

BOARD OF ZONING APPEALS

Meeting Minutes

Wednesday, March 19, 2014

Call to Order

Mr. Brady called the BZA meeting to order at 7:00 p.m.

Those members present: Gary Meyer, Prue Dana, John Barnhart, Paul Brady, Mike Schnipper

Those members excused: None.

Staff members present: Sam Perry, Jung-Han Chen and Amy Blankenship.

Staff members excused: None.

Adjudication Hearings

BZA-2014-01 130 E High Street variances of Overall Lot Coverage, 1143.09(c)(4)B.1, enclosed building coverage, 1143.09(c)(4)B.2, front yard depth, 1143.09(c)(2)A, fence height, 1141.01(c)(4)A.1, reduction in occupancy, 1137.04(b)(5) and parking spaces, 1149.03(e)(5), George Simonds, Applicant, Agent

Mr. Barnhart made motion to enter into Public Hearing, BZ-2014-01. Ms. Dana seconded the motion. All were in favor. Mr. Meyer recused himself from discussion.

Mr. Perry briefly summarized that the property, MU Upsilon House Corporation, Phi Gamma Delta Fraternity, also known as FIJI house, 130 E. High Street, suffered significant fire damage in May, 2013. Through their rebuilding process, the owners wish to rebuild the fraternity house with a slightly larger footprint to house the same number of occupants. Mr. Perry continued that the Applicant is allowed to continue with their legal nonconforming use since it existed prior to the zoning code adoption which prohibited this use. Mr. Perry noted that the Historic and Architectural Preservation Commission has also been greatly involved and granted a Certificate of Appropriateness based upon the proposed repairs, materials and construction addition plans, including the proposed fence. Mr. Perry stated that the Applicant has not yet submitted a building permit as they were waiting the outcome of BZA's decision; but are getting close to the one year rebuild deadline. Mr. Perry stated that even though the City zoning code allows for reconstruction and re-use of a fire-damaged nonconforming use property (within one year) it only allows it to be rebuilt to the original footprint and use as it was before the fire. Therefore, since the Applicant wishes to increase the footprint they are required that the plans comply with all of the underlying zoning district regulations. Mr. Perry also noted that with the proposed change, they would also be required to reduce the permitted occupancy. Mr. Perry pointed out that the site plan showed a building footprint similar to the current footprint, except for the extended west "wing". Mr. Perry referenced the drawings included in the agenda. Mr. Perry provided a PowerPoint presentation reviewing the west extension.

Mr. Perry provided an overview of each submitted variance request (six of them), in addition to one variance that was discovered during Staff analysis. The seventh variance has to do with the RO District front yard coverage. Mr. Perry continued that upon review, the RO District limited the front yard setback area coverage to 5% for lots with alley access; the front yard coverage is 25%. Further discussion continued: Overall Lot Coverage - maximum RO District coverage with alley access is 40%; the Applicant is requesting nearly 66%. Regarding building coverage, the maximum building coverage for an RO zoned lot is 25%; the submitted site plan shows current building coverage at 30.46% with the proposed addition being 38.85%. Mr. Perry noted that the proposed 1,405 square foot increase was due to the expanded west "wing". Front Yard Depth - the required minimum front yard setback for the RO District is 20 feet, and that being a corner lot, this would apply to both front yard depths. Mr. Perry referred to the submitted surveyor site plan and noted that the rounded existing front porch facing High Street encroached into the required front yard the full 20 feet. The front yard depth along Campus Avenue was in compliance and would remain compliant after reconstruction. Mr. Perry noted that the Applicant was not planning to remove the front porch facing High Street. Front Yard Fence Height - the supplemental section of the zoning code limits fence height in front yards to four feet. Mr. Perry stated that the current

post and chain boundary-style fence was three feet tall. The proposed wrought iron-style fence is 4-1/2 feet tall with 5-1/2 feet tall brick piers, thus making it 1-1/2 feet higher than the allowed height. Reduction in Occupancy - Mr. Perry referred to the section of the Code, 1137.08, which allows for reconstruction and re-use of a fire damaged building; however, 1137.04(a)(5) states that it requires that an addition categorizes the building as a reconfiguration, meaning that a reconfiguration of a nonconforming residential structure would require a 30% reduction in occupancy. Mr. Perry stated that the existing building is permitted for 50 occupants; a 30% reduction would reduce the occupancy to 35; the Applicant wishes to maintain the 50 person occupancy with the reconstruction. Parking Spaces - the zoning code requires two spaces for every five beds of permitted occupants. Mr. Perry continued that there were currently ten parking spaces and some were short of meeting dimensional standards; however, based upon the proposed occupancy of 50, 20 parking spaces would be required. Mr. Perry stated that the Applicant was asking for a variance to provide 10 full-sized parking spaces.

Mr. Perry noted that no public comments were received from surrounding property owners.

Mr. Perry referenced the Decision Standards and noted that there were seven variances and seven decision criteria for discussion, and reminded the BZA that the west addition triggered most of these variances. Mr. Perry stated that the BZA would need to determine if the variances meet the reasonable return criteria.

Mr. Perry also noted that the western addition would fill in some of the existing green space.

Mr. Brady noted that this was a key location, the urban core of Oxford, a gateway onto the University Campus and the City and needs done appropriately. Mr. Brady referred to the HAPC having reviewed this property finding the Applicant's request appropriate, and that HAPCs decision should weigh heavily in BZA's discussion and a factor to consider.

Mr. Perry stressed to the BZA that as part of their deliberation they should determine if the expansion is essential and can be addressed by Decision Criteria review.

Mr. Perry noted that the Applicant has not submitted full construction plans, so no City department detailed reviews have taken place.

Mr. Perry also referred to trash management now being an important component during reviews by City Staff and that they would be addressing this issue. Mr. Brady inquired about trash management and Mr. Perry responded stating that Staff didn't have anything in writing but discussions have been taking place among City Departments and the Applicant.

Mr. Scott Webb was sworn in by Mr. Brady.

Mr. Webb noted that this was not his architectural design, but that he was asked to fill in for Mr. Gerry Bird, the architect, at this meeting. However, it turned out that Mr. Bird was able to attend and was in the audience. Mr. Webb, provided a summary introduction of the variance application.

Mr. Webb provided a PowerPoint presentation and discussed the spirit and intent of the RO District. Mr. Webb described the surrounding properties and the nice transition of this building between the other surrounding fraternities and the Uptown District.

Mr. Webb reviewed the variances requested: the west addition would not be moved closer to the street. Mr. Webb referred to the fence height that HAPC agreed upon and that the six foot height would be more in scale with the structure. Mr. Webb stated that the Applicant wished to maintain the current occupancy. Mr. Webb shared that the parking spaces would become more organized, code compliant and safer.

Mr. Jay Bennett, legal counsel for MU Upsilon House Corporation, was sworn in. Mr. Bennett stated that the rebuild

would present virtually no impact on surrounding properties and was more of a restoration. Mr. Bennett noted that the only substantial change was the west wing. Mr. Bennett referred to Mr. Perry having suggested there be an explanation of the change and the relevance of it.

Mr. Gerry Bird, Architect for the project, was sworn in by Mr. Brady. Mr. Bird referred to the 50 person occupancy request being a largely economic decision to support the house. Mr. Bird noted that the north wing would be using the same footprint. Mr. Bird pointed out that there were some things that had to be done in order to make the structure compliant with the building code, which included becoming ADA compliant. Mr. Bird discussed the current layout and its inability to support that compliance. Mr. Bird stressed it important to contribute marketable units; as they do not want to build to 60 year old standards. Mr. Bird stated this was the reason for the needed larger footprint. Mr. Bird referred to the fence, stating it was not required, but felt it to be a positive addition, and the height request made it to scale with the structure.

Mr. Brady inquired what the practical difficulty was with the fence. Mr. Bird responded stating that the 4-1/2 foot height would be totally appropriate in a residential area, but for the scale, six feet would be the best match. Mr. Bird concluded that they didn't need to build the fence but added it for aesthetics. Mr. Bird referred to the HAPC having agreed to the fence and the height.

Mr. Schnipper inquired about the occupancy at the time of the fire. Mr. Bird responded that occupancy was in the upper 30's to 40, not at maximum capacity. Mr. Schnipper inquired about beds per floor. Discussion followed. Mr. Bird stated there were 46 total beds. Mr. Schnipper inquired about bedroom sizes on the second and third floors. Discussion followed from Mr. Bird that the east side room sizes ran 12' x 13.5', and the north and south bedrooms approximately the same. The west side bedrooms on the second floor measure 10.6' x 12'; the west wing bedrooms will be single occupancies. Mr. Schnipper referred to current rental bedroom size requirements and if all these bedrooms met the requirement. Mr. Bird stated he didn't think it would be a problem. Mr. Brady inquired if there was enough room for occupancy of 50 people. Discussion followed. Mr. Brady noted that the BZA were trying to determine if the Applicant has thought far enough down the road to house 50 persons. Mr. Bird stated they were fine to house around 48 if necessary. Mr. Bird stated they felt confident in meeting the square footage requirement and were agreeable to an approved 47 or 48 person occupancy.

Ms. Dana and Mr. Brady both agreed that keeping the front portion of the structure was a difficulty.

Ms. Dana inquired about the historic preservation aspect and if the front portion being kept would be fire separated. Mr. Bird stated that yes the front portion of the structure would be fire separated from the rear portion. Mr. Bird described the materials being used for the fire separation.

Mr. Bennett referred to the Decision Standards and provided his perspective on each.

Mr. John DuBois, DuBois Bookstore, 118 E. High Street, was sworn in. Mr. DuBois inquired about the fence and which part measured 6 feet. Mr. Bird stated that the posts were 56 inches and the fencing 42 inches. Ms. Dana inquired if the fence would be located right up against the sidewalk. Mr. Bird stated there would be a small setback from the sidewalk. Mr. DuBois expressed his concern about the 7-1/2 feet between the two buildings and his desire to assure his tenants were provided a good environment.

Ms. Dana made motion to reconvene to regular meeting. Mr. Barnhart seconded the motion. All were in favor.

Mr. Perry reminded the BZA that the variance regarding front yard setback coverage would need to be added to the six other Decision Standard reviews.

The BZA began their review of each variance.

Discussion:

Overall Lot Coverage. The BZA agreed this was not much of an issue. It was noted that the Applicant was restoring the front of the structure, which is a hardship and everything done is affected by the keeping of the front of the structure.

Mr. Schnipper made motion to approve the proposed overall lot coverage based upon Decision Standard B, that the variance was not substantial. Ms. Dana seconded the motion. The motion passed 4-0-0.

Building Coverage. The BZA agreed that the increase in building coverage would not affect the essential character of the neighborhood, but would enhance the neighborhood.

Ms. Dana made motion to approve the proposed building coverage based upon Decision Standard C, that the essential character of the neighborhood would not be substantially altered or suffer a detriment. Mr. Schnipper seconded the motion. The motion passed 4-0-0

Front Yard Depth. The BZA agreed there were no other options as the front of the structure would remain and the structure could not be moved.

Mr. Barnhart made motion to approve the front yard depth. Mr. Schnipper seconded the motion. The motion passed 4-0-0.

Fence Height. Most of the BZA agreed that the proposed fence height was not substantial and that it fit in with the character of surrounding properties. It was noted that the HAPC reviewed and approved the fence design and height. Mr. Brady did not feel practical difficulty was found to warrant the variance request.

Ms. Dana made motion to approve the proposed fence height variance request based upon Decision Standard B, that the variance was not substantial. Mr. Barnhart seconded the motion. The motion passed 3-1 (Brady)-0.

The fence posts would be 4'8" and the fence would be 3'6", not 5'6" or 6' tall as discussed previously.

Reduction in Occupancy. No practical difficulty was found since occupancy would remain the same at 50. Mr. Schnipper did not feel practical difficulty was found to warrant the keeping of the occupancy at 50.

Ms. Dana made motion to approve keeping the occupancy the same, at 50 persons. Mr. Barnhart seconded the motion. The motion passed 3-1 (Schnipper)-0.

Parking Spaces. All agreed that the proposed number of parking spaces was not a substantial variance of the required 20 spaces. During the hearing it was noted that the ten parking spaces would all meet dimensional requirements, whereas currently not all parking spaces are the correct dimensions.

Mr. Schnipper made motion to approve the proposed ten parking spaces based upon Decision Standard B that the variance is not substantial. The motion passed 4-0-0.

Front Yard Coverage. The BZA agreed this variance was a practical difficulty, as the structure would not be moved since the front portion of the structure was being restored.

Ms. Dana made motion to approve the front yard coverage. Mr. Schnipper seconded the motion. The motion passed 4-0-0.

BZA-2014-02 201 E Chestnut, Chestnut Place, variance to Section 1151.05(e)(2) building identification signs; Scott Webb, Applicant, Agent

Mr. Meyer made motion to enter into Public Hearing, BZA-2014-02. Mr. Barnhart seconded the motion. All were in favor.

Mr. Perry described the variance request. Mr. Perry referred to an earlier BZA hearing (BZA-08-2012) at the same location for 9 variances. Mr. Perry stated that the Applicant wished to receive approval to allow for a building wall sign for an apartment complex located at 201 E. Chestnut Street. Mr. Perry stated that zoning considered it a building identification sign. Mr. Perry stated that the sign request was for an 18 square feet sign area. Mr. Perry noted that the Applicant listed the sign as having 11.25 square feet sign area, but that the sign measurements based upon Section 1151.07(a) was incorrect and that the sign actually measured 18 square feet. Therefore, the difference between the allowable area and the requested area was 12 square feet. Mr. Perry described the location for the proposed sign that it would face north toward the South Campus Avenue roadway. Mr. Perry noted that the zoning code does not include any other provisions for multi-family building signage except for a building identification sign. Mr. Perry noted that this was the only wall sign proposed for this property. Mr. Perry noted that this property was highly visible and the sign would be highly visible.

Mr. Perry referred to other options the Applicant had, including temporary signage that would not require a variance.

Mr. Perry noted that with the size of structure that this variance would not be substantial; the structure is larger than residential-allowed signs but would be in scale with this structure. Mr. Perry stated the wall sign would be in character with its surroundings and its aesthetics; however it was important to keep the sign size to a minimal square footage to maintain the surrounding character. Therefore, the BZA would need to deliberate if this sign was appropriate or not.

Mr. Perry stated that Staff did not receive any comments from the neighboring property owners.

Mr. Perry provided a site history.

Mr. Perry noted that it was up to the Applicant to present reliable and substantial evidence why the variance was needed.

Mr. Perry reviewed the Decision Standards. Mr. Perry noted that the Applicant did have four other options for signage, both temporary and permanent. Mr. Perry outlined the four options: that, window signage was allowed up to 50% of the window opening; that, one six square foot temporary real estate sign was permitted or a more substantial changeable copy realtor type sign; that, one wall mounted (six square foot) building identification sign was permitted; and that one, 24 square foot freestanding sign, with a maximum of six feet in height was allowed.

Mr. Perry noted that Staff, based upon having other options, felt that the property could yield a reasonable return without the variance.

Mr. Perry referred to the sign variance, being a 200% increase in sign area, was not substantial in context with the scale of the overall building complex; the BZA may find this not substantial; however, the sign would not be mounted on a typical building wall, but on an entrance walkway feature attached to the building walls.

In regards to the essential character of the neighborhood, Mr. Perry noted that the sign may be seen as out of scale with other "house signs" on buildings in the area but not in scale with the building complex upon which it would be mounted; which the BZA may find that the variance would not negatively alter the essential character of the neighborhood.

Mr. Perry referred to the other options given and that they would not require a variance, but that he understood that the

sign location request would be more desirable. Mr. Perry then referred to the Applicant's alternate wall sign location, being a freestanding sign. Mr. Perry added that should the Planning Commission and City Council see a need that additional wall sign area language for multi-family residential buildings was necessary, that a text amendment to the zoning code could be appropriate.

Mr. Brady swore in Mr. Webb, Applicant. Mr. Webb stated that the previous owner had a ground sign. Mr. Webb described the ground signs he could put up. Mr. Webb described the sign request not including any phone numbers or any other leasing information, only the name. Mr. Webb referred to there being four buildings on the property. Mr. Webb concluded that all he was asking for was to put the name of the project in a classy way. Mr. Webb stated he felt the design was a better solution.

Mr. Brady inquired about directional signs. Mr. Webb stated that directional signs were different; there would be small building identification signs on the property, but nothing off Arrowhead Drive. There would be no lighting on the arch only surface-mounted lettering.

Mr. Perry agreed that there would be no lighting on the sign, only natural illumination.

Gary Meyer moved to approve BZA-2014-02 201 E Chestnut, Chestnut Place, variance to Section 1151.05(e)(2) building identification signs. John Barnhart seconded. The motion passed with the following roll call:

AYE: Gary Meyer, Prue Dana, John Barnhart, Paul Brady, Michael Schnipper (5)

NAY: None (0)

ABS: None (0)

Approval of Minutes of the January 15, 2014 Regular Meeting

Ms. Dana made motion to approve the minutes as written. Mr. Barnhart seconded the motion. The minutes were approved 4-0-1 abstain (Gary Meyer). All were in favor.

Old Business

Revised Rules of Procedure

Mr. Brady referred to the receipt of Mr. Stewart Meck's letter regarding Persons with Standing.

Mr. Brady inquired legal counsel if changes to the Board of Zoning Appeals' Rules of Procedure in considering how to deal with requests for hearing postponement, and an acceptable length of time for Applicant presentation.

Discussion followed. The BZA voted to approve Staff's recommendations to revise the Rules of Procedure.

Mr. Schnipper made motion to approve changes to the Rules of Procedure in regards to hearing postponement deadlines and Applicant presentation times. Mr. Meyer seconded the motion. The motion passed 5-0-0.

New Business

Mr. Brady referred to BZA training scheduled for April 10, 2014 in Hamilton.

Adjournment

Mr. Barnhart made motion to adjourn the meeting. Ms. Dana seconded the motion. All were in favor. The meeting was adjourned at 8:30 p.m.