

**City Hall, Council Chambers, 2nd FL.
127 South Court Street, Circleville, Ohio
Monday, August 23, 2021 – 7:00 pm**

City of Circleville Board of Zoning Appeals convened in City Hall, 2 FL. Council Chambers, Tuesday August 23, 2021, at 7:00 pm. Roll call, Members present: David Getreu; Josh Ford; Mike Logan; Brad Keaton and Seth Sias and alterative Dennis Garlington. Clerks are Linda Chancey and Darci Valentine. Board Consultant: Holly Mattei, Crossroads Community Planning, LLC. Invited guest Jim Stanley, City's Zoning Officer, Michael Benson, Attorney for Applicant, Applicant, Michel Capobianco.

Getreu called the meeting to order at 7:00 pm. Getreu outlined the meeting procedures: the Chair will name and describe the Case; the Applicant will give testimony as to why the Application should be approved. Anyone wishing to speak in favor, against or in general, will be allotted three (3) minutes to address the Board. Once all testimony has been heard, the Hearing will be closed, and the Board will deliberate in private or in open session. The Board has up to thirty (30) days to render a decision. If the applicant is disapproved, the applicant may seek relief pursuant to the Ohio Revised Code.

Getreu asked those who wished to address the Board to please stand for the Oath. Getreu administered the oath to all that wished to speak.

1. Michael Benson, Attorney Benson & Sesser, LLC 36 South Paint St. Chillicothe OH
2. Michael Capobianco, Applicant, 62 East Drive, Hartville OH.
3. Jim Stanley, Zoning Code Enforcement, 107 East Franklin St. Circleville, OH. 43113
4. Holly Mattei, Crossroads Community Planning, LLC 48 Stoney Way, Lithopolis, OH.

1. Approval – August 9, 2021, meeting minutes

Ford motioned to approve the minutes. Sias seconded the motion. (4 Yeas -0 Nays). Motion carried.

2. Public Hearing

Appeal Application 2021-BZA-16. An appeal of a denied Certificate of Zoning Compliance for 271 Clark Street having tax parcel number A05-1-035-00-054-02. Full Circle Holdings, LLC applied for a Certificate of Zoning Compliance on June 25, 2021, for the use of said property as an apartment complex. On July 6, 2021, the City of Circleville Zoning Inspector denied said application and cited Section 1105.02(42)(B) as the reason for said denial. The applicant is requesting the Zoning Inspector's ruling be reversed and that the Zoning Inspector be ordered to issue the requested Certificate of Zoning Compliance.

Mike Logan stated that he has a conflict of interest in this hearing was excused from room.

Getreu asked Mattei to state the case. Mattei present the following case:

Appeal Application 2021-BZA-16 – See Exhibit A for Consultant Report

DISCUSSION

Holly Mattei explained that this is an appeal to a decision from the Zoning Inspector. The Zoning Inspector indicating that it is his belief the proposed use would be a group residential facility which would require a rezoning additional use application. The applicant indicated that is not the case and strictly be an apartment use. The existing zoning on the property is AR apartment residential and there is surrounding AR properties both to the north and south as well as the east. On the west is R-2 family residential. Mattei showed aerial views of the building and property 271 Clark Drive. Photos provided in application of existing use and its surroundings.

Mattei continued with according to – Article VII of the Circleville Zoning Code (Chapter 1119 of the Circleville Codified Ordinance) provides specific criteria for approving variances. The applicant has specifically stated that a variance is NOT being requested. The applicant is appealing the decision of the Zoning Inspector for the denial of a Certificate of Zoning Compliance for the use of the property located at 271 Clark Drive as an apartment. The Board of Zoning Appeals must examine the facts and findings in the case to determine whether the Zoning Inspector acted in error and an appeal should be granted. Mattei provided some facts that were provided from the applicant, it is listed in Mattei's report (Exhibit "A") and the note from the city's Zoning Inspector (Exhibit "A") after researching the LLC's listed to provide some background and clarification from them. Mattei looked up the Secretary of State information and is listed in her report to the BZA Board in Exhibit (C.). Mattei concluded with, prior to the board deciding, Crossroads Community Planning LLC recommends that the board obtain additional testimony from the applicant and Zoning Inspector to better understand the proposed use at 271 Clarke Drive.

Jim Stanley read a statement for the denial based on information he had gathered as follows: On July 6, 2021, I denied a zoning use permit for an applicant named Cynthia Woodford for Full Circle Holdings.

Michael Besson, Attorney for Full Circle Holdings LLC, explained the intent of the owners, Full Circle Holdings (hereafter FCH) LLC and Full Circle Recovery (hereafter, (FCR) of Circleville LLC are the same, but have three owners, David Kapp and Mike Karpenko and Susan Inglis. I can't testify about Full Circle Recovery, but I do know they do the treatments, I can only testify about FCH; I only represent them. FCH currently have no employees, but the plan is to hire a full-time staff to stay on site, as of today, there are no employees for that entity. They have started this process and have applied for occupy permit for the building and zoning to be in compliance. That was done with several people working with David Kapp. This entity is providing housing for the individuals that are or potentially in full treatment at FCH, Circleville. According to the owners, a lease agreement will be signed and rent payments will be received with no treatment provided at this facility, also no testing, no counseling, and no physicians at this site. There is a simple lease agreement with a two-step investment opportunity for the owners for Full Circle Recovery Circleville LLC to provide housing for people that need it. They have been open a couple of months and my understanding is when people get out of treatment, there was no place for them to live. Much of the treatment they had was out treatment programs, but still no treatment at FCH, LLC. The owners saw an opportunity to acquire that building, which was previously owned by Ohio Christian University and used as a dormitory with ten units for people to reside in. The owners bought this building because their thoughts and intent was to use this building for that purpose. There will be a property manager on site and employed by FCH, LLC. This staff person will not be a counselor or do testing or anything that has to do with recovery, it's another opportunity to help people that can't find a place to live. If they don't pay rent, or don't comply with the rules, or any activities that are improper, they will be evicted. It's simply a place to rent to people that are in town. These people will be in full recovery at FCR, Circleville LLC. No one will be rented to that will be affiliated with the relationship with those two entities. Also, there is no transportation or counseling available at that location. The rent agreements will be month to month, no longer which complies with the City's zoning codes. The Class II residential facility. This entity is not going to house juvenile offenders or be a halfway house for rehabilitation or adult offenders in lieu of institution... "read a statement from the zoning codes..." and this is not a detox center for sure. The people will be screened for applicant's process. We don't want any problems at the location. They don't want to lease the property to people that could do harm or cause damage or be noisy to the property or neighborhood. This facility does not qualify under any Class II groups for residential facility definitions.

It's not clear how the interpretation or comments from Mattei came to be, the owners from FCR, Circleville LLC, but it's owned by the same owners. The employees had no basis to talk or speak about them buying the holding of LLC. So again, no treatments and management on site, it's to help the people.

This site will help the owners have other investment income and again the people will be required to pay rent (the attorney read over notes again of what it's not going to be). There will not be any employees that are associated with the other entity, and it will be the same as other apartment complexes to the north and south of the facility. Other than people that can't find a place to live that otherwise will apply anywhere else, but this is to help people that are in our patient care at these locations. Regarding the application being denied, I was shocked. It's an apartment complex and intended use. It seems there was quite a bit of research of the LLCs on Google, but no one called these owners to ask what the relationship was or come to the property to look at it, it was just denied. I wish we could have explained this before we got to this point, but it seems that the application should be granted. I understand the desire not to have a treatment facility as needed in a back yard or next door, but this is not what this is going to be at this location. We asked that the board overturn the decision by the code enforcement officer to allow people to start living there.

Michael Capobianco stated we really want to be a partner in the community, and what I have seen from where I live, there is a need for this facility. Once the person goes thru the detox program and through our residential program at the facility then they will get released. This gives them a conduit or a place to go to that they will rent from us and not go back into their old environment which is typically a bad environment. This building is an apartment complex, and we will screen these people very heavily before we place them in that facility. Again, they will be a resident and pay rent, have property management on site 24 hrs. a day. This is for people to continue outpatient services whether at Hope Valley, which is not required, to be a resident. Also, there are apartment complex's close, we feel there is a need for this service.

Getreu asked the board if there were anyone that would like to speak in favor of this request? Anyone wishes to speak in general? Anyone would like to speak in opposition?

Board Members Asking Questions

Ford asked, I am having a hard time understanding... now are these going to be patients of FCR? Benson stated it's not a requirement of the lease, but we will be having some patients coming to this facility, but not for any treatments. Ford continued, how many residents are going to be there? or a time frame for the lease? Benson stated it would be a 30-day lease. Or it could be longer or a timeframe to stay there. Ford continued, for Mr. Stanley the zoning is AR, was O.C.U an AR when they were there? Stanley stated it was still an AR when they had the facility.

Keaton asked, so they do not have to go to FCR. before they can go to the facility? Benson stated it not the rule. Keaton continued, is it possible that someone else might needs a place to stay. Benson explained when people are done with their detox at the other facility, they are released to find a place to live. Then they will be offered a spot at this location if they want to sign a lease, they will be prequalified based on their needs, or they can go back to wherever they came from. They can treat wherever they want, they can be in a treatment facility somewhere else. These people will be screened to allow them the last step to get back on their feet. Keaton continued, so if they are not in recovery, you can't stay there? Benson stated that is not accurate. You don't have to be in recovery to stay there. Keaton asked, so if someone has not gone to a rehabilitation place... I am just an average guy with no issues at all looking for a place in town to stay, am I allowed to stay?

Benson explained if it was empty and we could not lease to anyone, then yes, but we still need an agreement. But the people would be steered toward and offered the recovery center, so it's for people who are leaving treatment programs.

Keaton stated you keep saying there are apartments around you so, an apartment complex is for everyone, I guess. Benson stated some are HUD and the person needs to qualify based on income, some I believe are towards the north and south are that way. Keaton asked, so do they have to apply differently with HUD or is this different? Mattei stated with HUD you must be income qualified. Keaton asked so it would not require any other zoning or conditional use, they are AR. Mattei stated you are correct.

Sias asked, do you plan on renting the apartment at fair market value or current rent or discounted as HUD would do? Benson said it would be based upon income scale. Sias stated if you are screening qualifying people then you must check to make sure that it adheres to federal housing laws? Benson stated we would do that; I have not heard of any housing laws. Sias asked, so right now what I hear is income qualifications must be met and not discriminate based, as an apartment it would be open to the public for income purposes. But this is for people that have been in treatment, to qualify, that is the preferred clientele after they are going thru the recovery process, and a criterion they must meet. Mattie explained, what you are saying if two people are applying and one is average Joe and the other one is coming out of the treatment facility, how are you going to distinguish and not violate those housing laws? Sias explained, if someone would want to rent from me, I would base it on income and credit, that's the way it is. Benson explained it's going to be a written agreement between FCR of Circleville LLC and FCH, LLC. That allows the full rent to occur and if no one is renting it then it will be open to other people, but its primarily going to be for people that are coming from treatment. Sias stated, so it's not an equal housing opportunity facility. Benson said it's going to be an agreement with the other entity. Sias stated right, and there are fair housing law stipulations for private clubs or members that's why I am asking. There needs to be some due diligence done. Benson stated the other owners has one in Warren Ohio. They are Medicaid approved by the federal government.

Ford asked if the staff will be on call for 24 hrs.? Benson stated they will live on the premises.

Keaton asked what will your scope of work be for this property manager? Benson stated any problems that arise or maintenance needs and to make it safe. Keaton continued, so nothing will be asked of this person that is a site property manager. Benson said absolutely not, no treatment or counseling.

Getreu asked, you said this is similar to the one in Warren, Ohio? Capobianco stated I think the lease agreements are different and the way its setup. Getreu asked, you said they are state approved right? Capobianco stated not for the apartment complex or residential. The one I am involved with, FCH, that one will not have any state licensure. That licensure would need authorization through the state. Getreu asked, so this will not have any state or local or federally approved dwelling place? Capobianco stated, No. Getreu asked, how many units are in the facility? Capobianco stated ten units. Keaton asked how many units are in Warren? Capobianco stated I have no idea. Keaton stated I thought you said it was a 1- to 4-unit place. Capobianco stated again, I have no idea. Keaton stated that is where a lot of the guidelines are different for a 1 to 4 units dwellings and certain exemptions.

Getreu stated that FCH owns this building and will sublease it to Hope Valley Center or recovery? Benson stated, that's not right, we will be leasing it to FCH and will be directly renting to residents. There will not be any type of lease agreement with Hope Valley, it's just with tenants.

Getreu stated I thought when Sias was questioning your statement, these two facilities, are subleasing this facility, because they had the first choice to put their residents in there. Is there some type of agreement with these two facilities? Benson stated there will not be any written agreements. Getreu asked, so Scioto Valley Health could place a resident there? Capobianco stated that is correct.

Getreu asked why did Hope Valley Recovery go around on May 13th and distribute brochures? Capobianco stated they were distributing them for Hope Valley, and they do not have anything to do with that building. Getreu asked Stanley is that the address that was on the brochure? Stanley stated that was on the application, the fellow that came in on May 13th. I asked him if they had purchased that building on 271 Clark Drive and he said Yes, they had. But there was nothing on the brochure about that being one of their facilities. Benson explained it would not be any part of that, their location is on Stoneridge Drive.

Getreu asked, how many days after the treatment at Hope Valley Center they would be going to this facility. Capobianco stated about 30 days, and again everyone at that facility will be offered a place to stay or maybe they would not want to stay or may go home. Keaton asked how do you determine who you offer a spot to? Capobianco stated these people are in recovery, I am operation, there is going to be a certain candidate that wants additional help and does not want to go back to their place or don't have family, we target those people that are serious and place them in the facility. Getreu asked so you are wanting people that want the additional help, and you will give them that here? Capobianco stated there are additional services at Hope Valley that they can get. The lease states they can go wherever they want for their services or outpatient services can be found. That would be our encouragement. Most people going into this building will continue some sort of treatment from the standpoint as outpatients. But nothing on premises to continue with treatment.

Ford asked are these ten units fully equipment with kitchens and restrooms? I have been in this building when O.C.U owned it and there were just dorm rooms. Capobianco stated they still are and there is a common area kitchen. Ford stated so residents will be sharing that. Capobianco stated yes, they will, the kitchen area. Ford continue, the staff member would be separate from that. Capobianco stated correct. Benson stated it's the same setup as O.C.U had, and I understand they had students. Ford stated it sounds like dorms rooms and not apartments. Benson stated I agree, but its zoned apartment under O.C.U and it qualified zoned area too, under FCH. Stanley explained, I was not the Zoning Inspector then, but the history of the building with O.C.U. is it was originally Victory Terrace and then sold to O.C.U for dorm rooms. Then under the previous zoning codes it could have been a non-conforming use at the time this zoning code came in 2015. So, research needs to be done to find out if it was conforming use at that time. Its original purpose as it was built as zoned properly in 1990 and continued as a non-conforming use at the time this zoning came in. Getreu asked, when did O.C.U leave the facility? Benson stated maybe a year and half, not sure, maybe longer.

Getreu stated if a person comes there, could they do a one-year lease? Capobianco stated we like to keep at a 30-day lease. Getreu stated the short-term lease facility is one bedroom and shared kitchen and restroom facility. Capobianco stated there are restrooms in each unit. Getreu asked month to month? Capobianco stated, Yes month to month. Benson stated the zoning codes does state that transits can stay, too, less than 30-days in Section 1145.02 31 zoning codes. So, this could have a 30-day month to month transit lease.

Getreu asked, will people that are staying at the facility have jobs, or is that rent coming from the federal government thru their insurance? Capobianco stated the goal is to get them back into society so they can have a normal job, no federal funds along those lines and no insurance.

Ford asked if there will be restricted hours for residents to be in at a certain time? Capobianco stated, No restricted hours or certain times.

Keaton stated, you are here today because this was going to be a group type facility. It was denied and so you are here. And you're telling us this is a place of recovery after they come from back from treatment to

get on their feet, with no treatment programs? Benson stated 100% correct. Keaton asked are these folks going to get out of treatment and go straight there? Without jobs and after 30-days they must pay? Benson stated they are not all jobless people that are treated some still have jobs. Keaton stated I didn't know if they are still in the facility for a certain amount of time, they would be able to keep their jobs. I don't know how that works.

Sias stated it's a shared kitchen and preference treatment by the way they select their tenants or clients at a discounted rent it sounds like some sort of treatment going on there and it's not medical treatment, I guess more information is needed for this facility to qualify as an apartment. Stanley stated if you read the definition on the screen, it does not say it has to be a Class II facility all it says is ... a halfway house providing residence for persons leaving a correctional institution and residential rehabilitation centers for alcohol and/or drug abusers, provided that detoxification is expressly prohibited on such premises. " so you are not allowed to have any type of any detoxification or medical services on a Class II facility premises. If you are doing that it takes it out of the Class II to rehab facility. So, by that definition it was being denied, it clearly states that.

Keaton stated, I clearly heard you say when they have nowhere else to go, I am no medical expert, but that sounds like a halfway house would you. If I am wrong and it's described that way, it sounds like a halfway house. Capobianco states I don't know what a halfway house is by definition. Again, I purchased the building because we know there is a need in the community, but unfortunately it is where it set, we want to be a partner with the community, that is our goal. I own a behavior health clinic and a chiropractor by trade in Canton Ohio, the amount of people that we see need help. I don't have any residential, but these people are down and out and have no place to go. We have sent them to Columbus and other surrounding places. It's a shame that people don't have a place to go for continued care. We hope to be in the out-patience services, the longer we wait for any type of treatment the more susceptible people are. We are going to pre quality them that will follow thru for care, our goal is to supply a safe place for them to live. Getreu stated, I don't disagree with you for that for the community. The way I see it, it's not an apartment building, it's in close proximity to schools and I don't see it passes because it's not an apartment. There is a need for that in this community and should this be in an area that allows such a thing but based off what our codes say and based on the surrounding areas my opinion is not for it. We want to see people get help but that's not what this is about, I have to interpret the code and that is where I am. Mattei point out we are not saying anywhere in the City it just not permitted in the AR, it could be go through a rezoned process request. But the way it's being described and preferential treatment you mentioned, and it differentiate from a typical apartment. Keaton stated that is it right there, there is a process to get this approved to be rezoned. As it stands right now the case brought forth, I don't think it fits the criteria.

Ford asked are the apartments a transition center. Capobianco stated I don't know what your definition of transition center is. Fords stated between drugs rehab and clearly the residents can have outside counseling, but your goal is help them to re-enter society, correct? Capobianco stated not necessarily, most patients that leave the detox most go out into society. It's not like an extra step.

Keaton stated we have to make sure our job is done correctly. No more questions right now. Ford and Sias had no more questions.

Benson stated at a half-way house there is testing done and they receive treatment there, the people make sure they are compliant with treatment and get assisted with other facilities financially, that is not the case here, we are not a halfway house. Keaton stated I don't know the definition of a halfway house, it's a special type of facility, it's not a public housing opportunity and that's my opinion. It does not fit this. It

does not mean I would not like to see this in our community but done the right way or somewhere else. Benson stated I understand the only comment is it's the same, its income-based, and it's different from preferred and allowed, there are HUD facilities next door, but they don't accept the public or me.

Keaton stated that is based solely on income. Benson stated if you are differential between income and whether someone is in recovery or not. Keaton stated that is preferential treatment based off income. Mattei stated if you have a family that had two incomes at the exact same time and one unit left you have one coming out of the drug facility and one mother with a child which one would you rent too? Capobianco stated I would need to look at the circumstances, we don't look at it that way. Mattei stated it's something to look at. Keaton said as a property owner that is what I must look at, I have to look at income and credit. But if it's a HUD apartment I understand the case as well. It should be an equal opportunity if fits that definition. Benson stated I respect your opinion, but the O.C.U let O.C.U people stay there. Keaton stated they are a private club, school, or organizations. Benson stated this is a private entity as well. Keaton said this is a business. Benson stated, I disagree, it does not qualify as a business, this is not a rehab center, and it does sit within your codes, but we disagree.

Sias stated when I read that last paragraph, I read it as the facility is going to be used as rehabilitation for drug or alcohol and used as a home for residential rehabilitation center for alcohol and drug abusers. Stanley stated I read it as a halfway house and the definition providing for persons leaving correctional institutional and residential rehabilitation for alcohol and drug abusers provided that is expressly prohibited on such premises. It needs to be rezoned; it has wrong classification. Keaton stated there is a need in the community for it, but this needs to be done properly. Getreu stated start at Planning and Zoning for that process.

Getreu stated we can close the hearing and or table it and applicants cannot come back after one year and the next course of action is the Court of Common Pleas if we deny this.

Getreu closed the hearing and asked the board will you deliberate public or private. Public.

DELIBERATION

Ford stated I feel like this should be denied because it sounds like a halfway house, it's not an apartment, it's dormitory with one shared kitchen with common areas.

Sias stated there is only one client that can go there.

Keaton stated if they would rezone the facility I have no problem with it, make it special use. Keaton continued, the Zoning Inspector brought up a good point, the non-conforming use, that O.C.U made prior or still had a dormitory style building because schools, churches and organizations have a special exemption than a business has, I have a private business, I must operate under LLC rules.

Ford stated it is a unique piece of property and not a special use.

Getreu asked, would the one-year rule apply that O.C.U has been out of the building? Mattei stated, Yes that would apply, but what would not apply is that they want to rezone it, they can apply for that immediately.

Keaton asked, the non-conforming use permit that time has passed, correct? Mattei stated that is correct.

Getreu asked, do we know if there was a non-conforming use permit for that building. Stanley stated I do not know, that would depend on what time it was purchased and what zoning code in effect at that time, there has been a couple of iterations since that was built, so it is possible it became a non-conforming use, or its ownership considered it to be non-conforming use but that would have to be researched.

Mattei stated you might want to consider when that time did start and if it was being occupied because no one was clear it was un-occupied but be sure of all your facts.

Keaton stated that building has been unoccupied for one year and if there was a non-conforming use at that time it was built.

Getreu asked do we have a definition of what an apartment complex is. Article IX Apartment Complexes definition was read. Stanley was asked if that definition would qualify? Stanley stated that was Victory Terrace would have qualified under current apartment residential.

Getreu asked, but the other option is one or more dwellings per structure. The question is what is a dwelling? Mattei read the definition of the code for Family Dwelling. Getreu stated, so they are not living independently because there is a shared kitchen. Mattei explained one single family definition. Getreu stated under apartment residential district multifamily district it would not fit the family structure because the dwelling does not have separated kitchen facility. So, it's in the wrong district. Mattei stated based on the testimony provided tonight then... Yes. Getreu stated, so, the applicant needs to go to Planning and Zoning to have it rezoned, is that correct? Mattei stated Yes. Getreu stated because its special use apartment residential use district and does not meet any conditional uses.

The board moved out of deliberation.

Ford motioned to approve the appeal. Keaton seconded. Motion carried.

VOICE VOTE: Roll call

Ford - No

Keaton - No

Getreu - No

Keaton - No

Getreu stated the motion is to deny to the application.

Getreu asked if there was any Old or New business to discussed at this time, the consensus of the board not at this time.

Ford motioned to adjourn; Sais seconded. Motion carried.

Respectfully submitted by

Linda M. Chancey, Clerk