

BOARD OF ZONING APPEALS

Meeting Minutes

Wednesday, February 21, 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, and Stephen McHugh.

Staff members excused: Jung-Han Chen, and Amy Blankenship.

Approval of Minutes of the January 17, 2018 Regular Meeting

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

Adjudication Hearings

BZA-2018-04, [5017 College Corner Pike, variance to Section 1143.12\(c\)\(2\) minimum rear yard requirements in a GB District, Scott Webb Appellant](#)

Mr. Schnipper made motion to enter into public hearing BZA-2018-04. Mr. Ames seconded the motion. All were in favor.

Mr. Perry was sworn in by Mr. Brady.

Mr. Perry provided a site map, and described the property location. Mr. Perry reported the applicant was proposing a 30' addition to the rear of the existing Carstar Autobody repair shop for a business expansion. Mr. Perry reported that the addition encroached ten feet into the 25 foot rear yard setback. Mr. Perry noted that the rear of the building abuts a railroad right of way. Mr. Perry expressed concern of the unknown location of the sanitary sewer line. Mr. Perry referred to concerns from the City Engineer and the protection of the sewer line.

Mr. Perry reviewed the Decision Criteria:

Criterion A - Mr. Perry stated that staff was not aware of how the lack of a variance would prevent any beneficial use without the variance.

Criterion B, Mr. Perry stated that the variance would not be substantial.

Criterion C, Mr. Perry reported the essential character of the neighborhood would not be effected as the addition was along a railroad and of similar scale as the existing building.

Criterion D, Mr. Perry referred to the City Engineer comments expressing concern regarding the protection of the existing sanitary sewer main.

Criterion E, property owner awareness of the 25 feet rear yard setback requirement, Mr. Perry stated it has been that amount since prior to the 2011 transaction to the current owner, and didn't know if the owner was aware.

Criterion F, owner's predicament, Mr. Perry stated it would be a predicament for the owner since he would have to put an addition somewhere else.

Criterion G, the spirit and intent was the same as Criterion D.

Discussion followed. The BZA inquired if they should know where the line is first before approving the variance request?

Mr. McHugh spoke. Mr. McHugh suggested adding to the condition that no portion of the building addition shows encroachment into or around the main line area.

Mr. Scott Webb, the applicant, was sworn in. Mr. Webb stated that they did not know where the sanitary line was and that they have contacted Bayer Becker to perform a full survey. Mr. Webb noted that it was news to them that there was a sanitary line in the rear yard.

Mr. Ames inquired how would this harm anything if the BZA tabled for 30 days. Mr. Webb responded he wasn't sure of the cost to the customer; however, they won't want to proceed with the cost of cameras, etc. for the survey without a BZA approval.

Mr. McHugh responded that he felt the BZA could make a decision tonight with the including of the condition.

Mr. Webb continued that the owner was currently using every bit of their lot and that they need the extra space for the additional business. Mr. Webb noted that the existing train tracks already take an easement.

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

Ms. Dana made motion to grant variance Section 1143.12(c)2 with the condition that, the existing sanitary sewer main shall be properly located and protected and that no portion of the building addition shall encroach into the sanitary main line and that the plan will be submitted to and approved by the City Engineer prior to the submittal of a building permit application, based upon Decision Criteria B, Criteria C, Criteria F. Ms. Shaughnessy seconded the motion.

Ms. Dana inquired about the survey that would take place. Mr. Perry explained how the camera would be utilized to locate the line and the survey would be completed.

Mr. Perry stated that he could see one of the manholes in aerial photography. He has his ideas of its location, but needs a professional survey completed.

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

NAY: Mr. Ames (1)

ABS: None (0)

[BZA-2018-05, 104 W. Collins, variance to Section 1143.05\(c\) maximum front yard coverage for properties without alley access in a R-2MS District, Scott Webb, Appellant](#)

Mr. Schnipper made motion to enter into public hearing BZA-2018-05. Mr. Ames seconded the motion. All were in favor.

Ms. Dana inquired that she lived close but did not receive a notification and felt it was sort of in her neighborhood. Discussion followed. Ms. Dana recused herself.

Mr. Perry was sworn in. Mr. Perry provided an aerial view. Mr. Perry stated that the owner wished to install a driveway for onsite parking. Mr. Perry stated there was an existing curbcut, but wasn't sure what happened with the driveway. Mr. Perry noted there was no off street requirement and the owner wants to create parking. Mr. Perry stated that due to the lot coverage requirement because the porch encroached into the front yard already, so the lot coverage was over. Mr. Perry stated they were requesting an 8' wide 36' long driveway and that this was the absolute minimum for a driveway, as the preference was 9x20. Mr. Perry reported that the house and porch had been there a long while and has been a rental for at least 17 years, without off-street parking.

Mr. Perry reviewed the Decision Criteria.

Criterion A, Mr. Perry reported that Staff was not aware of how the variance would be of any beneficial use since the property as a rental has existed without parking for a long time.

Criterion B, Mr. Perry reported that the variance was not substantial since the curb cut exists and the proposed driveway is the absolute minimum dimension.

Criterion C, Mr. Perry reported the essential character of the neighborhood would not be negatively altered with the variance

Criterion D, Mr. Perry reported that the delivery of government services would not be adversely affected by granting the variance, based upon Fire and Police reviews.

Criterion E, Mr. Perry reported that the property owner awareness of the zoning restriction; the front yard lot coverage limit has been in the Zoning Code for decades, well prior to the 2002 ownership transfer. It was most recently increased from 25% to 30% in 2017.

Criterion F, Mr. Perry reported that the owner's predicament was stated in the applicant narrative. It appears to be that alley access is not possible and that the encroachment of the house into the front yard area causes the increase of the lot coverage.

Criterion G, whether or not the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance, Staff believes that the spirit and intent of the zoning requirements would be observed by granting this variance.

Mr. Perry referred to the Police Chief comments.

Mr. Schnipper referred to the aerial photo and the other structures the owner owns in the full block, and that the only person negatively affected would be Mr. Messler.

Mr. Webb was sworn in. Mr. Webb stated there was probably a carriage house previously and that a lot of the houses sit close to the street. Mr. Webb referred that this restriction makes no provision for existing buildings in the Mile Square that are placed closer to the street.

Mr. Webb reviewed the Decision Standards: that, the variance was not substantial, that the essential character would not be affected.

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

Mr. Schnipper made motion for BZA-2018-05, variance 1143.05(c) front yard lot coverage was not substantial or would reflect negatively to the neighborhood and a condition that there be a permanent non removable parking stop to get into the back yard. Mr. Ames seconded the motion.

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

NAY: None (0)

ABS: None (0)

Ms. Dana was welcomed back.

[**BZA-2018-06, 112 S. Poplar, variance to Section 1141.03\(b\) principal entrance upon a street in a R-3MS District, Scott Webb, Appellant**](#)

Mr. Ames made motion to enter into public hearing BZA-2018-06. Mr. Schnipper seconded the motion. All were in favor.

Mr. Perry was sworn in. Mr. Perry reported the variance was for two of three principal entrances to not face the street (the alley). Mr. Perry reported that one of the entrances would face Poplar Street; while the other two would face the alley. Mr. Perry reported the owner would clear the site and construct a new three-family building.

Mr. Perry reported that this was the second time this property had been in front of BZA in recent months. The other variances were related to front yard coverage and lot width. This variance is for a principle entrance upon a street. Mr. Perry reported that the newest zoning did not affect those properties with lots that front on the street.

Mr. Perry referred to the footprint drawing of the building provided by Mr. Webb. Mr. Perry reviewed the Decision Standards:

Criterion A, Mr. Perry reported that Staff was not aware of how the lack of a variance would prevent any beneficial use; the current owner has owned the property since 2002 and maintained it as a residential rental.

Criterion B, Mr. Perry reported the variance could be substantial if the Police and Fire concerns are not correctly mitigated.

Criterion C, Mr. Perry reported in regards to essential character of the neighborhood, the proposed building is similar to buildings in the neighborhood.

Criterion D, Delivery of government services would be affected:

1. The Northeast corner of the existing building currently encroaches two feet into the alley right of way. If this third variance were granted, then the result would be the removal of the encroachment. The use of the alley can be considered a governmental service.
2. The Police and Fire Chiefs both have submitted comments of concern about finding the alley entrances of the proposed building. The ability for emergency responders to find building entrances can be considered a governmental service.

Criterion E, Mr. Perry reported the property owner's awareness the principal entrance requirement has been in the zoning code well prior to the 2002 ownership transfer.

Criterion F, Mr. Perry referred to the property owner's predicament stated in the applicant narrative and that building a new three-family building was a guaranteed right, that is incorrect. Mr. Perry explained that the R-3MS District allows for single, and two-family, which may not require as much building façade for an approved entrance location.

Criterion G, spirit and intent could be observed if Police and Fire approve a satisfactory addressing plan including a physical identification method met.

Mr. Perry suggested that signage and identification of the alley entrances be provided which may make the variance not substantial.

Mr. Perry noted that a three family building was not a guaranteed right; therefore, he did not agree with the owner's predicament shared in Mr. Webb's narrative.

Mr. Perry reviewed staff conditions.

Mr. Schnipper inquired if there were any other structures like the proposed structure. Mr. Brady referred to one at 312 Walnut Street and one off Beech Street (11 & 15). Mr. Perry stated that yes there have been variances granted in the past few years, maybe not exactly like this one with one principle entrance on the street and two to the side.

Mr. Scott Webb was sworn in. Mr. Webb referred to past applications with this kind of entrances issue and that he didn't agree with Mr. Perry or formerly Kathy Dale, so accept as it is and come before the BZA for a variance. Mr. Webb stated he felt it meets intent of the code; we don't want buildings sitting sideways on the lot. Mr. Webb stated it meets the intent. Mr. Webb referred to Mr. Perry's comment that this was not a guarantee for a 3 family building and referenced last month's approval of a three family building. Mr. McHugh noted that yes the BZA did at last month's meeting make a determination to grant the variance.

Mr. Webb referenced addressing issues and noted that each entrance would have a separate porch that can be simply identified with clearly marked designations. Each porch for each dwelling unit will be visible from S. Poplar Street. This will be a huge improvement from the existing structure.

Mr. Webb reviewed the Decision Standards:

Mr. Webb reported that this was a voluntary improvement. The current occupancy is 12 and the current building would continue to encroach the alley ROW or a different building type design could be provided. Mr. Webb shared how this design was compatible with the neighborhood.

Mr. Ames inquired if the front facing entrance allowed entrance into the other. Mr. Webb stated no.

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

Mr. Brady inquired Mr. McHugh his opinion if it was a foregone conclusion that the decisions made last month stood. Mr. McHugh referred to the minutes of the previous month stating specific discussion of the side entrances.

Mr. Ames stated he liked the design.

Mr. Ames made motion to grant variance 1141.03(b) with the condition that the side entrances shall be addressed properly and approved by the Police and Fire Departments based upon Criterion B was not substantial.

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

NAY: None (0)

ABS: None (0)

Old Business

There was none.

New Business

Staff announced that the March meeting would have four applications.

Adjournment

Ms. Shaughnessy made motion to adjourn the meeting. The meeting was adjourned at 7:28 p.m.