

BOARD OF ZONING APPEALS
Meeting Minutes

Wednesday, June 19, 2013

Call to Order

Mr. Brady called the June 19, 2013 BZA meeting to order at 7:30 p.m.

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

Those members excused: None.

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

Staff members excused: None.

Adjudication Hearing(s)

BZA-06-2013 [5642 College Corner Pike, Great Clips, variance to Section 1151.05\(a\)\(3\)A.2.a., multi-tenant wall signs, no more than one wall sign per tenant, Holthaus Signs, Applicant, Agent](#)

Mr. Barnhart made motion to adjourn to BZA-06-2013. Mr. Meyer seconded the motion. All were in favor.

Mr. Perry spoke. Mr. Perry stated that the Applicant wished to install an additional wall sign. Mr. Perry referred to a previously similar sign request from Maurice's, a retail clothing store that was located in the same complex and was denied by the BZA in 2008. Mr. Perry described the building location being adjacent to Wal-Mart. Mr. Perry provided a PowerPoint presentation which included a surrounding zoning map. Mr. Perry referenced the sign design and its dimensions. Mr. Perry stated that Staff did not receive any public notice comments. Mr. Perry discussed the Decision Standards, particularly criterion F, if the property owner's predicament can be obviated through some other methods. Mr. Perry discussed other options available which included the potential relocation of the existing freestanding sign. Mr. Perry suggested that the BZA, should they approve the variance request, that a condition placed that the sign's internal illumination be turned off after business hours.

Mark Caudill, Applicant, Holthaus Signs, was sworn in by Mr. Brady. Mr. Caudill described this as a simple request. Mr. Caudill continued stating that Great Clips has determined that it underperforms in this demographic area. Mr. Caudill referenced the Delhi area (Cincinnati) and stated that when they added a back building sign it increased sales 18%; they have had significant results from adding an additional sign. Mr. Caudill described the problems with the existing freestanding sign having to do with the design of the adjacent parking lot and the inability to place the sign up on the parking level. Mr. Caudill stated that Great Clips wants to make this a viable location for them.

The BZA Board members had no questions.

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

Ms. Dana stated she was sympathetic with their position of the building and the free-standing sign; the freestanding sign should have taken care of the issue of knowing businesses were there. Ms. Dana stated she was considering the sign at this position with conditions placed upon it.

Mr. Brady reminded everyone on the Board to keep in mind that if this is approved there will be four signs on the back of the building from all the other tenants. Discussion followed.

The Decision Standards were discussed:

- a) Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance; all yes
- b) Whether the variance is substantial; all yes
- c) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance; all yes (adjoining properties would suffer)
- d) Whether the variance would adversely affect the delivery of governmental services (i.e., water, sewer, garbage); no
- e) Whether the property owner purchased the property with knowledge of the zoning restriction; all yes
- f) Whether the property owners' predicament feasibly can be obviated through some method other than a variance; yes, (can try some other things)
- g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance; would not; basic fairness, can't allow one and not the other
- h) Any other relevant factor.

The BZA concluded that there were other methods to attract customers and that the hardship was not the result of the regulations.

Mr. Barnhart made motion to deny BZA-06-2013 based on Decision Standards a, b, c, and g. Mr. Meyer seconded the motion.

AYE: Paul Brady, Todd Hollenbaugh, John Barnhart, Gary Meyer (4)

NAY: Prue Dana (1)

ABS: None (0)

BZA-07-2013 [222 E. Vine Street, variance to Sections 1141.03\(b\) principal entrance upon a street, 1143.03\(c\)\(2\)B minimum rear yard depth, and 1143.03\(c\)\(3\)\(D\)\(3\) front yard requirement for lots with no access from a public street, Dave Kellems, Applicant](#)

Mr. Barnhart made motion to adjourn to BZA-07-2013. Mr. Hollenbaugh seconded the motion. All were in favor.

Mr. Chen reminded everyone that they had heard this case in 2012 as case number BZA-09-2013 and that it had been denied by this Board. Mr. Chen continued that this property address was before them again, as case number BZA-07-2013 as a result of court appointed mediation and subsequent agreement between the Applicant and the City to allow the Applicant to move forward with the building plan to construct a single-family on the mentioned parcel. Mr. Chen provided a history on this property.

Mr. Chen recognized the fact that there were many alley lots created in the past without any consideration of the implications of that action. Mr. Chen stated that increasing the density in the neighborhood was a primary concern. Mr. Chen also stated that it was important to remember the property owner's rights to develop the property.

Mr. Chen stated that the requested variances from the Staff's perspective were not considered to be substantial in the overall review of the Decision Standards. Mr. Chen continued that the predicament of this alley lot can only be addressed by the BZA's actions.

Mr. Chen stated that Staff recommends the Board approve the requested variances and also recommended that the Board approve all three variances in one vote.

Mr. McHugh, Law Director, spoke. Mr. McHugh stated that the problem was with the encroachment and lot split/consolidation. Mr. McHugh provided a history of this property: variances were denied and the Kellems filed an appeal in September 2012. In October 2012 the City filed a claim for judgment. As a result, there were several proceedings; ultimately the parties decided it appropriate to hold mediation and we did so on May 1, 2013. Mr. McHugh then described what occurred many years ago with the property. Mr. McHugh stated that the consolidation split was never recorded, but a building permit for an addition was issued. Mr. McHugh described the encroachment that took place due to the addition to the home. Mr. McHugh added that a lot consolidation expires 120 days if not filed. Mr. McHugh stated that it was determined that we had no evidence where anything was ever filed; probably was not filed. Mr. McHugh stated

that it should have been caught before the building permit was issued.

Mr. McHugh stated that now the stairway and deck has been removed from the structure and 3' has been taken off Lot #346; therefore, the encroachment no longer exists into the other lot; the side yard and rear yard setbacks have been met.

Mr. McHugh described the new structure measurements.

Mr. Jay Bennett was sworn in by Mr. Brady. Mr. Bennett is the attorney for the Kellems. Mr. Bennett was agreeable with what Mr. McHugh had stated. Mr. Bennett added that there were three things that have happened that were important; the lot consolidation has been filed, regarding the settlement/contract everyone was in agreement, and the dismissal of three lawsuits (one by the City, two by his client) occurred.

Mr. Bennett reviewed the variances before the BZA and stated that six of the seven Decision Standards were valid.

No one had questions for Mr. Bennett. Mr. McHugh referred to a letter in the agenda regarding response to the Decision Standards.

Mr. Hollenbaugh made motion to reconvene to regular meeting. Mr. Meyer seconded the motion. All were in favor.

Ms. Dana stated she appreciated the mediation as it was a real quandary for the BZA; however, she still had an issue with a principle entrance upon an alley. Ms. Dana felt that the mediation was a good thing to happen.

The Decision Standards were discussed:

- a) Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance; all yes
- b) Whether the variance is substantial; no
- c) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance; no
- d) Whether the variance would adversely affect the delivery of governmental services (i.e., water, sewer, garbage); no
- e) Whether the property owner purchased the property with knowledge of the zoning restriction: yes
- f) Whether the property owners' predicament feasibly can be obviated through some method other than a variance; cannot
- g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance; not sure how to answer this one
- h) Any other relevant factor.

Prue Dana moved to approve BZA-07-2013 222 E. Vine Street, variances to Sections 1141.03(b), 1143.03(c)(2)B, and 1143.03(c)(3)(D)(3). Todd Hollenbaugh seconded. The motion passed with the following roll call:

AYE: Todd Hollenbaugh, Gary Meyer, Prue Dana, John Barnhart, Paul Brady (5)

NAY: None (0)

ABS: None (0)

BZA-08-2013 [120 S. Beech Street, variance to Section 1137.04\(b\)\(3\)\(2\)a, 30% occupancy reduction for a reconfigured non-conforming use, Scott Webb, Applicant, Agent](#)

Mr. Meyer made motion to adjourn to BZA-08-2013. Ms. Dana seconded the motion. All were in favor.

Mr. Perry provided an overview. Mr. Perry provided a PowerPoint presentation which provided a surrounding zoning map and photographs of the structure. Mr. Perry described the property as it presently looks. Mr. Perry stated that the Applicant was seeking a variance from the number of occupants permitted in this residential rental property. Since 2003, the property has been considered legal nonconforming. Mr. Perry stated that the first and second floors were habitable and that the property was considered a lodging house, permitted for 12. Mr. Perry referred to the Agreement on page 34 of the agenda. Mr. Perry stated that the Applicant was proposing a reconfiguration of the building floor plan, which required a 30% reduction in occupancy from the approved rental permit, to allow nine occupants instead of eight.

Mr. Perry reviewed the history of this section of the code, Section 1159.19, definitions, Reconfiguration - no changes to shell or exterior of building just interior modifications; with that a 30% reduction of occupancy. Mr. Perry stated that the Applicant was requesting a 25% reduction. Mr. Perry also noted that, this was considered an area variance and referred to a letter in the agenda on page 32 that addressed this issue.

Mr. Perry reviewed his Decision Standards' comments on page 30 of the agenda.

Ms. Dana inquired about the letter discussing an area variance and that she read it as a density variance. Ms. Dana inquired if that was the same. The reply was yes. Mr. Perry then provided examples of a "change of use", and stated that this wasn't a use variance, that it was a lodging house and would remain a lodging house. Ms. Dana inquired about the definition of a lodging house. Mr. Perry provided one and Mr. McHugh read aloud the definition of a lodging house as stated in the zoning code.

Ms. Dana asked for a summary of how the code was amended to reflect a 30% reduction in occupancy. Mr. McHugh and Mr. Brady provided an explanation.

Mr. Scott Webb, Applicant, Architect, was sworn in.

Mr. Webb stated that the building had an occupiable third floor, existing egress windows, and that the proposal was to finish this unfinished space. Mr. Webb referred to this as a "reconfiguration" which required a 30% reduction in occupancy. Mr. Webb stated that would result in 8.4 occupants, which rounded to 8. The request is to allow for nine, thus resulting in a 25% occupancy reduction.

Mr. Webb addressed the Decision Standards:

Mr. Webb noted that the owner could keep 12 students in the property forever and ever. Mr. Perry described the expansion up into attic space to include two bedrooms, two bathrooms.

Mr. Webb addressed the rest of the Decision Standards: variance is/is not substantial - no; character of the neighborhood improved (reduced occupancy); would not affect government services; purchased with knowledge - this is a new zoning code, no; predicament could/could not be obviated; no; spirit and intent met - yes (reducing the occupancy voluntarily).

Ms. Dana inquired about how many were currently renting the property. Mr. Webb stated it varied year to year.

Mr. J.C. Rupel, 134 Stone Creek, was sworn in as an adjoining property owner. Mr. Rupel felt that what the owner wished to do would only improve the property and that he was in favor of it. Mr. Rupel felt reducing the occupancy followed the master plan of what the City wanted to do as the owner would maintain the building and reduce occupancy.

Mr. Hollenbaugh made motion to reconvene to regular meeting. Mr. Meyer seconded the motion. All were in favor.

Ms. Dana felt that 30% seemed a little arbitrary to her. Ms. Dana felt that since the zoning code came into effect that the BZA may begin to see an increase in this kind of request and that she wanted to clarify this was about density and not "use". Mr. Brady described how the text amendment for the 20% reduction was originally created, as the Planning Commission didn't want to create a situation where old houses got torn down; it was evident it wasn't working, and now we were here. Mr. Brady doesn't see 30% as arbitrary; anything that has been through the process, doesn't think it is considered arbitrary in any way.

Ms. Dana inquired if others felt that the addition of one person was substantial. Discussion followed. Mr. Brady stated that what he hadn't heard was the reasoning the City should change something that was only two months old (zoning text amendment). Mr. Meyer felt that as long as they were reducing the nonconformity it was a win-win situation; the number of people reduced is substantial versus the addition of .5 persons which isn't substantial. Mr. Meyer continued three less persons, three less vehicles.

Decision Standards were reviewed.

- a) Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance; yes
- b) Whether the variance is substantial; no
- c) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance; would not
- d) Whether the variance would adversely affect the delivery of governmental services (i.e., water, sewer, garbage); no
- e) Whether the property owner purchased the property with knowledge of the zoning restriction; yes
- f) Whether the property owners' predicament feasibly can be obviated through some method other than a variance; can not
- g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance; yes, reducing occupancy
- h) Any other relevant factor.

Mr. Hollenbaugh made motion to approve BZA-08-2013 based upon Decision Standards b, f, g. Mr. Meyer seconded the motion.

AYE: Mr. Meyer, Mr. Barnhart, Mr. Hollenbaugh, Ms. Dana (4)

NAY: Mr. Brady (1)

ABS: None (0)

Approval of Minutes of the May 15, 2013 Regular Meeting

Mr. McHugh referred to having received an email asking for one minor change to the minutes.

Ms. Dana made motion to approve the minutes with one minor grammatical correction. Mr. Meyer seconded the motion. All were in favor.

Old Business

BZA-08-2012 201 E. Chestnut Street, extension to an approved variance application, Scott Webb, Applicant, Agent

Mr. Chen spoke. Mr. Chen described the Applicant's request for an extension.

Mr. Scott Webb, Applicant was sworn in.

Mr. Guy Totino, Developer, GMS development, was sworn in by Mr. Brady.

Mr. Totino described the status of the project. Mr. Totino stated that the drawings were substantially complete; were going through value engineering, looking at making minor modifications. Mr. Totino stated that they wanted the project completed and ready for occupants August 2014; therefore, would need to be under construction this August. Mr. Totino stated he was requesting six months, or 180 days.

Mr. Totino stated he was finalizing the loan preparation. The surveys and civil engineering was complete. Mr. Totino stated they were committed to the project and were prepared to move forward.

Mr. Barnhart made motion to approve the 180 day extension. Ms. Dana seconded the motion. All were in favor.

New Business

Mr. Chen announced that the Board of Zoning Appeals would be participating in training during a work session prior to the start of the July BZA meeting. A light meal will be provided. Mr. Chen stated this was a good time to have refresher training since a new member would be coming on board. Mr. Chen stated this would also be a good time to discuss any matters the Board may have. Mr. McHugh and Ms. Blankenship will be conducting the training.

Mr. Chen referred to the Planning Commission having set their 2013 goals and was in the process of creating several subcommittees to help reach those goals. One of the subcommittees is to review the existing parking requirements and how to encourage sustainable design practices to promote stormwater best management practices. The Planning

Commission is asking for a BZA representative to sit on this committee. Discussion followed. Ms. Dana volunteered.

Mr. Brady thanked Mr. Hollenbaugh for all of his years serving on the BZA, over 15 years.

Adjournment

Mr. Barnhart made motion to adjourn the meeting at 8:40 p.m. Mr. Hollenbaugh seconded the motion. All were in favor.