

BOARD OF ZONING APPEALS
Meeting Minutes
Wednesday, January 17, 2018

Call to Order

Those members present: Paul Brady, Roger Ames, Prue Dana, Michael Schnipper, and Rosmarie Shaughnessy.

Those members excused: None.

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

Staff members excused: Amy Blankenship.

Election of Officers, Oath of Office

Mr. Roger Ames made motion to elect Paul Brady as Chair of the BZA, Mike Schnipper as Vice-Chair, and Prue Dana as Secretary. Ms. Rosmarie Shaughnessy seconded the motion. All were in favor.

Mr. McHugh gave the oath of office to the BZA members.

Approval of Minutes of the November 15, 2017 Regular Meeting

Mr. Ames made motion to accept the minutes of the November 15, 2017 meeting as written. Ms. Dana seconded the motion. All were in favor.

Adjudication Hearings

BZA-2018-01 [5745 College Corner Pike, Gillman Home Center, variance 1149.02\(a\) hard surface requirement, Paul Eichold, Appellant](#)

Mr. Schnipper made motion to enter into public hearing BZA-2018-01. Ms. Dana seconded the motion. All were in favor.

Mr. Perry was sworn in by Mr. Brady.

Mr. Schnipper disclosed for the record that a member of Gillman's wished to speak with him about the case and that he responded he couldn't speak about the case and stated further that he would have to recuse himself from the public hearing if discussion continued.

Mr. Perry stated that this was the second case in recent months for Gillman's Home Center. Mr. Perry stated that the first variance request was approved by the BZA in 2017 for a variance for the size of an accessory structure. That variance was approved. Also, out of that discussion came about the hard surface requirement for the area located between the customer lot, retail building and new storage building. Therefore, the current parking and site access regulations for the entire use and entire site would need to conform to meet this hard surface requirement. Mr. Perry continued that the owner was requesting relief from this hard surface requirement. Mr. Perry also stated that the applicant had submitted a building application but it was on hold pending this outcome.

Mr. Perry described the existing gravel rear vehicular access area. Mr. Perry stated the property was annexed into the City in 2014 and this area existed before that annexation. Mr. Perry provided several

aerial photographs.

Mr. Perry reviewed the Decision Standards. Criterion A (beneficial use of the property without the variance), Criterion F (the owner's predicament is not known) and Criterion G (spirit and intent behind the zoning requirements would be observed) would not be met. Criterion B (variance is not substantial), Criterion C (essential character of the neighborhood) Criterion D (delivery of government services) and Criterion E (property owner awareness of the zoning restrictions) would be met with the variance. Mr. Perry stated that the staff recommendation was to not approve the variance request.

Mr. Paul Eichold and Mr. August Alfred, Gillman Home Center, were sworn in by Mr. Brady. Mr. Eichold referred to the prior variance approval and reminded the BZA that it would be utilized as a storage building to house the large volume increase in sales and that there would not be an access area for the public or for customer parking. Mr. Eichold noted that before the property was annexed into the City that gravel was allowed. Mr. Eichold also reported that no additional gravel or lane would be added. Mr. Eichold stated that the new structure was planned to be built at the end of the drive. Mr. Eichold described the front of the pole barn to include an apron. Mr. Eichold stated they were asking for a variance to not continue down the lane, through the fence and back to the building.

Mr. Ames inquired if there would be entrances located on the sides of the building. Mr. Eichold stated no, just the front of the building.

Mr. Schnipper inquired if in the future they could see the new structure becoming open to the public. Mr. Eichold stated no. Mr. Alfred stated that it was just a polebarn.

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

Mr. Schnipper suggested that if in the future something changed, that perhaps they should consider stipulations placed on approval.

Ms. Dana stated that she didn't see this as precedence setting as this was a unique case, and was pretty specific for storage.

Mr. Ames made motion to approve BZA-2018-01, based upon Decision Standards B and G. Ms. Dana seconded the motion.

AYE: Mr. Ames, Ms. Shaughnessy, Mr. Schnipper, Ms. Dana, Mr. Brady (5)

NAY: None (0)

ABS: None (0)

BZA-2018-02 [322 S. Main Street & 315 Heather Lane, variance to Section 1137.04\(b\)\(5\)\(A\) occupancy reduction for reconfiguration of nonconforming land uses, Scott Webb, Appellant](#)

Mr. Brady recused himself from discussion. Mr. Schnipper served as Chair.

Mr. Perry was sworn in by Mr. Schnipper.

Ms. Dana made motion to enter into public hearing BZA-2018-02. Mr. Ames seconded the motion. All were in favor.

Mr. Perry stated that the variance request came about from a building permit application. Mr. Perry stated that the owner planned a modification to an existing carport's structural posts that were undersized, structurally insufficient and had existing drainage problems.

Mr. Perry provided a site overview. Mr. Perry referred to the 2013 zoning code change for a 30% reduction of occupancy due to a reconfiguration. Mr. Perry stated the owner was requesting to maintain occupancy at 15 and that due to the zoning reduction, occupancy would have to be reduced to 10. Mr. Perry continued that a structural wall was going to be built onto the rear of the carport to provide appropriate structural support; and that, therefore, was considered a structural modification.

Mr. Perry reviewed the Decision Standards. Mr. Perry stated that Criterion A (beneficial use of the property without the variance), Criterion B (variance is not substantial), Criterion E (property owner awareness of the zoning restriction), Criterion F (owner's predicament) and Criterion G (spirit and intent behind the zoning requirement would be observed) were not in support of the variance. Mr. Perry stated that Criterion D (delivery of governmental services) was not impacted. Mr. Perry stated that he felt there were other options and felt there wasn't enough support to warrant the variance.

Mr. Scott Webb was sworn in by Mr. Schnipper. Mr. Webb stated that it seemed like a whole lot of work over a very minor revision.

Mr. Webb provided a PowerPoint. Mr. Webb shared photographs of the carport posts that existed at the time of purchase by the current owner and that literally the posts were inside buckets filled with cement. Mr. Webb also noted that the grading was substandard. Mr. Webb stated the plan was to install real footings along the front wall of the carport and in order to stop the water from dumping into the carport along the backside of the carport, the owner chose to build a wall with windows and a door. Mr. Webb explained that the zoning code Section 1137.04(b)(5)(A) definition of reconfiguration, was directed to the primary use of the building.

Mr. Webb reviewed the Decision Standards. Mr. Webb stated that it never entered the Owner's mind that fixing the carport would cause a 30% reduction of occupancy. Mr. Webb also stated that he was not sure that he understood staff indicating other solutions could be approved including a half wall on the rear of the carport thus leaving the existing structure in place.

Ms. Dana inquired the design for the wall was a full wall instead of a half wall. Mr. Webb responded that if a half wall was built, water could still come in to the carport and that the simple solution was to replace with a full wall and footings.

Mr. Schnipper inquired if this was a maintenance issue and why he did not appeal staff's decision instead of a variance request. Mr. Webb responded that he felt the intent of the code should be affected.

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

Mr. Ames stated that he understood this was a modification but yet not to the living quarters. Mr. Ames noted that the structure would look better and be safer for the resident.

Mr. Ames made motion to approve BZA-2018-02. Ms. Shaughnessy seconded the motion.

Ms. Dana stated that she was torn in her decision as she saw it as a difficult issue in regards to the housing stock and reducing occupancies.

Ms. Shaughnessy inquired the rationale to reduce occupancy when you are not reconfiguring the apartments. Why in fixing the carport do you have to lower the occupancy. Mr. Schnipper responded that at this point in time that is how the code was written.

AYE: Mr. Ames, Ms. Dana, Ms. Shaughnessy, Mr. Schnipper (4)

NAY: None (0)

ABS: None (0)

BZA-2018-03 [112 S. Poplar Street, variances to Section 1143.05\(c\)\(1\)\(B\) minimum lot width for a 3-family dwelling; Section 1143.07\(c\) maximum front yard coverage of 5%, Scott Webb, Appellant](#)

Mr. Brady returned.

Mr. Brady swore in Mr. Perry.

Mr. Perry stated that two variances were being requested. Mr. Perry stated that the owner of the property planned to demolish three existing buildings on the property and build a new 3-unit building. Mr. Perry noted that the property was recently rezoned to R3MS. Mr. Perry reviewed the lot width and front yard requirements; requiring that the lot width be at least 60 feet wide for a 3-family dwelling; however, the lot is 52 feet wide. Also, the allowable front yard coverage to 5% of the total front yard area; however, due to the proposed sidewalk, the lot coverage is 9.5%. Mr. Perry referred to the alley access.

Mr. Perry noted that there was an additional zoning code issue to deal with. Mr. Perry explained that the way the building is designed there is one door facing the street and two doors facing the alley; therefore, all unit entrances are required to face the street unless a separate variance is granted.

Mr. Ames clarified that the 3rd variance would have to come back before the BZA? Mr. Perry responded it would depend upon what Mr. Webb designed.

Mr. Perry noted that the encroachment into the alley would also be fixed with the new construction.

Mr. Perry reviewed the Decision Standards.

Mr. Webb was sworn in. Mr. Webb provided a PowerPoint. Mr. Webb reviewed the plans to create a new three-family building and stated that he didn't feel the lot coverage was substantial. Mr. Webb stated that the side yard setbacks were reduced; no change in existing occupancy; alley encroachment would go away; would meet the parking requirement; meet setbacks, except for the lot width.

Mr. Webb noted that the sidewalk in the front yard made the front yard coverage 5% over; however, the sidewalk was required. Mr. Webb noted that should the variances be denied the existing structures would remain.

Mr. Webb reviewed the Decision Standards. Mr. Webb did agree that the owner was aware of the zoning code.

Mr. Ames inquired about the existing garage in the back and the parking. Mr. Webb stated they would remove the garage and provide eight parking spaces - thus meeting the parking requirement.

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

Ms. Dana made motion to approve BZA-2018-03, based upon Decision Standard G. Mr. Shaughnessy seconded the motion.

Discussion about other whether the property could yield a reasonable return without the variance took place.

Mr. Brady disagreed that they could combine the lots to make the lot bigger. Mr. Schnipper stated this made for better housing stock and was better looking. Ms. Shaughnessy stated the proposed house was better looking than the existing house.

Mr. McHugh asked to clarify that this would be 3 units with up to 4 occupants each for a total of 12 occupants.

AYE: Ms. Schnipper, Ms. Shaughnessy, Mr. Ames, Ms. Dana (4)

NAY: Mr. Brady (1)

ABS: None (0)

Old Business

Request for Extensions - O'Reilly Auto Parts Store, BZA-2017-03 & BZA-2017-09

Mr. Perry reported that the Applicant has had issues with platting and are working through the issues; however, the project was still a go. Mr. Perry stated that they don't want to proceed until they know the variances are good. Mr. Perry responded that the BZA could approve a 6 month extension.

Ms. Dana made a motion to grant a six month extension for BZA-2017-03 and BZA-2017-09. Mr. Ames seconded the motion. All were in favor.

New Business

Mr. Schnipper inquired about proceeding with the enforcement portion of the zoning code with staff and then meeting together in a work session. Everyone was in favor.

Adjournment

Ms. Shaughnessy made motion to adjourn the meeting. The meeting was adjourned at 7:42pm