BOARD OF ZONING APPEALS
Meeting Minutes
Wednesday, August 20, 2014

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, and Amy Blankenship.

Staff members excused: None.

Mr. Brady called the August 20, 2014 meeting to order at 7:30 p.m. Mr. Brady requested the agenda be re-ordered . All were in favor.

Mr. Brady announced that the BZA-2014-08 Appeal of Administrator's Decision would be tabled and heard with the Applicant's Petition for Zoning Variance at the next BZA meeting on September 17, 2014.

Mr. Brady therefore reordered the agenda.

Mr. Schnipper made motion to table BZA-2014-08, 115 E. Collins Street. Mr. Barnhart seconded the motion. All were in favor.

Mr. Brady reminded everyone that this decision was mutually agreed upon by the City and the Petitioner (Mr. McHugh and Mr. Bennett).

Adjudication Hearing

BZA-2014-07 **217 S. Elm Street,** City of Oxford Fire Station, variance to Section 1143.12(c)(2)A front-yard setback, and Section 1143.12(d)(4) minimum ground floor glazing, **Scott Webb Applicant, Agent**

Mr. Barnhart made motion to enter into Public Hearing BZA-2014-07. Ms. Dana seconded the motion. All were in favor.

Mr. Perry provided a summary of this case. Mr. Perry stated that Mr. Scott Webb, Architect, was requesting, on behalf of the City of Oxford, two variances for an addition to the City of Oxford Fire Station location on the corner of Spring and Elm Streets. Mr. Perry stated that the GB (General Business) District where the fire station is located required a 35 foot front yard setback on each street face. The existing building has a 20 foot yard setback. The proposed addition is 25 feet, requiring a variance of 10 feet.

Mr. Perry continued that the second variance request was to allow for a reduction in window glazing. The GB District requires a minimum 60% of glazing on ground floor storefront facades, between 2.5 and 7 feet above grade. Mr. Perry stated that the applicant wanted to match the new windows with the existing double hung windows; therefore, the planned addition area would result in approximately 18% glazing.

No comments were received from neighboring properties. Mr. Perry reviewed the decision standards and focused on B, if the variance request was substantial and f, whether the property owner's predicament feasibly can be obviated through some method other than a variance. Mr. Perry stated that the front yard setback was not substantial because the addition -, being 10 feet closer to the public right of way , was five feet further recessed than the existing building. And, the glazing decrease was not substantial because of the nature of the existing architecture not being a commercial storefront. Mr. Perry added that the existing building and parking occupied nearly the entire site and that there was no other practical locations for an addition to be built for the necessary staffing of a public service.

Mr. Brady swore in Scott Webb. Mr. Webb stated he appreciated working for the City in this capacity. Mr. Webb provided a PowerPoint presentation.

The BZA had no questions.

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

Prue Dana moved to approve BZA-2014-07 217 S. Elm Street, City of Oxford Fire Station, variance to Section 1143.12(c)(2)A front-yard setback, and Section 1143.12(d)(4) minimum ground floor glazing,. Jack Cohen seconded. The motion passed with the following roll call:

AYE: Prue Dana, John Barnhart, Paul Brady, Jack Cohen, Mike Schnipper (5)
NAY: None (0)
ABS: None (0)

Approval of Minutes of the July 16, 2014 Regular Meeting
Mr. Cohen made motion to approve the minutes as written. Mr. Schnipper seconded the motion. All were in favor.

Old Business
There was none.

New Business
BZA-2014-06 **20-24 E. High Street and 48-56 E. Park Place** Appeal of HAPC's Decision to deny a Certificate of Appropriateness for an application for an addition and demolition, HAPC-2014-08, **Jay C. Bennett, Esq. Petitioner** (Tabled July 16, 2014)

Mr. Brady announced that the BZA would be changing procedure and would hear from the HAPC, Applicant, City Staff and recreate minutes of the HAPC meeting of May 21, 2014 due to the failure of the recording equipment at that meeting.

Mr. Cohen inquired Mr. Brady, the BZA would be recreating the transcript due to a mechanical error. Mr. Brady stated that there was a mechanical failure with the recording after 6 minutes. Mr. McHugh referenced regulations 1331.06.

Mr. Jay Bennett stated he was ready to go reluctantly as he was at a loss of what direction to take. Mr. Bennett stated he was ready to recreate the HAPC meeting if this is what the BZA felt to be the best way to proceed. Mr. McHugh outlined how the process could go to hear the information.

Mr. McHugh stated that the HAPC was willing to follow the process that he had outlined. Mr. Bennett agreed he would go forward. The agreement with both parties was to listen to the same testimony as what was heard by the HAPC at their May 21, 2014 meeting. Mr. Cohen stated he didn't agree. Discussion followed. Mr. Brady reminded everyone that they would be under oath. Mr. Schnipper stated he understood Mr. Cohen's concerns but this would be expeditious with this case. Ms. Dana and Mr. Barnhart agreed to proceed.

<u>Mr. Barnhart made motion to enter into Public Hearing BZA-2014-06. Ms. Dana seconded the motion. The motion carried with a vote of 4-1-0 (Mr. Cohen nay vote).</u>

Mr. Perry spoke stating that no additional expert testimony would be allowed. Mr. Perry was sworn in by Mr. Brady.

Mr. Perry stated that the May 21, 2014 HAPC meeting was the result of a tabled hearing from the HAPC May 7, 2014 meeting because of a decision of the Commission to have a better look at the structure. Mr. Perry, Mr. Kohus and Ms. Henderson participated in a walk through. Mr. Perry stated that the property owner wished to demolish/remove buildings addressed at 48-56 E. Park Place and construct a new addition on the rear of its current archives building located at 20-24 E. High Street, leaving the remainder a vacant grassed area for future development. The owner wishes to then sell off the vacant grassy area.

Mr. Perry turned the conversation over to Ms. Henderson and Mr. Kohus. Their PowerPoint presentation for this meeting was the same as that presented at the May 21, 2014 HAPC meeting and included many photographs taken by them at the walkthrough. Mr. McHugh acknowledged that it may seem redundant but since transcripts were unavailable of the entire proceedings that they needed to try to duplicate as much as possible. Discussion followed. Mr. Brady stated he was comfortable recreating the part that was unavailable and didn't feel a need to go over the first meeting. Mr. Cohen felt the case should be remanded back to the HAPC. Mr. Schnipper stated that he felt the BZA could recreate the second meeting. Ms. Dana and Mr. Barnhart agreed. Mr. Brady summarized the process, that the BZA would recreate the second meeting. Mr. Brady directed the process to Mr. McHugh to assure it was sufficient. Mr. McHugh agreed.

Mr. Brady apologized for the delay.

Mr. Kohus and Ms. Henderson were sworn in. Both provided their educational and professional backgrounds.

Ms. Henderson reviewed photographs with the BZA that were taken during the walk through. Ms. Henderson noted interesting architectural features of the structure. Ms. Henderson stated she didn't feel there was any structural damage or anything of particular concern. Ms. Henderson described Paust Printers' space.

Mr. Kohus spoke. Mr. Kohus stated that he didn't see any structural damage during their walk through, but, it was confusing as to how the interior was cut up. Mr. Kohus reviewed the Sigma Chi Museum condition. The Community Foundation office photographs were described as well. Mr. Kohus stated it was a maze of small rooms but overall in good condition. Mr. Kohus continued that overall the structure did not meet the current fire code as far as fire exits, etc. Mr. Kohus reviewed the former Nail Depot and stated it was in good condition also. Mr. Kohus then described the Barber Shop - its tin ceiling, good condition and cleanliness. Ms. Henderson reviewed the exterior of the structure, stating that in 2004 the front of the building had been restored. Ms. Henderson described the boarded up windows along the side of the building and stated they were intact and seemed to be original. Ms. Henderson described the back exterior as a maze of meters and wires. Ms. Henderson provided historic photographs and who once occupied the building.

Ms. Henderson continued that they did see indications of a fire trap, but, if the wiring and plumbing and maze of rooms and hallways were taken out of the picture they didn't think the structural condition was bad enough to warrant being tore down. Ms. Henderson stated that the structure added historic character to the location and that the structure could be brought up to code and possibly rented out for offices. Mr. Kohus felt there were a couple of roof leaks, but for the most part the structure was in relatively good shape and that the interior needed renovated.

Ms. Henderson continued that the HAPC felt that a four story structure was inappropriate for the location. Ms. Henderson stated the McCullough Block was an important feature of their heritage, its historic content, its historic meaning. Ms. Henderson suggested the BZA bring up the rest of the HAPC members to hear what they said during the May 21 meeting. Mr. Bob Benson was sworn in by Mr. Brady. Mr. Benson stated he was a resident of Oxford and provided his educational/professional background. Mr. Benson continued speaking saying that as a Commission they weigh all factors when speaking of a demolition of a structure and that they understood restoring properties was never cheap. The HAPC had no problem with the small addition proposed. But the question was does this mitigate the loss of these historic buildings. These are the last of the historic buildings on the square, were the architectural fabric of the area and part of the actual history of Oxford itself. Mr. Benson expressed that he was very pleased with what Sigma Chi had done to the front of the building.

Mr. Mike Smith was sworn in by Mr. Brady. Mr. Smith stated he was a member of City Council and the representative to the HAPC. Mr. Smith stated he was a lifetime resident of Oxford. Mr. Smith agreed with Mr. Benson's summarization. Mr. Smith stated that the last of the buildings built were in the 1850's and that given their current condition, would be a loss.

Ms. Kim Peterka was sworn in by Mr. Brady. Ms. Peterka described her educational/professional background. Ms. Peterka described her reaction to Ms. Henderson's presentation on May 21, 2014 because the Applicant had described a much more deteriorated structure.

Mr. Scott Webb was sworn in by Mr. Brady. Mr. Webb provided his PowerPoint presentation from May 21, 2014. Mr. Webb explained his goals of the project.

Mr. Webb distributed to the BZA a document that he had distributed at the May 21, 2014 meeting. It was a 3-page document referencing the Decision Standards, the restoration and addition expenses proposed, an estimate of restoration, remodeling and addition expenses of the remaining structures, and the landscaping and re-use plan.

Mr. Webb described what remained - a maze-like arrangement of connected buildings without fire separations or protected means of egress, too few stairs, inaccessible restrooms, costs to renovate exceeding the value. Mr. Webb shared how much Sigma Chi had spent already. Mr. Webb reviewed his PowerPoint regarding the proposed separation and addition. Mr. Webb stated that the HAPC at the May 21, 2014 meeting agreed that they liked the addition.

Mr. Webb described Decision Standard E - plan for reuse. New construction is appropriate, feels having met the HAPC standards, and has met two of the Decision Standards, thinks the Decision Standard are clear, appropriate construction, rehab, landscaping.

Mr. Ashley Woods, Chief Operating Officer and General Counsel of Sigma Chi Foundation was sworn in by Mr. Paul Brady.
Mr. Woods shared the amount of investment made in the neighborhood of 1.4 million plus $470,000 to the front part of the historic Sigma Chi Foundation. Mr. Woods stated they have exceeded revenue

received; however, they are committed to the building. Mr. Woods stated that they provide free rent to the Oxford Community Foundation and would continue to do so. Mr. Woods clarified that during the May 21, 2014 meeting that certain parts of the structure were not listed as historically significant in the Historic Inventory list and that he had not been made aware of any changes in its designation.

Mr. Woods stated that he understood the need to meet two of the five decision criteria and felt they did - the cost of rehabilitating exceeded marketability and second, landscape plan.

Mr. Jay Bennett was sworn in by Mr. Brady. Mr. Bennett was the applicant for this appeal. Mr. Bennett shared to the BZA that he was not in attendance at the May 7 or May 21, 2014 HAPC meetings. Mr. Bennett continued that having sat through both sides of discussion; he had great respect of the HAPC and what they bring to the table. However, some of the things said give him concern. Mr. Bennett felt that some of the things the HAPC suggested were personal opinion and didn't speak to the decision criteria. Mr. Bennett referred to decision criteria E regarding reuse, specifically landscaping, and that when you are dealing with someone else's property then you have to follow the code, and there is no room for discretion. If you are not strictly following the code with a hard and literal look, it is considered personal opinion.

City staff had no comments.

Mr. Brady provided his remarks and inquired the HAPC that the reasoning for their motion to deny was based upon the fact that only one of the two required conditions was met under 1331.063(a)(2)D, square foot cost of meeting the minimum building code would exceed the square foot market value of similarly used and improved structures in the historic district. Mr. Brady continued and inquired the HAPC as to why the motion was made this way as they did submit a landscape plan. Mr. Perry responded that the HAPC was bound by the entire package proposal that they couldn't pull out parts they liked, or disliked. They had to respond to the package proposal which was demolition and addition and landscape; that is how the HAPC said only one of those were met, and they had to show two of the five were met.

Ms. Dana referred to page 35 of the agenda packet where Ms. Henderson stated that the re-use plan proposed was not sufficient to mitigate the loss of the buildings and that there is already a grassy public area across the street. At the meeting, the HAPC inquired about saving or tearing down portions of what they wanted to tear down; it ended up being an all or nothing proposal and that is why a compromised position wasn't offered.

Ms. Henderson stated the reason to demolish 48-56 E. Park Place was to sell the property. They want to sell it. They can't sell it with the buildings still there. Ms. Henderson continued that both parties did discuss to demolish only the portion in order to put in the addition, but that wasn't an option. The HAPC was concerned about having a grassy lot for an undetermined length of time.

Mr. Benson stated that it was clear in the documentation the reason for demolition was to pay for the addition.

Mr. Woods clarified, that they proposed a grassy park consistent with City expectations, and they proposed a plan of reuse that met one of five provisions for reuse.

Mr. Perry added that the meeting ended where the Commission gave the Applicant an opportunity to table to take another look. However, it was mutual to move forward.
Mr. Brady inquired about the HAPC inventory list of properties in the historic district. Mr. Perry stated that the inventory didn't have anything to do with the decision criteria.

Mr. Cohen inquired about the condition of the roof and if any of the HAPC had viewed it. Mr. Kohus stated that no, no one had climbed atop the roof. Mr. Kohus added that the structural rafters were in good condition, because there were parts of the building where you could see the rafters, and some areas you could not. Mr. Cohen referred to Section 1331.063 Conditions of Removal and inquired Ms. Henderson when she walked through if they looked at the issues Mr. Webb had raised during his first presentation May 7, 2014.

Mr. Kohus stated that he did not see anything that led them to believe that the building could not be restored. Mr. Kohus stated that the HAPC understood that restoration would be expensive. Ms. Henderson described when reviewing a demolition and reuse they have to follow the code and that they did not find the applicant met the criteria. Mr. Cohen referred to their having toured the structure; Ms. Henderson responded that they did not find enough structural damage to justify the demolition of the structure. Mr. Schnipper inquired if the HAPC acknowledged that the Applicant met Conditions of Removal D. Mr. Schnipper inquired Mr. Woods in that in his demolition application for landscape planning if a plan to care for the landscaping was addressed. Mr. Woods stated that the area would be a publicly available space until a reuse plan was determined and that they would be more than happy to put benches and seating in the space. Mr. Cohen inquired if it wasn't discussed at the May 7 meeting about the general public statute being implemented. Mr. Webb referred to the historic district inventory list identifying the portion of the structure being torn down as not a "significant structure" and that this request was no different than the BP Gas station tore down on High Street.

<u>Mr. Brady made motion to reconvene to regular meeting. Mr. Schnipper seconded the motion. All were in favor.</u>

Ms. Dana reiterated that there wasn't any way to separate the structures to demolish the specific portion for renovation and leave the rest intact.

Mr. Brady stated everyone agreed the front portion of the structure was important.

Mr. Cohen inquired about the BZA's options: overturning the HAPC, remanding back to the HAPC for procedural errors, or upholding the decision based upon the code.

Mr. Schnipper noted there was no question that the square foot costs exceeded the value and agreed that there was a landscaping proposal for the rest of the lot, it doesn't say opinion is the deciding factor; they did meet two of the guidelines.

<u>Ms. Dana made motion to support the decision of the HAPC based upon code and having only met one criterion (D criteria). The motion failed for lack of a second.</u>

<u>Mr. Schnipper made motion to reverse HAPC's decision, allowing for the demolition permit based upon the applicant having met two criteria. The motion failed for lack of a second.</u>

<u>Mr. Cohen made motion to remand BZA-2014-06 back to the HAPC for a proper recording as statute requires. Mr. Barnhart seconded the motion.</u>

AYE: Brady, Dana, Cohen (3)
NAY: Schnipper, Barnhart (2)
ABS: None (0)

Adjournment

Mr. Barnhart made motion to adjourn the BZA meeting. Mr. Schnipper seconded the motion. All were in favor. The meeting was adjourned at 9:32 p.m.