

BOARD OF ZONING APPEALS
Meeting Minutes
Wednesday, May 20, 2015

Call to Order

Those members present: Prue Dana, John Barnhart, Paul Brady, Jack Cohen, and Mike Schnipper.
Those members excused: None.
Staff members present: Sam Perry, Amy Blankenship, and Jung-Han Chen.
Staff members excused: Steve McHugh.

Approval of Minutes of the April 15, 2015 Regular Meeting

Mr. Cohen asked for corrections to the minutes regarding signage discussion that occurred at the April 14, 2015 meeting. One comment referred to the staff condition for ambient lighting and the other to reword a sentence.

Mr. Schnipper made motion to approve the minutes as corrected. Ms. Dana seconded the motion. All were in favor.

Adjudication Hearings

BZA-2015-08 5000 College Corner Pike, Variance Request 1141.03(b) principal entrance on a street; 1143.12(d)(4)A, glazing requirement, Scott Webb, Applicant/Agent

Mr. Cohen made motion to enter into public hearing BZA-2015-08. Mr. Barnhart seconded the motion. All were in favor.

Mr. Perry provided a staff review stating that the property was located in the GB (General Business) District. Mr. Perry stated the request was for two variances; one related to the façade design requirements and the other to the requirement for 60% glazing of windows on the ground floor.

Mr. Perry stated that the glazing proposal was for 40% glazing, which is 33% less than the required amount. Mr. Perry stated that in regards to the other variance, the zoning code requires that the principal entrance be oriented toward the street and that the proposed building entrance was oriented internally, toward the shared driveway.

Mr. Perry provided historic information about the property, stating that this was the last lot of a three lot subdivision originally approved in 1981. Mr. Perry continued that the elevation drawings and site plan would illustrate how this is a building that although has some facade design on the front of the building isn't where the principle entrance is located. Mr. Perry also stated that there was glazing on the front wall but it didn't meet the 60% requirement. Mr. Perry stated that the intent was to promote an inviting street presence for customers in this business district.

Mr. Perry reviewed the decision criteria for façade glazing:

Mr. Perry specifically referenced whether the owners predicament could be obviated through other means and asked could the building have been designed differently; what about the spirit and intent, the

code really relates it to retail storefronts and the intent is to maintain the commercial nature of the business which this proposal achieves. Mr. Perry referred to other relevant factors stating that there are two buildings existing already thus setting the tone for the style of the development.

In reference to principle entrance decision criteria:

Mr. Perry stated that there could be some return, however, with the pre-existing orientation of the lot there is only a certain amount of storefront that can be done on the front side.

In regards to the owner's predicament obviated through a method other than a variance, for the principal entrance to be oriented toward College Corner Pike and the spirit and intent of the zoning requirement the existing structures set the tone for the development.

Mr. Perry discussed the shared driveway for all three lots.

Mr. Scott Webb, Applicant, was sworn in. Mr. Webb provided a PowerPoint presentation. Mr. Webb stated that this was the third building of an existing group and that each building was designed to be visible from the street. Mr. Webb stated that the practical difficulty is that the existing sloped site makes it impractical to locate the main entrance to face US 27.

Mr. Webb discussed grading and placement of the entrance and glazing requirements including curb cuts, and the design of the project itself. Mr. Webb noted that this was an office building not retail.

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

Ms. Dana made motion to approve the variance request based upon a hardship of the building orientation and minimal area to meet the glazing requirement. Mr. Barnhart seconded the motion.

AYE: Mr. Cohen, Mr. Schnipper, Ms. Dana, Mr. Brady, Mr. Barnhart (5)

NAY: None (0)

ABS: None (0)

BZA-2015-09 - [102 S. Locust Street El Burrito Loco, variance to Section 1143.12\(c\)\(2\)A, front yard setback, Scott Webb, Applicant/Agent](#)

Mr. Schnipper made motion to enter into public hearing BZA-2015-09. Mr. Barnhart seconded the motion. All were in favor.

Mr. Chen provided an overview stating that the applicant was requesting to reduce the front yard setback to install a 14' x 40' outdoor dining deck at El Burrito Loco. Mr. Chen stated that the deck would encroach into the front yard setback 14 feet and that the existing building already encroached by five feet, which was granted by the BZA in 2003. Mr. Chen stated that the BZA denied a similar variance request in 2010 at the site.

Mr. Cohen inquired about there being no other outdoor dining in the area and parking.

Mr. Webb, the Applicant, was sworn in. Mr. Webb stated that there was not a lot of area at the site and that they would landscape around the deck facing the street. Mr. Webb stated that the existing site was along the Locust Street corridor and that the essential character would be improved with the outdoor dining addition. Mr. Webb noted that sidewalks were in place and prescribed for this area to encourage pedestrian activity, adding life to the streetscape, making it more pedestrian friendly. Mr. Webb stated that the expansion had no where else to go except for in the front yard setback. Mr. Webb stated seating would increase 20%. Mr. Webb stated that the parking requirements for restaurants were just reduced by 50%.

Mr. Brady inquired about the parking requirement. Mr. Webb responded 150 square feet per usable area.

Mr. Schnipper noted that there was already an approved variance, now are asking for another.

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

Mr. Cohen made motion to grant the variance based upon that the property cannot be obviated without the variance, and that the spirit and intent would be observed because this is an improvement to the area. Ms. Dana seconded the motion.

AYE: Mr. Barnhart, Ms. Dana, Mr. Cohen (3)

NAY: Mr. Schnipper, Mr. Brady (2)

ABS: None (0)

Administrative Appeal*

BZA-2015-07: 28 W. Walnut Street, Appeal of Administrator's Decision, Floor Area Ratio, Robert Treadon, Gregory Meyer, Treadon and Associates, Petitioners

The BZA discussed how to proceed with the appeal and whether to have a hearing for the case.

Mr. Cohen made motion to enter into adjudication hearing BZA-2015-07. Mr. Barnhart seconded the motion. All were in favor.

Mr. Perry began discussion. Mr. Jack Cohen referred to Mr. Jack Grove, present and representing the Petitioners, being on the Public Defenders Commission with him, but that he would not be recusing himself from this discussion and vote.

Mr. Perry shared that the appeal came about from a staff decision to deny a building and zoning permit review for 28 W. Walnut Street. Mr. Perry noted that this was not a variance request, therefore, would not be looking at decision criteria, but simply looking at staff's decision based upon the zoning code.

Mr. Perry stated that 28 W. Walnut Street was a new 4 story building having originated from HAPC. Once the application was submitted for staff review it was denied based upon the Floor Area Ratio (FAR). Mr. Perry stated the Petitioner exceeded the allowable FAR. Mr. Perry noted that the architect and applicant have resubmitted plans with a different stair design and that staff had reviewed; however, it didn't change the interpretation of staff's decision. Mr. Perry stated that the Uptown zoning code has minimums and maximums and that is where they are set. Mr. Perry read aloud as it is stated in the zoning code "the maximum permitted gross floor area ratio of a structure at or above grade in the Uptown District shall be 3; residential space shall provide a maximum ratio of 2:1 of the lot area subject to the following: outdoor patios, decks and balconies for residential use shall be computed into the maximum 2:1 ratio."

Mr. Perry referred to the Floor Area Calculations table on page 46 of the agenda packet outlining the required square footage, proposed square footage, the overage square feet and overage percentage.

Mr. Perry stated that it was determined that it didn't make the stairs excluded from the FAR and noted that the analysis should only be based upon building, structure, FAR and gross floor area; so, is the stair system part of the building. Mr. Perry referred to the definition of structure and definition of building and that, therefore the determination was that the stairs were included in the building's FAR calculation.

Mr. Perry referred to the time spent with the applicant and architect and that they had the option of changing their design. Mr. Perry noted that he was not aware of another case with an open space staircase.

Mr. Perry stated that the applicant chose to appeal the staff's decision based upon their interpretation of what should be included in the FAR.

Mr. Cohen inquired if the stairways had a ceiling. Answer was yes. Mr. Cohen inquired if the stairways were within the exterior face of the exterior walls. Mr. Perry stated yes. Mr. Cohen inquired where the code says the columns are the walls. Mr. Perry referred to page 74 drawings included in the agenda packet, and stated that you can see the roof, the columns, and then referred back to the definition of a building. Mr. Cohen referred to page 44 of the agenda packet or 1159.03(5) Building definition and inquired where columns were defined as exterior walls.

Ms. Dana referred to Bella Place that has exterior stairways. Discussion followed.

Mr. Cohen inquired if it was staff's opinion that this current stair design is inferior or an improvement of the previous plan. Mr. Perry responded that we don't formulate an opinion on that.

Mr. Perry noted that the applicant would have to go back to HAPC since there was a change to the exterior design.

Mr. Jack Grove introduced the Court Reporter in attendance. Mr. Brady swore in Mr. Jack Grove.

Mr. Grove stated he was representing Mr. Ned Hoelzer, the owner. Mr. Grove stated that this was a code

interpretation issue of whether an exterior stairwell must be included in the FAR.

Mr. Grove described other places in Oxford with open stairway designs. Mr. Grove asked Mr. Greg Meyer to step forward and discuss the design.

Mr. Greg Meyer was sworn in by Mr. Brady.

Mr. Meyer distributed a three page document which was of the first original plan showing a three dimensional building elevation amid Walnut Street and their concept of an open stair. Mr. Meyer stated the stairs weren't enclosed, nor climate controlled. Mr. Grove stated that the open stairway was on the right side; however, Mr. Grove was referring to the previous submittal. (It is noted that there was some confusion in the Appellant's presentation as they discussed and displayed the original drawings, not the revised drawings as submitted to staff.)

The second page showed that the front elevation of the open stair and the last sheet showed the east side of the elevation punched openings in the walls that provided the effect of an open stair. Both sets of stairs were on one side of the building. The open stair is safe. Mr. Grove stated this was preferred more so than a closed stairway. Mr. Meyer agreed.

Mr. Schnipper referred to the handout provided by the Appellant on page 3, and the square footage of the stairwell.

Ms. Dana inquired about having an elevator. Mr. Meyer stated they were required to make the building ADA accessible.

Mr. Schnipper inquired if the revised drawings were of the same square footage. Mr. Meyer stated yes, 800 sq. feet.

Mr. Grove stated the Fire Chief approved the design. It was noted there are a total of 17 beds.

Mr. Bob Treadon, Architect, was sworn in.

Mr. Treadon described his affiliation with the project. Mr. Treadon stated that the decision was based upon Oxford zoning code definitions. Mr. Treadon stated that staff failed to identify five other definitions in the zoning code, 1159.07 - Floor Area Gross, Floor Area Net, Gross Leasable Area, Habitable Space, and Useable Floor Area and that these definitions should be included in staff interpretation.

Mr. Treadon continued that in 35 years of interpreting zoning codes, we live in a heavily regulated society and unless the code is clear we cannot imply restrictions. "the expression of one is the exclusion of all others". Mr. Perry has implied a restriction that does not exist; this is a difference in interpretation. The restriction does not imply and is improper for the code officer to deny the request. An exterior stairwell is not part of the computation of the ratio.

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

favor.

Mr. Brady noted that the stairwell was an integral part to the building; you have to have them, so, you can't say they are an accessory; if it is under the same roof and same foundation, for the purpose of the FAR, how do you exclude it.

Mr. Schnipper referred to the residential square foot overage, noting that the staircase was a total of 800 square feet, and that even if you excluded 340 square feet on the first floor portion of the staircase with the approach, you were still going to be over on residential square footage.

Mr. Meyer responded that there was also a stair in the back and a connector connecting the two stairways.

Mr. Cohen made motion to grant the Appeal of the Administrator's Decision. Ms. Dana seconded the motion.

Mr. Cohen stated this was a difference of interpretation and that property rights were important, and if it isn't clear, and no damage or no harm...

Ms. Dana described how FAR came into the zoning code, and stated how much of the limits are we allowed to push. Ms. Dana stated she agreed with the property rights issue.

Discussion followed.

Mr. Perry spoke stating that he respected the challenge in regards to the FAR; however, the size of the lot matters and this is a small lot. You have two sets of codes that have to be complied with. The codes Mr. Treadon refers to are not defined in the UP District.

Mr. Grove stated this only has to deal with the FAR; floor area is for a habitable area/dwelling unit; the stairway does not function in this way; this is exterior, and that is why it isn't part of the definition.

Mr. Kachos referred to Section 1159.07(6), "the Gross Floor Area is the sum of the gross horizontal areas of all floors of a building or structure from the exterior face of exterior walls..." Mr. Brady responded so what is an exterior wall. Mr. Kachos responded that with an exterior wall you have atmosphere.

AYE: Dana, Cohen, Barnhart (3)

NAY: Schnipper, Brady (2)

ABS: None (0)

The appeal was granted.

Old Business

There was none.

New Business

Mr. Brady announced that Mr. Barnhart's last meeting would be in June.

Mr. Brady inquired about upcoming cases. Mr. Chen reported that there was a potential old case for June.

Mr. Schnipper expressed gratitude to Mr. Barnhart for his service.

Adjournment

Ms. Dana made motion to adjourn the meeting. Mr. Schnipper seconded the motion. All were in favor. The meeting was adjourned at 9:07 p.m.