



In Attendance: Chair Rusty Johnson; Board Member Tom Appenzeller, Stephen Passarelli, Tracy Stancill, Susan Drake

Absent: Vice Chair Nancie Mandeville

Staff Attendance: Planning and Zoning Administrator Jonathan Wells and Town Clerk Ashlie Vincent

Board of Adjustment Minutes

October 23, 2023

Call to Order/Invocation/Pledge of Allegiance: Chair Johnson called the meeting to order and gave the invocation. All shared the Pledge of Allegiance.

Determination of Quorum: A quorum was present.

Consent Agenda: The motion to approve the consent agenda was made by Member Appenzeller and seconded by Member Drake—all ayes.

Election of Officers:

Rusty Johnson was nominated for chair by Member Passarelli and seconded by Member Appenzeller—all ayes.

Nancie Mandeville was nominated for vice chair by Member Drake and seconded by Member Appenzeller—all ayes.

Conflict of Interest: Member Passarelli recused himself because he is the applicant.

V-23-02 – Appeal of Planning and Zoning Admin’s Decision

- a) **Sworn In:** Jonathan Wells and Stephen Passarelli were sworn in.
- b) **Hearing:**

Administrator:

- The Planning & Zoning Administrator met with the applicant on site in early May before the permit was issued and explained the 8-foot setback requirement; that requirement is stated clearly in 3 different places on the Zoning Permit.
- The setback is far from “minor,” as the required setback is 8 feet, and the actual setback is less than 4 feet.
- The Marshville Public Works Department has stated that it needs a minimum of 5 feet of clearance from the back of the curb to make any utility repairs that may be required in the right-of-way.
- The Marshville Technical Standards & Specifications (detail 1.01) prescribes a 5-foot sidewalk construction standard.
- While the applicant contends that the benches and planters are “movable,” staff estimates they weigh hundreds of pounds.
- When the applicant made the decision to extend the structure beyond that which is permitted in the Zoning Permit, town staff was not consulted, and neither was their approval sought/obtained.
- The agenda packet was introduced as exhibit 1 for the administrator.

Questions from the Board:

Chair Johnson: In the ordinance, does it say anything about existing roads requiring a five-foot construction standard?

Admin: No. For new construction, the maximum built-to-line is up to eight feet from the edge of the curb.

Chair Johnson: Is the deck encroaching on the eight-foot mark?

Admin: Correct.

Member Appenzeller: Is the eight-foot mark the real mark or the five-foot mark?

Admin: The development ordinance requires eight feet. The only reason for referencing the five feet is because the standard is rooted in the space Public Works needs to work.

Member Appenzeller: Is the deck considered new construction?

Admin: It would.

Member Appenzeller: Wouldn't it go by the five-foot standard?

Admin: The development ordinance requires an eight-foot setback in the Main Street district.

Chair Johnson: Based on the application, is the deck supposed to be sixteen feet or twenty-four feet?

Admin: It is listed at sixteen feet but measured at twenty-four feet.

Member Appenzeller: Is it a deck or movable benches?

Admin: The applicant contends that it is not a deck.

Chair Johnson: Is there a definition for a deck?

Admin: The contraption encroaches on the setback from the curb.

Chair Johnson: The only reason for the citation was because it encroaches on the setback, not because it was a deck?

Admin: It had nothing to do with whether it was a deck or a seating area. During the application process, the importance of the eight-foot setback was designated.

Member Appenzeller: Was there an understanding of requirements before it was built?

Admin: Correct.

Stephen Passarelli: Defined a deck and explained that was originally the plan for the permit application in May. Is there a floor of any kind? Is there anything permanent there?

Admin: He was not around for the construction of the structure. He noticed that the structure was encroaching on the eight-foot setback.

Stephen Passarelli: How can the town do any work around the utility poles encroaching on the sidewalks?

Admin: That is a public works question.

Applicant:

- Purchased the ice cream shop in January.
- Number one concern was safety for the public because it is a very busy street.
- He and Fred Griffin discussed the best way to keep the public safe.
- Reached out to the Zoning Admin about a permit for a deck.
- After talking to the county about creating the deck, it was proving too huge of an undertaking to construct.
- White picnic tables have been there with no issue prior to the purchase of the shop.
- The planters and movable benches' sole purpose is to create a protective area for the public.
- He and his attorney looked through the ordinances and found no provisions for the type or location of benches, planters, and non-permanent structures.
- He presented segments from the MDO Article 2.1 and Article 3 to the board members.
- He stated there is nothing that explicitly addresses movable benches and planters. Therefore, there is nothing the Zoning Admin could rule on.
- These benches serve the entire community, not just the ice cream shop.
- Union County Code Enforcement had seen no issue with the county code.
- He stated he felt that this was selective enforcement of the ordinance,

- Petition of over 1,000 signatures in support of the movable benches and planters.
- Photo packet introduced as applicant exhibit 1

Questions from the Board:

Chair Johnson: What was the original intent for the permit?

Applicant: The original intent was a permanent deck, but they decided not to do it. Didn't want to use the permit and requested a refund.

Member Drake: Did he apply for a permit for the benches and planters?

Applicant: No, nothing in the ordinances that require a permit.

Member Drake: Did he consider working within the eight-foot requirement guidelines?

Applicant: Only within the confines of the permanent structures.

Member Drake: Would the applicant be willing to assume responsibility and/or cost for moving the benches and planters?

Applicant: It wouldn't be a problem.

The motion to close the hearing was made by Member Appenzeller and seconded by Member Drake—all ayes.

c) **Consider Approval or Denial:** The motion to approve the appeal of the applicant was made by Member Drake and seconded by Member Appenzeller—all ayes.

Other Business: Inform Nancie of her appointment as Vice Chair.

Adjournment: The motion to adjourn the meeting was made by Member Appenzeller and seconded by Member Drake—all ayes.