

BOARD OF ZONING APPEALS

Meeting Minutes

Wednesday, July 20, 2016

Call to Order

Those members present: Paul Brady, Prue Dana, Jack Cohen, and Michael Schnipper.

Those members excused: Roger Ames.

Staff members present: Sam Perry, and Stephen McHugh.

Staff members excused: Jung-Han Chen.

Approval of Minutes of the June 15, 2016 Regular Meeting

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

Adjudication Hearing

BZA-2016-04 110 N. Poplar Street, McCullough-Hyde Memorial Hospital, Variances,

Chapter 1151 Signs, specifically, 1151.05(a)(2)B.1 indirect illumination of wall mounted signs; 1151.05(e)(2)A building identification sign area and natural illumination, Michael Murphy,

Champlin Architecture, Applicant, Agent (Tabled June 15, 2016)(Tabled at the request of applicant until August 17, 2017 meeting)

Mr. Brady announced that the applicant wished to table the hearing. Mr. Schnipper made motion to Table BZA-2016-04 until the August 17, 2016 meeting. Ms. Dana seconded the motion. All were in favor.

BZA-2016-06 116 W. Collins, Variance to Section 1141.03(b) Supplemental Regulations, Principal entrance upon a street; 1149.02(a) parking, Scott Webb, Applicant, Agent (Tabled June 15, 2016)

Mr. Schnipper made motion to remove from the Table, BZA-2016-06. Ms. Dana seconded the motion. All were in favor.

Ms. Dana recused herself as she owns property across the street.

Mr. Perry was sworn in.

Mr. Perry provided an overview. Property owner records were distributed.

Mr. Perry stated there were two variances, 1 - principle entrance upon a street (an alley lot, no street frontage). Mr. Perry provided a PowerPoint showing an aerial view of the subject property. It is a vacant lot and has been for many years. Mr. Perry stated that the second variance was in regards to parking, two front yard spaces, and the inability to achieve.

Mr. Perry stated that regarding the rental permit, and housing agreement of two lots, that this didn't have an agreement, so was not an issue.

Mr. Perry reviewed the decision criteria:

1. Mr. Perry stated that the lot did meet the 3,000 sq. ft. minimum lot size requirement; however didn't mean it can be developed. Mr. Perry referred to Section 1129.01 zoning certificate requirement. 2. Mr. Perry referred to is the variance request substantial. Mr. Perry responded if this fulfills a parking need it may be substantial 3. In regards to essential character no other buildings have their principle entrances on an alley so yes, it would affect the essential character. 4. In regards to services, historically alleys have been used for access and utilities, so the variance may affect services. 5. In response to the owner having knowledge, Mr. Perry stated he was not sure if the owner was aware 6. In regards to the owner's predicament could be obviated other ways in order to get some use out of it, Mr. Perry shared consolidation of the lots or seek a zoning text amendment removing the off street requirement. 7. In regards to the spirit and intent Mr. Perry stated that he agreed with Mr. Webb to prevent the creation of isolated lots. 8. Another relevant factor Mr. Perry noted that the lot has been vacant for some time and could be a real need to get more use out of the property.

Mr. Perry stated that he didn't think there was enough evidence to support the request.

Mr. Webb was sworn in. Mr. Webb displayed a PowerPoint presentation. Mr. Webb provided a rendering of a small single family structure. Mr. Webb noted that it was on a lot of record and provided the parcel numbers. Mr. Webb referred to Section 1137.05a showing that the design meets the lot area and conformed to the height, lot coverage, vehicular access and yard and setback requirements. Mr. Webb summed up that therefore the lot meets the standards to allow a single family dwelling in this residential zoning district.

Mr. Webb reviewed the decision standards:

1. Regarding reasonable return, the parking lot does not yield a reasonable return; 2. Is the variance substantial; it is a moot question 3. Regarding the essential character, Mr. Webb referred to the rendering showing that the design was in line with the Mile Square guidelines. Mr. Webb stated that parking was not relevant to this application. 4. In regards to the delivery of services, Mr. Webb stated that utilities are all available and roads are paved. Mr. Webb referred to other City departments and not receiving comments from other interoffice departments. 5. In regards to the owner having knowledge of the restriction, Mr. Webb noted that it was a plated lot and has remained unchanged. 6. In regards to the owner's predicament, to deny the variance is to prohibit the development of vacant land; 7. Spirit and intent of the zoning requirement, Mr. Webb stated that it meets the minimal standards set by 1137.05(a).

Mr. Webb referred to other factors being the definition of a lot of record; and that this is absolutely a lot of record; has been arbitrarily enforced and continued by describing other lots that have and have not been granted this variance; comprehensive Plan regarding land use and housing was shared by the applicant.

Mr. Webb then referred to the required parking variance. Mr. Webb noted that being an alley lot they have two front yards, and, therefore the project as proposed meets the intent of the zoning code, meeting lot coverage.

Mr. Webb described the current look of the lot; the proposed parking is similar to its surroundings. Mr. Webb reviewed Decision Standard 1. does not affect the reasonable return; 2. the variance is not substantial as lot coverage's are met; 3. Would the essential character of the neighborhood be affected? Mr. Webb responded that the character would be more dramatically altered by alternatives to the variance as suggested by Mr. Perry; 4. would the variance adversely affect government services? Mr. Webb stated they would be unaffected; 5. Regarding the zoning restriction knowledge Mr. Webb responded was irrelevant until development was considered; 6. The owner's predicament Mr. Webb felt the design best fit the neighborhood; 7. Regarding the spirit and intent done by respecting the zoning requirement, Mr. Webb stated that substantial justice is achieved, as parking exists in similar locations on all adjacent properties.

The BZA inquired Mr. Perry various decision criteria. Mr. McHugh then addressed the BZA and stated that the Courts had determined a lot on an alley that had access through the alley was a buildable lot, was public access, fire, police and determined to be buildable.

Mr. Cohen inquired Mr. Perry in regards to Criteria F of the Decision Standards, of an alternative which described to seek a zoning text amendment by City Council and wouldn't that be everything that comes before the BZA. Mr. Perry responded yes.

Mr. Schnipper made motion to reconvene the meeting. Mr. Cohen seconded the motion. All were in favor.

Mr. Brady stated that this is a buildable lot. Mr. Schnipper agreed, and that Mr. McHugh summed it up. The practical difficulty is that the public access needs to be acknowledged as a street; if that is how they want to do it, we have to grant the request. Mr. McHugh noted that it is a buildable lot, however still have to have access to the street and the parking. Mr. McHugh continued that the BZA has to grant on the principal entrance facing the alley. In regards to the parking, the practical difficulty, you have two front yards. All the BZA agreed.

Mr. Cohen made motion to approve BZA-2016-06, 1141.03(b) based upon Decision Standards the practical difficulty of utilizing the property, does not alter the essential character of the neighborhood, will not affect government services, the property owners' practical difficulty could not be obviated through any other means. Mr. Schnipper seconded the motion.

AYE: Mr. Schnipper, Mr. Cohen, Mr. Brady (3)

NAY: None (0)

ABS: None (0)

Mr. Cohen made motion to approve BZA-2016-06, 1149.04(a)1, based upon Decision Criteria that the property owner's predicament cannot be obviated by any other means, and is a practical difficulty. Mr. Schnipper seconded the motion. All were in favor.

AYE: Mr. Schnipper, Mr. Cohen, Mr. Brady (3)

NAY: None (0)

ABS: None (0)

BZA-2016-08 203 S. Locust Street, Variance to Section 1149.05(e)(4)R(2) Pedestrian Safety, walkway surface material requirements within parking areas, Scott Webb, Applicant, Agent

Mr. Schnipper made motion to enter into Public Hearing BZA-2016-08. Mr. Cohen seconded the motion. All were in favor.

Mr. Perry was sworn in. Mr. Perry provided an overview, stating that Mr. Webb was present on behalf of Goodwill. Mr. Perry stated that the variance was for the pedestrian crosswalk in the parking area. Mr. Perry noted that the crosswalk was part of the approval of the plans. Mr. Perry stated that the approved plans showed a concrete crossing with paved parking. Mr. Perry stated that the certificate of occupancy was issued, however, did not issue a Certificate of Code Compliance. Mr. Perry stated that the Applicant decided to seek a variance for the crosswalk. Mr. Perry provided a showing of the crossing as approved showing crosswalk concrete pavement detail. Mr. Perry stated that it was not built, and was not sure why. Mr. Perry shared the code requirement, under the vehicle management chapter of the zoning code. Mr. Perry noted that this part of the code is very detailed. Mr. Perry shared the decision criteria: a reasonable return can be made without the variance. There are other ways to differentiate the crossing area (different texture) besides concrete. Regarding the variance being substantial? It depends on the perspective. As a pedestrian, they may not be as visible to cars if not in a marked area. In regards to the essential character, similar markings exist at other sites in the area. Did the owner know Mr. Perry responded most likely would not have known; could the predicament be obviated by any other means, there were approved plans so it is possible; if not granted, happy to review alternatives except for the current one.

Mr. Webb was sworn in and provided a rendering of Goodwill. Mr. Webb discussed the materials and width. Mr. Webb stated that he was questioning the fact that surface striping alone is insufficient. Mr. Webb stated that this wasn't in the zoning code at the time. Mr. Webb stated that he feels the current marking provided a clear and safe path for pedestrians. Mr. Webb provided a project timeline. Mr. Webb shared that City Council adopted a new vehicle management chapter in the code midway in the project timeline and that the walkway was overlooked to be added into the budget.

Mr. Webb reviewed the Decision Standards:

In regards to the variance yielding a reasonable return; this is a non-profit company and the cost will cause an unnecessary burden; is the variance substantial? The walkway currently provides a safe crossing; the essential character would not be affected; the effect on governmental services would not be affected; did the property owner have any knowledge? no; could the predicament be obviated through another means? the crosswalk has already been hatched and striped; the spirit and intent feels this is an aesthetic provision. Mr. Webb stated the Applicant has already met the health, safety and welfare of the citizens.

Mr. Keith Koerner, Facilities Director, Goodwill was sworn in. Mr. Koerner stated that this was a mistake that wasn't picked up by the architect. Mr. Koerner noted that they have to account for every dollar spent, that he didn't feel it an egregious mistake, however, they would prefer to utilize their monies in other places.

Mr. Cohen inquired when they first found out about the new requirement. Mr. Koerner stated they weren't very happy with the extra expense and that this was why they were appealing. Mr. Koerner stated that he felt that what they have is a safe walkway. Mr. Cohen inquired about the understanding that concrete was not required. Mr. Koerner stated he was told it needed to be concrete. Mr. Koerner reiterated that once again this is a financial situation. Mr. Koerner stated that the contractor has gone away and Goodwill is operational.

Mr. Cohen inquired who informed him of the problem. Mr. Koerner stated that this was an all parties fault and that they did not know until May 5 and obviously was a mistake overlooked.

Mr. Cohen inquired Mr. Webb referencing to the unhappiness with the regulation, and who expressed their unhappiness. Discussion followed. Mr. Webb described their processing of the plans and change was made by Bayer Becker in the midst of trying to get a building permit so they were not aware until very end. Therefore his intent was not to express someone being unhappy with the regulation. Mr. Cohen inquired who was responsible for the mistake. Mr. Koerner stated that everyone missed it and that it was not in the budget. Mr. Cohen inquired though wasn't it part of the approved plans. Mr. Koerner responded yes. Discussion followed. Mr. Schnipper inquired wasn't the walkway in the submitted plans and approved. Mr. Koerner responded yes.

Mr. Cohen inquired Mr. Webb what to suggest besides concrete. Mr. Webb described other alternative materials. Mr. Cohen inquired Mr. Perry alternative materials. Mr. Perry stated that he would need to see the manufacturer specs, cross section, drawings, definitely pavers, and epoxy's maybe. Mr. Schnipper stated that the BZA are not supposed to come up with the solution.

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

Ms. Dana noted that according to the City, surface stripping is insufficient and inquired how long would the current design last and next time to be redone to standards. Mr. Brady inquired about the practical difficulty since the new code became in effect during the processing of. Isn't that where the practical difficulty is. Discussion followed.

Mr. Cohen inquired about to deny or table for an alternative solution. Mr. Schnipper stated that when mistakes happen you correct it.

Mr. Cohen inquired is correcting mistake that is costly, a predicament.

Discussion followed.

Mr. Cohen made motion to deny BZA-2016-08, variance 1149.05(e)(4)R(2) and adopt the City Planner's analysis. Mr. Schnipper seconded the motion.

AYE: Ms. Dana, Mr. Schnipper, Mr. Cohen, Mr. Brady (4)

NAY: None (0)

ABS: None (0)

Old Business

Mr. Brady reminded the BZA that BZA-2016-04 hospital signage would be in August.

Adjournment

Ms. Dana made motion to adjourn the meeting. Mr. Schnipper seconded the motion. All were in favor. The meeting was adjourned at 8:43 p.m.