

OXFORD BOARD OF ZONING APPEALS

Wednesday, May 21, 2008
Meeting Minutes

The May 21, 2008 meeting of the Oxford Board of Zoning Appeals was called to order at 7:31 p.m. by Todd Hollenbaugh, Chair. Also present were Gary Meyer, Vice Chair; George Prentice; William Houk; Kathryn Dale, City Planner; and Scott Liberman, Legal Counsel.

Mr. John Barnhart was excused.

Ms. Dale called the roll.

Chairman Hollenbaugh invited a motion for approval of the agenda with the deletion of the Executive Session.

Mr. Meyer moved approval of the agenda, excluding the Executive Session. Mr. Houk seconded. The motion passed 4-0-0.

Chairman Hollenbaugh announced the Board of Zoning Appeals consists of five members. Chairman Hollenbaugh advised for a variance petition to prevail, an applicant would have to garner three votes of the board. Chairman Hollenbaugh noted the absence of one board member and offered applicants the opportunity to table their respective cases.

PUBLIC HEARING

BZA 03-2008 5041 College Corner Pike, Car Quest, requesting a variance to Chapter 1151 Signs, Section 1151.05(a)(3)C.1.b for a freestanding sign, **Patrick Reist, Agent, Applicant**

Mr. Meyer moved to enter into public hearing BZA 03-2008. Mr. Houk seconded. The motion passed 4-0-0.

Ms. Dale noted the location of the property is 5041 College Corner Pike, also known as Car Quest. Ms. Dale advised the applicant is requesting that a nonconforming sign that was compensated for during the 27 North improvement project which had to be relocated out of the right-of-way at which time it lost its nonconforming status and must conform with current sign regulations. Ms. Dale explained the applicant would like to utilize the existing sign case and panels, locating them out of the right-of-way. Ms. Dale noted the site plan submitted by the applicant was not clear. Ms. Dale referred to page 14 of the agenda, and noted the drawings from the ODOT improvements. Ms. Dale stated there is a slight slope from the street downward towards the building. Ms. Dale noted in order to accommodate for that slope, the applicant is making the sign approximately eight feet in height from the finished grade. Ms. Dale advised sign height is defined as distance

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between any part of the sign face area and the natural finished grade directly below the sign face area. Ms. Dale noted public comments were not received. Ms. Dale stated agency comments forms were returned with no comment. Ms. Dale noted the sign shall not be any closer than the height of the sign from the public right-of-way, and the applicant has indicated they would locate the sign approximately six feet behind the sidewalk. Ms. Dale noted that does not clear the location of the new public right-of-way. Ms. Dale referred to page four of the agenda, and noted when permits are applied for, they would have to show the current setback requirement unless the applicant would prefer to table the application and add that as a variance. Ms. Dale explained the setback would measure from the back of the sidewalk to where the edge of the sign would be, and it would have to be 16 feet of distance to meet the requirements.

Chairman Hollenbaugh asked if the sign would be an impediment to traffic.

Ms. Dale stated there would be more than 20 feet of visual clearance.

Ms. Dale noted in reference to the particular variance requested regarding the height of the sign, staff felt all the decision standards have been met. Ms. Dale stated should the Board recommend approval, staff would recommend the following conditions:

1. That the proposed work comply in all other respects with the applicable codes, ordinances, and City of Oxford Zoning Code, including the required setback.
2. That the proposed work be constructed as approved with this appeal and that no changes or modifications be made without the consent of this Board.

Mr. Houk asked Ms. Dale to verify the height of the sign.

Mr. Patrick Reist, Agent and Applicant, having been first duly sworn, explained the owner is attempting to meet the six-foot requirement by adjusting the grade level of the sign to meet that of the street. Mr. Reist stated there have been discussions regarding placing the sign closer to the building; however that is below street grade and part of the building would obstruct the sign from public view.

Chairman Hollenbaugh reminded Mr. Reist he wasn't applying for sign placement, just height variation. Chairman Hollenbaugh noted the sign would have to be placed 16 feet back from the right-of-way.

Mr. Reist noted his understanding that all issues could be addressed at one time.

Chairman Hollenbaugh noted the hardship is the berm, and the building is lower than the grade of the street.

Mr. Reist suggested the present sign is still useable with adjustments and a new sign would be costly.

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Mr. Meyer asked if the applicant would be back regarding the setback issue.

Mr. Reist noted his misinterpretation of the code regarding the setback.

Ms. Dale stated the drawings allow for six-foot setbacks from the sidewalk and the sidewalk is not the right-of-way line in accordance with the ODOT drawings.

Ms. Dale offered the applicant the opportunity to table the application for the purpose of requesting the additional variance for location.

Mr. Reist requested the application be tabled.

Mr. Houk moved to table BZA 03-2008. Mr. Meyer seconded. The motion passed with the following roll call:

AYE: Mr. Meyer, Mr. Houk, Mr. Prentice, Mr. Hollenbaugh (4)

NAY: None (0)

ABS: None (0)

BZA 04-2008 Alley, former parking lot behind 25 W. High Street, requesting a variance to Chapter 1141.03(e)(4) Front Yards, **Scott Webb, Architect, Applicant**

Mr. Prentice moved to enter into public hearing BZA 04-2008. Mr. Meyer seconded. The motion passed 4-0-0.

Ms. Dale noted the formal address of this property has yet to be determined, but it is being referenced as 25 W. High Street, the alley location. Ms. Dale advised the owner is requesting to locate a three-story residential building in the alleyway with the main entrance facing east along the north/south alley directly behind the First Financial Bank building. Ms. Dale noted the applicant has received a COA with conditions from HAPC and the Planning Commission held a conditional use hearing ending in a tie vote, which would come back in June. Ms. Dale advised comments forms were sent out, and no public comments were received. Ms. Dale noted the only agency review received was from engineering directed to the Planning Commission discussing utility and water issues as well as parking concerns. Ms. Dale noted the primary variance requested concerns the building being erected on a lot of record and having its principal entrance upon a street bordering such lot. Ms. Dale referred to page 16 of the agenda and noted the definitions included. Ms. Dale referred to the attached deed and noted the property is a separate parcel that could be conveyed and sold separately, thereby making it a lot of record. Ms. Dale touched briefly on prior cases. Ms. Dale advised the recommendations should the Board consider approval are as follows:

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1. That the proposed work complies in all other respects with all applicable codes, ordinances, and the City of Oxford Zoning Code.
2. That the proposed work be constructed and approved with this appeal and that no changes or modifications can be without consent of this Board.

Mr. Scott Webb, Applicant and Agent, having been first duly sworn, noted the issue before the Board deals with the lot of record as well as the principal entrance. Mr. Webb presented renderings of the prospective building and its placement on the property. Mr. Webb outlined the surrounding properties. Mr. Webb noted the existing stone wall that would be incorporated into the design. Mr. Webb addressed the engineer's comments regarding utility services and accessing them from High Street.

Mr. Meyer asked what would be on the first floor.

Mr. Webb noted that is the reason for applying for a conditional use; it would be residential.

Mr. Houk noted previous recommendations to include the addition of a gate for security.

Mr. Webb stated they agreed to install a gate as a condition.

Chairman Hollenbaugh invited public comments.

Ms. Kathleen Zien, 6060 Joseph Drive, having been first duly sworn, noted she previously viewed the plans for this apartment at HAPC, and noted their purview is brick, color and style and not function. Ms. Zien addressed the tie decision at the Planning Commission meeting regarding the issue of residential on the first floor. Ms. Zien referred to page 20 of the agenda, which lists the site as .05 acres and page 29 of the agenda, which indicates the site is .079 acres. Ms. Zien addressed the proposed projects for the area in question, such as the Wendy's site and the First Financial Building. Ms. Zien suggested the increase in density would have a negative impact on the area. Ms. Zien addressed the responses to the decision standards on pages 22 and 23 and suggested they should be challenged. Ms. Zien quoted the applicant from the Planning Commission as saying, "allowing an alley property to be improved to higher density is a step to improve housing conditions." Ms. Zien stated that is a contradiction. Ms. Zien noted the lack of accessibility to the property. Ms. Zien noted the absence of a loading area. Ms. Zien stated she was surprised and disappointed there were no comments from the police chief regarding safety and traffic impact. Ms. Zien expressed concern with the fact no parking is provided. Ms. Zien addressed safety issues regarding vehicular traffic. Ms. Zien noted included in the Planning Commission's agenda was a two-page memo from the fire chief regarding the potential inability for the fire department to service the building. Ms. Zien noted the city engineer also had concern regarding the water line. Ms. Zien stated all pertinent background information should be included to enable the Board of Zoning Appeals to make an appropriate decision. Ms. Zien referred to page 21

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of the agenda regarding the list of adjacent property owners and noted it is not included in the agenda.

Chairman Hollenbaugh asked Ms. Zien to keep her comments germane to the issue at hand.

Ms. Zien stated the Oxford Press was not contacted regarding this project.

Chairman Hollenbaugh stated there was a public notice on the variance hearing.

Ms. Zien noted the Oxford Press should have been sent a comment form as a property within 200 feet.

Ms. Zien commended Mr. Webb's design skills, noting they can make the most unacceptable project look palatable. Ms. Zien stated the apartment is not a good idea for the location.

Chairman Hollenbaugh invited further public comments, and there were none.

Mr. Meyer moved to reconvene BZA 04-2008. Mr. Prentice seconded. The motion passed 4-0-0.

Chairman Hollenbaugh read Chapter 1141.03(e)(4) into the record, and reminded the Board that the applicant is requesting the principal entrance to be on an alley and located on a lot of record.

Mr. Prentice noted there has been some precedent in terms of buildings on alleys, although that does not dictate the present Board's decision. Mr. Prentice stated parking is not an issue to be decided.

Mr. Meyer noted an alley is a public right-of-way.

Mr. Houk noted his disagreement and stated a street and an alley are defined differently.

Chairman Hollenbaugh addressed the decision standards individually as follows:

- a) The variance would not permit or result in a use that is not permitted in the zoning district. Use variances are prohibited.
- b) Conditions of the land, site, structure, or element for which the application is submitted are substantially different from other sites in the same zoning district because of physical characteristics of the land including dimensions, elevation, topographical variations, soil conditions, or other extraordinary situations, and the difference supports the application.

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- c) The conditions upon which the application is based are not the result of the actions of the applicant.
- d) The variance would not confer a special privilege to the applicant, but would relieve a hardship.

Mr. Houk suggested "hardship" should read "practical difficulty."

Chairman Hollenbaugh amended decision standard d) to read:

- d) The variance would not confer a special privilege to the applicant, but would relieve a practical difficulty.
- e) The literal interpretation of this Zoning Code would deprive the applicant of the ability to develop a site or use the land as a conforming permitted use in that district.
- f) The variance will be the minimum variance necessary to permit reasonable use of the land, site, structure, or element for which the variance is sought.
- g) The situation permitted by the variance will be in harmony with the general vicinity, will not be detrimental to the public health, safety, or general welfare, and will satisfy the general intent of this Zoning Code.

Mr. Houk noted he disagreed with decision standard g), and stated by allowing the entrance onto the alley, the alley is being treated as a street affecting traffic in the cross section. Mr. Houk noted he could not vote in favor of the application because he thinks it is a special privilege as well as a safety issue.

Mr. Meyer moved to approve BZA 04-2008 based on the fact that all decision standards have been met with conditions of staff. Mr. Prentice seconded. The motion passed with the following roll call:

AYE: Mr. Meyer, Mr. Prentice, Mr. Hollenbaugh (3)

NAY: Mr. Houk (1)

ABS: None (0)

BZA 05-2008 112 S. Poplar, requesting a variance to Chapter 1143 Districts, Section 1143.04(d)(4)A - R-2MS District, Lot Coverage, **Scott Webb, Architect, Applicant**

Chairman Hollenbaugh noted it's his understanding staff has recommended this application be tabled.

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Mr. Webb expressed concern regarding the timing involved in the filing process.

Mr. Meyer moved to table BZA 05-2008. Mr. Prentice seconded. The motion passed with the following roll call:

AYE: Mr. Meyer, Mr. Houk, Mr. Prentice, Mr. Hollenbaugh (4)

NAY: None (0)

ABS: None (0)

BZA 06-2008 Main & High Street, former Wendy's, requesting a variance to Chapter 1143 Districts, Section 1143.10(c)(2) Yard Requirements, **Robert Treadon, Applicant, Agent**

Mr. Meyer moved to enter into public hearing BZA 06-2008. Mr. Prentice seconded. The motion passed 4-0-0.

Ms. Dale noted the property is located at the corner of Main and High and is also known as the former Wendy's site. Ms. Dale stated the owners are requesting the front yard setback from Main Street as their variance. Ms. Dale noted the property contains approximately 8,000 square feet of lot area and includes the 16.5 foot vacated right-of-way in its boundary description. Ms. Dale explained the applicant is proposed to demolish the former Wendy's and construct an approximately 22,000-square foot three-story mixed-use building in part of the vacated right-of-way or also six feet from the property line. Ms. Dale noted the Zoning Code requires a front yard setback of 16.5 feet in the UP District except for along High Street, where the setback is zero. Ms. Dale referred to page 44 of the agenda, which explains the use of the vacated right-of-way in italics. Ms. Dale advised the applicant modified their application to include a provision as it related to maximum permitted residential gross floor area; however, upon further review by staff, it was determined that variance is not required. Ms. Dale stated HAPC approved a COA for demolition and construction of a new mixed-use building with conditions. Ms. Dale noted the property owner has applied for a demolition permit, which has been conceptually approved. Ms. Dale reviewed the variance request before the Board to Section 1143.10(c)(2). Ms. Dale noted the applicant is requesting a 10.5-foot encroachment. Ms. Dale noted the building would align with the City parking garage, which was granted a variance in 2001. Ms. Dale referred to the site plan on page 61 of the agenda. Ms. Dale noted public comments forms were sent, and none were received. Ms. Dale addressed the engineering comment form as it related to the street project on High Street and coordinating efforts in staging and demolition. Ms. Dale noted the owners and applicant are aware of this and have been in contact with both the city engineering office and the service office. Ms. Dale addressed the clear and proper consolidation of the lots prior to any permits being released. Ms. Dale noted similar cases that have been previously approved. Ms. Dale stated should BZA recommend

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approval, staff would recommend the following:

1. The proposed work complies in all other respects with all applicable codes, ordinances and City of Oxford Zoning Code.
2. The proposed work be constructed as approved with this appeal and that no changes or modifications be made with consent of this Board.

Mr. Houk asked if the building would be located in the 10.5-foot vacated right-of-way.

Ms. Dale noted the vacated right-of-way is 16.5 feet.

Mr. Houk noted they are asking for 10.5 feet of that back for the building.

Mr. Robert Treadon, Robert Treadon and Associates, having been first duly sworn, referred to the narrative in the submission and reiterated the desire to allow construction of a viable project that is an aesthetically and commercially prominent on an Uptown site. Mr. Treadon noted the intention to maintain the flavor of the Uptown area both on High Street and Main Street. Mr. Treadon advised the first floor would be exclusively commercial space, with the second and third floors being residential areas. Mr. Treadon noted several design features of the building. Mr. Treadon advised due to the fact the property is a corner lot, 133 feet of the structure fronts on Main Street. Mr. Treadon stated without the requested allowance, the commercial areas would be limited to 40 feet in depth. Mr. Treadon noted the building would have an elevator. Mr. Treadon noted the desire to continue to work with the City on any concerns.

Mr. Houk asked if the walkway on the side of the building is part of the public right-of-way.

Mr. Treadon noted it is in the public right-of-way, and lines up with the existing retaining walls on the Wendy's site.

Mr. Meyer asked if the entire footprint of the building is in line with the stairwell area of the parking garage or if the building jogs back and forth like the parking garage.

Mr. Treadon noted it aligns with the northeast corner of the parking garage.

Chairman Hollenbaugh invited public comments.

Ms. Kathleen Zien, 6060 Joseph Drive, having been previously duly sworn, noted one of the conditions of HAPC was following demolition, if construction does not commence, the site will be properly filled in and covered with seed and sod. Ms. Zien stated that promise was made two years ago as well.

Chairman Hollenbaugh reminded the speaker of the issue at hand.

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Ms. Zien reminded the Board decisions standards should be discussed one at a time.

Chairman Hollenbaugh asked Ms. Zien to speak to the germane issue.

Ms. Zien referred to decision standard a), and noted the use would be permitted and can be a complete building if it stays within the code. Ms. Zien stated an argument that we must have this footage on Main Street in order to attract tenants is not necessarily a valid argument. Ms. Zien addressed decision standard b) and stated they could construct a building and stay within code. Ms. Zien referred to decision standard c) and noted the results would be the actions of the applicant. Ms. Zien referred to decision standard d), and noted the variance would confer a special privilege. Ms. Zien addressed decision standard e), and noted it would not deprive the applicant of the ability to develop the property.

Mr. Doug Elliott, City Manager, having been duly sworn, read a letter from Mayor Prue Dana to the Board and into the record encouraging the Board to give the request serious consideration.

Mr. Bernard Rumpke, 5610 Pleasant Avenue, Fairfield, having been duly sworn, noted the efforts made to create a site development that would adhere to the requirements and desires of the City. Mr. Rumpke asked the Board to take note of the concessions that have been made in deleting two rental units from the building to create a better design.

Mr. Prentice moved to reconvene BZA 06-2008. **Mr. Meyer** seconded. **The motion passed 4-0-0.**

Chairman Hollenbaugh reminded the Board that recent encroachments have all been soft scapes or patios. Chairman Hollenbaugh asked the Board to envision standing in the middle of North Main Street between the parks looking south if the building is allowed to encroach. Chairman Hollenbaugh expressed concern that decision standards e), f) and g) are not met.

Mr. Houk stated he did not feel decision standards e) or f) are met.

Mr. Prentice noted he did not feel decision standards e) or g) are met.

Chairman Hollenbaugh deferred to Mr. Houk regarding the decision standards.

Mr. Houk addressed the decision standards as follows:

- a) The variance would not permit or result in a use that is not permitted in the zoning district. Use variances are prohibited.
- b) Conditions of the land, site structure, or element for which the application

is submitted are substantially different from other sites in the same zoning district because of physical characteristics of the land including dimensions, elevation, topographical variations, soil conditions or other extraordinary situations, and the difference supports the application.

Mr. Houk stated he does not believe that decision standard b) has been met. Mr. Houk noted he sees none of those conditions that are different from any other location in the Uptown District.

Chairman Hollenbaugh noted his agreement.

Mr. Houk continued as follows:

- c) The conditions upon which the application is based are not the result of the actions of the applicant.
- d) The variance would not confer a special privilege to the applicant, but would relieve a practical difficulty.

Mr. Houk noted he did not feel a case has been made for a practical difficulty.

- e) The literal interpretation of this Zoning Code would deprive the applicant of the ability to develop a site or use the land as a conforming permitted use in that district.

Mr. Houk stated the property could be developed within the requirements of the Zoning Code.

- f) The variance will be the minimum variance necessary to permit reasonable use of the land, site, structure, or element for which the variance is sought.

Mr. Houk noted he did not believe this was a minimum variance.

- g) The situation permitted by the variance will be in harmony with the general vicinity, will not be detrimental to the public health, safety, or general welfare, and will satisfy the general intent of this Zoning Code.

Chairman Hollenbaugh noted he did not feel it would be in harmony with the general vicinity.

Mr. Houk moved to deny BZA 06-2008 based on decision standards b), d), e), f) and g) having not been met. Mr. Prentice seconded. The motion passed with the following roll call:

AYE: Mr. Meyer, Mr. Houk, Mr. Prentice, Mr. Hollenbaugh (4)

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NAY: None (0)

ABS: None (0)

EXECUTIVE SESSION

There was none.

APPROVAL OF MINUTES

Mr. Houk moved approval of the April 16, 2008 regular meeting minutes.

Mr. Prentice seconded. The motion passed 3-0-1.

OLD BUSINESS

Chairman Hollenbaugh noted the updated BZA Rules and Procedures are included in the packet.

Ms. Dale noted there are some word changes included in the Rules and Procedures based on legal counsel's recommendations.

OTHER BUSINESS

Chairman Hollenbaugh noted he is unsure if he will be present at the next meeting on Wednesday, June 18, 2008.

ADJOURNMENT

Mr. Houk moved to adjourn. Mr. Meyer seconded. The motion passed 4-0-0. The meeting was adjourned at 9:00 o'clock p.m.