denied* *tabled* _____

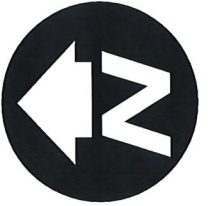
CONDITIONS/MISCELLANEOUS:

FILE:
ORIGINAL: 4/9/21
REVISED:



2021-0895
Substitution of Less Nonconforming Use
73 East William Street
Location Map





2021-0895
Substitution of Less Nonconforming Use
73 East William Street
Zoning Map





2021-0895
Substitution of Less Nonconforming Use
73 East William Street
Aerial (2019) Map



Anthony Toops &
Karah Katenkamp
152 Troutman Rd
Delaware, OH 43015

**Letter of Intent
In Support of Request for Substitution of Non-Conforming Use
73 East William St, Delaware, Ohio 43015**

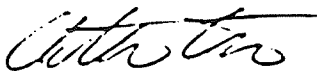
To Whom it May Concern,

This Letter of Intent is in support of my request for a substitution of non-conforming use for our property at 73 East William St; Parcel 519-431-10-015-000. The intention is to substitute the commercial non-conforming use for a multifamily residential non-conforming use. The current non-conforming commercial use variance has been in place since 2003 and is specifically approved for a photography studio. With the auction sale of this property in February 2021, the commercial photography space is no longer in use.

Upon approval, we plan to renovate the bottom current commercial unit into a residence to accompany the existing residential unit creating a two-unit multifamily property. The property is already separated into two individual spaces with separate utilities and entrances, on lots 71-72. Currently, the downstairs commercial space is labeled as 73 East William St and the upstairs apartment is labeled 73 1/2 East William St. Our hope is to offer an additional upscale residential space for more people to enjoy the beautiful city of Delaware. We ask the board to consider our request to issue a substitution of non-conforming multifamily use for this property.

Thank you for your consideration.

Respectfully submitted,



Anthony Toops
Property Owner & Applicant
740.725.4338



Karah Katenkamp
Property Owner & Applicant
740.262.8186



On Mar 3, 2021, at 11:08 AM, Karah Katenkamp <karah.katenkamp@gmail.com> wrote:

Lance,

Thank you for taking my call yesterday. As I stated on the phone, my brother and I recently purchased the property at 73 E William St via a Sheriff's Sale. The sale was confirmed 3/1/2021.

Currently, the building has an upstairs apartment over an office. They have two separate entrances and ample parking. From what I understand, it was approved for a conditional use or variance many years ago for a photo studio. We would like to begin the process of petitioning to have the building reconvey the property to a two-unit residential building, returning the building to fully residential zoning. Similar to the use case at 65 E William St. We would like to create more opportunities for people to live near beautiful downtown Delaware and OWU campus.

Please let me know how I might aid in this process.

Thank you,

Karah Katenkamp

Owner at Mosaic Real Estate

(740) 262 -8186

karah.katenkamp@gmail.com



51943110015000 10/01/2009



CITY OF DELAWARE, OHIO
 PLANNING & COMMUNITY DEVELOPMENT
 MASTER APPLICATION FORM



Project # _____

Case # _____

Planning Commission

- | | | |
|--|---|---|
| <input type="checkbox"/> Amended Final Development Plan | <input type="checkbox"/> Final Development Plan Extension | <input checked="" type="checkbox"/> Substitution of a Non-Conforming Use |
| <input type="checkbox"/> Amended Final Subdivision Plat | <input type="checkbox"/> Final Subdivision Plat | <input type="checkbox"/> Vacation-Alley |
| <input type="checkbox"/> Amended Preliminary Development Plan | <input type="checkbox"/> Final Subdivision Plat Extension | <input type="checkbox"/> Vacation-Easement |
| <input type="checkbox"/> Amended Preliminary Subdivision Plat | <input type="checkbox"/> Floodplain Permit | <input type="checkbox"/> Vacation-Street |
| <input type="checkbox"/> Annexation Review | <input type="checkbox"/> Lot Split | <u>Board of Zoning Appeals</u> |
| <input type="checkbox"/> Combined Preliminary & Final Development Plan | <input type="checkbox"/> Pre-annexation Agreement | <input type="checkbox"/> Appeal Administrative Decision or Interpretation |
| <input type="checkbox"/> Comprehensive Plan Amendment | <input type="checkbox"/> Preliminary Development Plan | <input type="checkbox"/> Conditional Use Permit |
| <input type="checkbox"/> Concept Plan | <input type="checkbox"/> Preliminary Dev Plan Extension | <input type="checkbox"/> Substitution of Equal or Less Non-Conforming Use |
| <input type="checkbox"/> Conditional Use Permit | <input type="checkbox"/> Preliminary Sub Plat | <input type="checkbox"/> Variance |
| <input type="checkbox"/> Determination of Similar Use | <input type="checkbox"/> Preliminary Sub Plat Extension | |
| <input type="checkbox"/> Development Plan Exemption | <input type="checkbox"/> Rezoning | |
| <input type="checkbox"/> Final Development Plan | <input type="checkbox"/> Subdivision Variance | |

Subdivision/Project Name _____ Address 73 E William

Acreage .14470 Square Footage 6303 Number of Lots 2 Number of Units 2

Zoning District/Land Use R3 Proposed Zoning/Land Use _____ Parcel # 519-431-10-015-000

Applicant Name Karah Katenkamp & Anthony Toops Contact Person Karah Katenkamp

Applicant Address 5795 Marion Waldo Rd Marion, OH 43302

Phone 740-262-8186 Fax _____ E-mail Karah.katenkamp@gmail.com

Owner Name Anthony Toops & Karah Katenkamp Contact Person _____

Owner Address 152 Troutman Rd Delaware OH 43015

Phone 740-725-4338 Fax _____ E-mail Karah.katenkamp@gmail.com
740-262-8186 Fax _____ E-mail revolutionpro@outlook.com

Engineer/Architect/Attorney _____ Contact Person _____

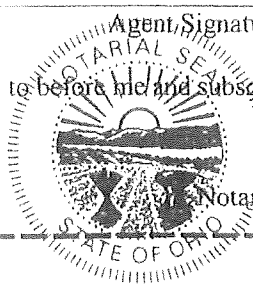
Address _____

Phone _____ Fax _____ E-mail _____

The undersigned, do hereby verify the truth and correctness of all facts and information presented with this application and authorize field inspections by City Staff.

Karah Katenkamp
 Owner Signature

Karah Katenkamp Anthony Toops
 Owner Printed Name



Sworn to before me and subscribed in my presence this 18th day of March, 2021

Shelly Rowe
 Notary Public