

BOARD OF ZONING APPEALS
Meeting Minutes
Wednesday, December 16, 2009

Call to Order

Those members present: Gary Meyer, William Houk, John Barnhart, and Todd Hollenbaugh.

Those members excused: George Prentice.

Staff members present: Lynn Taylor, Kathryn Dale, and Steve McHugh.

Staff members excused: Rob Jacques.

Executive Session

Chairman Hollenbaugh invited a motion for approval of the agenda with the deletion of the Executive Session. Mr. Meyer made motion for approval of the agenda with the deletion of the Executive Session. Mr. Barnhart seconded the motion. All were in favor.

Chairman Hollenbaugh advised for a variance petition to prevail, an Applicant would need to garner three votes from the Board. Mr. Hollenbaugh recused himself from hearing BZA-09-2009 as being an owner of a similar establishment Uptown. Chairman Hollenbaugh noted that Mr. Prentice was absent and asked the Applicants if they wished to continue or table until having a full board.

Mr. Matt Hughes, Applicant of BZA-09-2009 tabled his hearing until the following month. Mr. Don Thomas, representing BZA-10-2009, wished to continue. Mr. Dennis Day, present for BZA-11-2009 wished to continue as well.

Adjudication Hearing

BZA-09-2009 - 16 S. Poplar, Appeal of Administrator's Decision, Matt Hughes, Applicant

Mr. Houk made motion to adjourn to Adjudication Hearing BZA -09-2009. Chairman Hollenbaugh noted that the Applicant, Mr. Matt Hughes, wished to table the case until the next meeting. Mr. Meyer moved to table BZA-09-2009. Mr. Barnhart seconded the motion. All were in favor.

BZA-10-2009 - 15 N. Poplar, Variance from Section 1141.03(e)(4) to allow a principal entrance to the ground floor commercial space to be off of an alley, Del Ogle/Don Thomas Applicant/Agent

Mr. Barnhart made motion to adjourn to Adjudication Hearing BZA-10-2009. Mr. Meyer seconded the motion. All were in favor.

Ms. Dale provided a staff report on this property. Ms. Dale stated the Applicant was proposing to construct an addition to the rear of an existing building with commercial on the first floor and residential above. Ms. Dale noted that the existing commercial and residential space would continue having access from N. Poplar Street and the proposed commercial addition on the ground floor would have its primary entrance off of the alley. Ms. Dale stated that the only portion of the new addition needing a variance was the proposed commercial addition on the ground floor which would allow it to have its primary entrance off of the alley.

Ms. Dale also noted that the additional commercial space would not be accessed from within the

existing commercial space; therefore, the existing ingress/egress would not be the principal entrance with respect to the new commercial space. Ms. Dale noted that the completed building would have two places of ingress/egress equally used by the public.

Mr. Meyer inquired about the design having two separate commercial spaces on the ground floor, and no connectivity. Ms. Dale referred the Board to ask the Applicant.

Mr. Don Thomas, Agent, was sworn in. Mr. Thomas explained that the primary entrances to the current space (currently being two doors at N. Poplar, one for commercial and one for upstairs residential) would be retained. Also noted by Mr. Thomas, the second apartment upstairs had only access from steel stairs on the back of the building. For renovations, the existing apartments would need remodeled in order to add apartments. Mr. Thomas, in referring to Mr. Meyers question regarding first floor connectivity, stated the variance would allow the owner options when marketing the commercial space to tenants. Mr. Thomas continued with his description noting that there would be three entrances on the alley, and that the new addition wouldn't have a basement (unlike the existing portion).

Mr. Houk referenced the trash slab at the back of the building. Mr. Houk inquired about the alley entrances. Mr. Thomas noted the alley entrances were set back. Mr. Barnhart referred to the south facing entrance, and if it was a commercial space entrance. Mr. Thomas stated it could be; and added they could all be connected, as it could depend on the tenant. Mr. Barnhart inquired how many residential units. Mr. Thomas stated there would be a total of five units. Mr. Barnhart inquired about the alley door entrance setbacks. Mr. Thomas stated they were three foot setbacks. Mr. Houk expressed his concern of residents exiting the alley doors directly into the alley and the potential of getting hit. Discussion continued regarding the safety of a side/basement entry door that opened into the alley and the relocation of the basement staircase. Ms. Dale explained that this may be a building code issue and would likely be addressed during the permit review, but not part of this request.

Mr. Thomas noted the stairwell to the existing basement was an interior stairwell.

Concern was repeated regarding the door swinging open into the alley and the worry about safety of people in the alley.

Mr. Hollenbaugh recused himself at this time as he owns a business in an alley.

Mr. McHugh referred to the number of issues arising from the discussion of the alley ingress/egress.

Mr. Hollenbaugh suggested tabling BZA-10-2009 until a more clearer design could be presented. Mr. Thomas was agreeable. Mr. Houk moved to postpone BZA-10-2009 until the Applicant returned with revised plans that would allow for some visibility clearance. Mr. Barnhart seconded the motion. All were in favor.

BZA-11-2009 - 110 S. Locust Street, Variance from Section 1149.05(a)1, parking encroachment into front yard setback, Section 1149.03(b), allow off-site parking, 1149.03(a), all parking shall be a paved surface. Dennis Day, Applicant

Mr. Barnhart made motion to adjourn to Adjudication Hearing BZA-11-2009. Mr. Meyer seconded the motion. All were in favor.

Ms. Dale provided a staff report to the Board. Ms. Dale stated the Applicant was proposing to install an 18'x60' gravel parking lot extension in the front yard setback at 114 S. Locust Street for the employees at 110 S. Locust Street. Ms. Dale noted that part of the gravel parking area was grandfathered, but the Applicant had expanded this area, which caused the variance and necessity for a permit. Ms. Dale stated the graveled area had been increased to 18 feet and encroached 7 feet into the required 30 foot front yard setback. The code also requires all parking areas be hard surfaced. Ms. Dale referred to the off-site parking variance request and stated that there was no record this was ever procedurally approved on this site and that Staff recommended the Applicant include this variance as part of their application. Ms. Dale summed up the Applicant's request for approval of three variances.

Mr. Meyer inquired if the Engineering Department would make sure the area is installed to Engineering specifications (i.e., draining requirements). Ms. Dale stated the permit wouldn't be released until Engineering approved. Ms. Dale referred to landscaping requirements and that the permit wouldn't be released until the landscaping was completed.

Mr. Don Thomas, Agent for the Applicant, noted he was willing to answer any questions. Mr. Thomas referred to the existing drain and Engineering specs; regarding the landscaping, Mr. Thomas stated bushes would be installed in the front only as they didn't want to impede site lines. Mr. Thomas stated the Applicant was willing to blacktop.

Mr. Houk referred to unusable parking spaces. Mr. Barnhart inquired about the number of additional parking spaces. M. Dennis Day, Applicant, was sworn in by Mr. Hollenbauh. Mr. Day stated he could rearrange parking striping.

Mr. Barnhart inquired about the existing signage designating parking spaces. Mr. Day noted that vehicles in the designated parking spaces have permits.

Mr. Meyer made motion to adjourn to Regular Meeting BZA-11-2009. Mr. Barnhart seconded the motion. All were in favor.

The BZA suggested to the Applicant to withdraw 1149.03(a) all parking shall be a paved surface as he agreed to pave this area. Mr. Day agreed to withdrawing variance 1149.03(a).

The BZA deliberated and made the following findings of fact regarding the off-site parking and encroachment variance requests:

1. Both properties would yield a reasonable return and could be beneficially used without the variances because there are already existing businesses/ tenants with parking available to them.

2. The variances are not substantial because the request is equal to or setback further than neighboring businesses.
3. The character of the neighborhood would not be substantially altered; the adjoining properties would not suffer substantial detriment as a result of the variances being granted because the properties in question are located in a business district with similar parking encroachments.
4. The variance would not adversely affect the delivery of governmental services because the complex is well established, there were no noted modifications necessary to the existing utilities, drainage system or ingress/egress and furthermore there was no response from any City department reviews indicating that this proposed parking lot expansion would negatively affect any governmental services.
5. The property owner was not aware of the zoning restrictions when the property was purchased because the existing parking and gravel parking area were established and grandfathered.
6. The Applicant's predicament cannot be obviated through some other method other than a variance regarding the off-site parking because there is no other available space on-site to provide for additional parking and the parking spaces on the neighboring lot are reserved for the four existing commercial tenants, necessitating an expansion.
7. The spirit and intent behind the zoning requirements would be observed and substantial justice would be done by granting the variances.

William Houk moved to approve BZA-11-2009 - 110 S. Locust Street, based on showing sufficient to warrant granting the variances requested. . Gary Meyer seconded. The motion passed with the following roll call:

AYE: Gary Meyer, William Houk, John Barnhart, Todd Hollenbaugh (4)
NAY: None (0)
ABS: None (0)

Gary Meyer moved to approve BZA-11-2009, Variance 1149.05(a)(1) parking on the basis of the motion previously adopted based on the same findings. . John Barnhart seconded. The motion passed with the following roll call:

AYE: Gary Meyer, William Houk, John Barnhart, Todd Hollenbaugh (4)
NAY: None (0)
ABS: None (0)

[Approval of Minutes of the August 19, 2009 and September 16, 2009 Regular Meetings](#)

Mr. Barnhart moved to approve the minutes of the August 19, 2009 meeting as written. Mr. Meyer seconded the motion. All were in favor.

Mr. Meyer moved to approve the September 16, 2009 minutes as written. Mr. Barnhart seconded the motion. All were in favor.

Old Business

Mr. Meyer inquired about the current Wal-Mart property and the cutting down of trees in the parking lot. Ms. Dale responded noting that the Service Department had been made aware and that discussions have taken place.

New Business

Ms. Dale announced an HAPC workshop scheduled for January 14, 2010 for those interested in nominating for the Historic Marker Program. The workshop will take place at the Smith Historic Library. Reservations are appreciated. Ms. Dale provided an explanation of the workshop noting that applications for the award would be due March 1.

Adjournment

Mr. Barnhart moved to adjourn the meeting. Mr. Meyer seconded the motion. All were in favor. The meeting adjourned at 8:50 p.m.