

# BOARD OF ZONING APPEALS

## Meeting Minutes

Wednesday, July 18, 2012

### Call to Order

The July 18, 2012 BZA meeting was called to order at 7:31 p.m.

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

Those members excused: None.

Staff members present: Jung Han Chen, and Steve McHugh.

Staff members excused: None.

### Executive Session

Mr. Barnhart made motion to approve the agenda with the deletion of the Executive Session. Mr. Meyer seconded the motion. The motion passed 5-0-0.

### Welcome New Board Member

Mr. Hollenbaugh welcomed Mr. Paul Brady to the BZA.

Mr. Steve McHugh swore in Mr. Paul Brady.

### Adjudication Hearing(s)

BZA-06-2012 Vine Street, Parcel # #H4100006000035 variance to Sections 1141.03(b) principal entrance upon an alley and 1143.03(c)(3)(D)(3)front yard lot coverage, Dave & Pamela Kellems, Applicants (Tabled June 20, 2012)

Mr. Barnhart made motion to remove from the Table, BZA-06-2012. Mr. Brady seconded the motion. All were in favor.

Mr. Hollenbaugh inquired if Mr. Brady was up to speed on this case. Mr. Brady responded he was comfortable to proceed as he had read the information.

Mr. McHugh addressed this case, reminding everyone that this matter had been tabled last month based upon two conflicting drawings included in the June agenda packet where, one Plot Plan showed Lot 346 having an encroachment onto Lot 345, and the other drawing showed Lot 346 without any structure at all. The street address in front of Lot 345 is 220 E. Vine. Mr. McHugh continued that Mr. Kellems acquired the property fairly recent and that it appeared that both lots were acquired at one time and was part of a short sale. Mr. McHugh referred to page 2 of the July agenda, and the revised Plot Plan submitted, and the clear encroachment onto Lot 345. Mr. McHugh continued that upon review of this situation, we asked how did this occur and what really occurred. Mr. McHugh further stated that he and Mr. Chen had just finished their research of this today. Mr. McHugh continued outlining relevant information to the Board explaining that a Lot Consolidation was filed in 1991, that the owner wished to build an addition to the home and utilize Lot 345 as a backyard and parking. The addition was built, thus encroaching into Lot 345; however, a recorded version of the new lot has not been discovered.

Mr. McHugh continued that the Board doesn't have legal authority to grant a second house on a single lot. Mr. McHugh stated he felt that the owner did not get the Lot Consolidation properly recorded. Mr. Brady felt the actions from the

City were valid but that somebody dropped the ball later. Ms. Dana inquired why this information wasn't provided at the June meeting. Mr. McHugh stated that what brought this entirely out were the two different site plans included in the packet for the June meeting.

Discussion followed among the BZA. The Chair, Mr. Hollenbaugh made motion to deny BZA-06-2012.

Mr. Kellems then requested his application request be withdrawn from consideration. The Board acknowledged the withdrawal and did not vote on the motion.

BZA-07-2012 15 S. Beech Street, variance to Section 1143.10(c)(3)B(1) increase in gross floor area ratio and Section 1143.10(c)(3)B(1)(b) increase in residential floor area ratio, permitted in the Uptown (UP) District, Scott Webb, Applicant, Agent

Mr. Brady made motion to adjourn to BZA-07-2012. Mr. Meyer seconded the motion. All were in favor.

Mr. Perry referred to this address having been presented and approved at the April BZA meeting. Due to an oversight by the applicant, the applicant had to come before the Board of Zoning Appeals again for two additional variances - to allow for an increase of 782 square feet gross floor area and for an increase of 2,177 square feet lot area.

Mr. Perry referred to the applicant's reasoning for the BZA to support the variance requests; the maximum residential occupancy of 38 persons is not at or exceeded; and that therefore any dimensional variances needed for a building under the occupancy, should be approved. Mr. Perry continued in referring to the applicant's narrative that the proposed building was designed for 36 persons.

Mr. Perry then reviewed the Findings of Fact and Staff recommendations to include conditions that the maximum occupancy allowed is 36 and that the development adheres to the proposed floor plan; specifically, the habitable apartment spaces which are above the minimums.

Mr. Hollenbaugh swore in the applicant, Mr. Scott Webb.

Mr. Webb provided a history lesson regarding the 2007 and 2008 changes to the zoning code regarding gross floor area ratio, commercial space ratio, residential space ratio and the maximum residential density ratio, also known as Issue 20, passed at the end of 2007.

Mr. Webb apologized for having missed these two items and that the mistake wasn't caught until Staff reviewed. Mr. Webb added that nothing was purposely hidden. Mr. Webb referred to HAPC's appreciation that the fourth floor design of the building had been pushed to the back of the building. Mr. Webb stated that there were no four bedroom apartments; but included twelve two-bedrooms and four three-bedrooms; corridors are wider than what are required in the building code. Mr. Webb stated that if he was not successful this evening, and given that he had lost a year that he could come back with a smaller building with more people in it. Mr. Webb hoped that the BZA understood his logic - to provide variety in building design. Mr. Webb continued by saying that the intent of the zoning code is being met; building sets back, not encroaching anywhere, less number of allowed occupants, and not a substantial variance request. Mr. Webb reviewed the Decision Standards.

Ms. Kathleen Zien, 6060 Joseph Drive, asked to speak at this meeting even though she didn't have Standing. Discussion followed. The BZA allowed Ms. Zien to speak. Ms. Zien stated that Mr. Webb had always provided good drawings; however, surprised to see Mr. Webb having had an oversight. Ms. Zien continued saying that this was a big oversight but a lesson learned.

Mr. Hollenbaugh reminded the Board that Ms. Zien's comments were not sworn testimony.

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

Ms. Dana stated that she supported and understood Mr. Webb's request and felt better having gone through the Decision

Standards.

Mr. Brady stated he understood what Mr. Webb was trying to convey. Mr. Brady felt however that it didn't follow the Decision Standards and that the applicant admits that but that there are benefits for perhaps not following the Decision Standards. Mr. Brady asked if this was what the BZA is supposed to do.

Mr. McHugh responded that the BZA needed to look at if there is a practical difficulty; that the BZA is not in negotiations, that, what you have before you is the case, the question is, is there practical difficulty and does the request meet the intent of the zoning code?

Mr. Brady felt this case needed handled a different way and not as a variance. Mr. Brady felt the applicant would need to redesign part of it and that the applicant could go back and remove the items in question.

Mr. Brady stated that he wasn't against the building. Mr. Barnhart stated he didn't see a problem with this variance request. Mr. Meyer referred to Decision Standard G that the spirit and intent behind the zoning requirement would be observed.

Ms. Dana stated that several of the Decision Standards are met because they give us a fair basis on which to look at for each project.

Mr. Brady inquired if this was a political or judicial decision. Ms. Dana stated it needed to be judicial.

The BZA reviewed each variance separately in considering the Decision Standards.

Prue Dana moved to approve BZA-07-2012 15 S. Beech Street, variance to Section 1143.10(c)(3)B(1) increase the gross floor area to 24,055 sq. ft. with the condition that the development adheres to the floor plans proposed and that the maximum occupancy allowed is 36. John Barnhart seconded. The motion passed with the following roll call:

AYE:

Todd Hollenbaugh, Gary Meyer, John Barnhart, Prue Dana (4)

NAY:

Paul Brady (1)

ABS:

None (0)

Prue Dana moved to approve BZA-07-2012 15 S. Beech Street, variance to Section 1143.10(c)(3)(B)(1)(b) to allow for an increase to the residential floor area ratio, to 17,693 sq. ft. with Staff conditions that the maximum occupancy allowed is 36 and that the development adheres to the floor plans proposed; specifically the habitable apartment spaces which are above the minimums. John Barnhart seconded. The motion passed with the following roll call:

AYE:

Todd Hollenbaugh, Gary Meyer, John Barnhart, Prue Dana (4)

NAY:

Paul Brady (1)

ABS:

None (0)

Approval of Minutes of the June 20, 2012 Regular Meeting

Mr. Barnhart made motion to approve the minutes as written. Mr. Meyer seconded the motion. Mr. Brady abstained. The minutes were approved by a vote of 4-0-1.

Old Business

Mr. Hollenbaugh, in referring to BZA-06-2012, thanked City Staff for their great research and requested that the BZA see more history on properties as they come before the BZA. Mr. Chen stated that Staff would try and do their

best.

Ms. Dana inquired if Staff had contacted Mr. Kellems beforehand with the additional information provided at tonight's meeting or had waited until this meeting. Mr. Chen stated that Staff and Counsel hadn't come to the conclusion until an hour before the meeting, but did inform Mr. Kellems when he arrived.

Mr. McHugh suggested no further discussion take place.

New Business

Mr. Hollenbaugh inquired about attendance at the August BZA meeting. Mr. Meyer stated he may be unable to attend.

Adjournment

Mr. Meyer made motion to adjourn the BZA meeting. Mr. Barnhart seconded the motion. All were in favor. The meeting was adjourned at 8:52 p.m.