

BOARD OF ZONING APPEALS
Meeting Minutes
Wednesday, March 20, 2013

Call to Order

Those members present: Paul Brady, Prue Dana, John Barnhart, and Gary Meyer.

Those members excused: Todd Hollenbaugh.

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

Staff members excused: None.

Approval of Minutes of the January 16, 2013 Regular Meeting

Ms. Dana made motion to approve the January 16, 2013 minutes as written. Mr. Barnhart seconded the motion. All were in favor.

Adjudication Hearing(s)

BZA-03-2013 304 Bishop Street, variances to Section 1143.05 R2MS Single- and Two-Family Mile Square Residential District, specifically 1143.05 (c) Site Development Regulations related to lot coverage; lot area; lot width; front setback, side setback, rear setback; and variance to Section 1149 Vehicle Management specifically 1149.03 parking regulation related to number and location of parking spaces for a two-family dwelling, Scott Webb, Architect, Applicant, Agent

Mr. Perry provided an overview of this case. Mr. Perry stated the applicant was applying for seven variances. Mr. Perry stated that the property currently was permitted for 12 occupants and was considered a lodging house by the City; a single dwelling unit for 12 persons. The Applicant's plans are to keep the existing shell and convert the property into a two-family dwelling, 4 persons per dwelling, for a total of 8 persons. Mr. Perry provided a summary of the variances requested by the applicant: lot coverage, lot area, lot width, front, rear and side yard setbacks, and parking spaces.

Mr. Perry stated that the applicant had originally applied for a building permit, but was refused because of the variances found during the plan review. Mr. Perry stated the property was a nonconforming structure/nonconforming use. Mr. Perry referred to a zoning text amendment for nonconforming uses having recently passed the Second Reading by City Council, which would have resolved the six site development regulations (but not the parking regulations); however, they will not go into effect until the 30 day period has passed. Mr. Perry reminded the BZA that due to the 30-day wait period, for this hearing they would need to base their decision on the current code.

Mr. Perry referred to an aerial photograph of the property describing the property and the surrounding properties.

Mr. Perry stated that current parking was located in the rear and accessed through an adjacent property. Mr. Perry continued saying that the adjacent property owner was not willing to grant a formal access easement; therefore, the Applicant is requesting relief from the requirement and

provide no on-site parking. Mr. Perry stated that the parking issue was much more complex, most importantly because of the access to the rear parking. Mr. Perry stated that this parking situation has existed for many years.

Mr. Perry described the existing property and the variance requests: existing lot coverage is 55%, required is 35%, no change-this is what it already is; existing lot area is 4,424 square feet, required is 7,500 square feet, as the lot is undersized; existing lot width 56 feet, 75 feet required; front yard setback is noncompliant, just under 7 feet from property line, versus required 20 feet; side yard does not meet requirements as well, 6.9 feet and 3.9 feet is existing, 7.5 feet is required; existing rear setback is 30.1 feet and the requirement is 35 feet. The parking requirement is two spaces per unit for a total of four. Mr. Perry stated that Staff received two public comments; one from 316 E. Vine; and a phone call from the Theta Chi Fraternity at 310 Bishop.

Mr. Scott Webb, Applicant/Agent was sworn in by Mr. Brady. Mr. Webb provided a PowerPoint presentation. Mr. Webb described the current condition of the property, which is severely in need of repair. Mr. Webb stated that the property owner contemplated tearing the structure down, but would like to restore the property. Mr. Webb stated that the building included nine bedrooms and two bathrooms. Mr. Webb stated the property was in serious need of structural work. Mr. Webb stated that the renovation would cause the loss of four occupants in this remodel. Mr. Webb stated that the proposed design was to try and actually bring it back into what would be seen in the Mile Square. Mr. Webb described the exterior renovations.

Mr. Webb reviewed the variance requests. Mr. Webb stated they would be removing the fire escape off the back of the property. Mr. Webb added that he can't make the lot any bigger or the building smaller; however, when comparing neighboring properties most sit significantly closer to the road and the side yard setbacks are similar as well. Mr. Webb stated that in regards to parking, it has been going on forever with back yard parking without legal access. Mr. Webb stated he understood Staff asking for a secure shared access easement; however, the neighbor was not willing to tie property up for an easement for their neighbor.

Mr. Webb noted that the first six variances would not be an issue since the new zoning code will be going into effect in 30 days.

Mr. Webb explained why the applicant chose to not wait another 30 days: the BZA has a long notice requirement, the text amendment wouldn't be in effect for 30 days, the property owner couldn't even apply for 60 days and would require the property owner to take the project off line and postpone it for another year.

Mr. Meyer inquired about the location of the alley. Mr. Webb stated the alley was located on the west side. Mr. Webb noted that the property behind the subject property was currently vacant, his client offered to purchase, but was told it was not up for sale (320 E. Vine).

Mr. Dave Judy, 4164 Miami Western Drive, property management for Theta Chi, located at 310 Bishop, was sworn in by Mr. Brady. Mr. Judy stated he was actually approached by a realty agency inquiring about the easement, and he stated they weren't interested. Mr. Judy stated that

the property in question was very dilapidated. Mr. Judy expressed his concern of removing the parking requirement since parking is limited on the street already. Mr. Judy stated he was hopeful that a parking agreement could be reached.

Ms. Dana made motion to close Public Hearing for BZA-03-2013. Mr. Barnhart seconded the motion. All were in favor.

Mr. Barnhart inquired about City Council's recent actions. Mr. McHugh stated that City Council did adopt new standards affecting everything but the parking variance request and that if the zoning code would have been affect today, six of the variances would not have been an issue. Mr. McHugh referred to the current parking situation having been a longstanding issue. Mr. McHugh noted that the property, should these variances be approved, would become an allowed use within the Zoning District.

The BZA discussed the scenario of tearing down the structure and rebuilding. The BZA inquired Mr. Webb to discuss if he and the client discussed. Mr. Webb stated that yes they had discussed all of their options.

Ms. Dana felt this to be a difficult decision as she would like to have seen negotiating with surrounding properties in regards to the parking. However, the matter before the Board is to remove the parking requirement. Ms. Dana outlined various options students would have for parking.

Mr. Barnhart noted that the BZA and the neighborhood wanted a better building; they are reducing the occupancy, they are putting up a better building; doesn't see any public harm; the parking situation has been there, and it is what it is; there are no negatives in improving the building; the first six variances are one in the same; the only difference is the parking issue.

Discussion followed on how to carry the voting. Many felt that six of the variances could be lumped together when reviewing the Decision Standards.

The BZA agreed the structure would become a conforming use; will exist where it currently is; that the alternative is what currently exists, with the same parking issue.

The Decision Standards were reviewed.

In reference to: Lot Coverage--1143.05(c)(4)(A)(1), Lot Area—1143.05(c)(1)(A), Lot Width—1143.05(c)(1)(B), Front Yard Setback—1143.05(c)(2)(A), Side Yard Setback—1143.05(c)(2)(C), Rear Yard Setback—1143.05(c)(2)(B):

a) The property in question will yield reasonable return and can be of beneficial use without the variance. (In no way increasing anything nor removing the basketball court).

b) The variance is not substantial

c) The essential character of the neighborhood would not be substantially altered and adjoining properties would not suffer a substantial detriment as a result of the variance. (Will be reducing the occupancy).

d) The variance would not adversely affect the delivery of governmental services (i.e., water, sewer, garbage);

e) The property owner did not purchase the property with knowledge of the zoning restriction. (Property owner has owned the property for 30 years. Mr. McHugh noted that the property owner, having owned it for so many years, the zoning has changed several times since).

f) The property owners' predicament feasibly cannot be obviated through some method other than variance;

g) The spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance;

h) No other factors

Mr. Meyer moved to approve BZA-03-2013 304 Bishop Street, Variance to Sections 1143.05(c)(4)(A)(1), 1143.05(c)(1)(A), 1143.05(c)(1)(B), 1143.05(c)(2)(A), 1143.05(c)(2)(C), 1143.05(c)(2)(B). Ms. Dana seconded the motion. The motion passed with the following roll call:

AYE: Paul Brady, Prue Dana, John Barnhart, Gary Meyer (4)

NAY: None (0)

ABS: None (0)

In reference to: Parking Spaces 1149.03(e)

a) The property in question will/will not yield reasonable return and can/cannot be of beneficial use to the property without the variance. Not applicable.

b) The variance is not substantial. (Existing situation as is now)

c) The essential character of the neighborhood would not be substantially altered or whether adjoining properties would not suffer a substantial detriment as a result of the variance.

d) The variance would not adversely affect the delivery of governmental services (i.e., water, sewer, garbage).

e) The property owner did not purchase the property with knowledge of the zoning restriction. (No restrictions at time of purchase)

f) The property owners' predicament feasibly cannot be obviated through some method other than a variance. (There is no other method)

g) The spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

h) No other factors

Mr. Barnhart moved to approve BZA-03-2013 304 Bishop Street, Variance to Section 1149.03(e) granting a zero parking requirement. Mr. Meyer seconded the motion. The motion passed with the following roll call:

AYE: Paul Brady, Prue Dana, John Barnhart, Gary Meyer (4)

NAY: None (0)

ABS: None (0)

Old Business

Mr. Perry announced that the BZA agendas would be available for pickup in the Police Station beginning at the April BZA meeting. The agendas had been mailed out to the members' homes. Mr. Meyer inquired about pending litigation. Mr. McHugh stated there were no updates.

New Business

There was none.

Adjournment

Ms. Dana made motion to adjourn the meeting. Mr. Meyer seconded the motion. The meeting was adjourned at 8:35 p.m.