

Mt. Pleasant Zoning Board of Appeals
Minutes of Regular Meeting
December 23, 2009

Chairman Curtiss called the meeting to order at 7:01 p.m.

I. Roll Call: Board Secretary Kench called roll.

Members Present: Benison, Curtiss, Ellertson, Kulick, Olivieri, White
Others Present: Kench, Murphy, Appellants

II. Approval of Agenda:

Agenda was approved with no changes.

III. Approval of Minutes from October 28, 2009:

Motion by Kulick, support by Benison, to approve the minutes from October 28, 2009, as written. Motion approved unanimously.

IV. Communications:

Kench reported that there were no communications to share at this time.

V. Public Comments:

Chairman Curtiss opened the floor for public comments. There being no one who wished to address the Board, Chairman Curtiss closed the public comment session.

VI. New Business:

Board secretary Kench explained board proceedings and noted that a quorum was present.

Kench introduced **Case 10-2009 – 812 Pleasant Street**, explaining that this was a request to reinstate a variance that was approved in July of 2008, which has since expired. Kench explained that the original request, to allow the addition of two units to an existing building, required a rear yard variance. Kench further reported that there have been no changes to the site plan that was previously approved; however, the applicant is asking the Board to waive the requirement placed on their previous approval, which calls for additional landscaping in the railroad Right-of-Way. The applicant has been unable to secure approval from the railroad to allow them to meet this condition.

Kench explained that the applicant went before the Planning Commission on December 3, 2009, and has secured an extension of their Site Plan Approval for this project, which had also expired.

Commissioner Ellertson asked for clarification on the difference between the request from 2008 and now. Kench explained that the setback request is the same, with the only

difference being the request to waive the requirement for additional landscaping in the railroad right of way.

Commissioner Kulick clarified that the original building is staying, with the addition being added to the west side of the existing structure. He further stated that with this design, the parking ratio and occupancy of this and the neighboring site, which is also owned by the applicant, is an improvement. In addition, the design also improves circulation for the Fire Department.

Chairman Curtiss stated that if this project had commenced prior to July 23, 2009, the applicant would not have been required to appear before the Board, as the approval would have still been valid.

Rick McGuirk, applicant for the case, approached the Board on behalf of United Investments, reiterating that it has been a challenge trying to get approval from the railroad to allow the additional landscaping; and they are therefore asking for relief from that requirement. He further indicated they would be willing to add additional screening on the east side of the property as an alternative.

Commissioner Kulick stated there is currently no public sidewalk in front of the property and asked Mr. McGuirk if it would be a problem for them to install sidewalks. Mr. McGuirk responded that they could do so.

Chairman Curtiss asked if the applicant had a target date for starting the project. Mr. McGuirk responded that the project would get underway in the spring.

Chairman Curtiss opened the Public Hearing. There being no one who wished to address the Board, the Public Hearing was closed.

Board Discussion:

Commissioner Kulick commented on the difficulty in working with the railroad in regards to obtaining permission for the plantings in the railroad right-of-way and concurred with the applicant's request that this requirement be waived. Benison asked if the railroad had any rationale for denying the applicant permission. Kulick indicated it wasn't so much that they denied the request, just that it is difficult to get a decision from them.

Chairman Curtiss asked Mr. Kench if there were any communications received on the case. Kench stated the only comments were from the Department of Public Works and Fire Safety and neither of these departments had any concerns with the proposed project.

Motion by Kulick, support by White, to reinstate the approval on the expired variance, based on the fact that the conditions from the original approval had not changed, waiving the requirement to place additional screening in the Railroad Right of Way, with additional plantings to be installed along the east of the property. In addition, the public sidewalk is to be extended from the south to the north property line in the interest of enhancing walkability.

Motion approved unanimously.

Case 11-2009 – 425 S. Mission

Kench introduced Case 11-2009, indicating this is a request for a finding on a nonconforming residential use located at 425 S. Mission, above the RHYNO's Car Wash. Kench stated that the non-conforming use has been in existence for over 40 years as a legal non-conforming use. Kench explained that legal non-conforming uses are allowed as long as the use doesn't cease for more than one year. Based on the information submitted by the applicant, the rental license was not renewed in April of 2008, at the owner's request to allow him time to make some much-needed repairs. As a result, the license on the nonconforming unit expired one year later in April of 2009. Per the applicant, he was unaware of the non-conforming status of his apartment and the one year time lapse, or he would have maintained or requested an extension on the license to make the repairs. Kench further stated that if the Board approved the applicants request to reinstate the legal non-conforming status of the property, they may want to require the applicant reserve parking spaces for the tenant(s).

Commissioner Benison asked about the nature of the repairs. Kench stated the applicant could better address that question, however he stated there was an issue with the boiler, and in addition, the apartment was empty at the time. He further stated he believes there have been a number of updates to the apartment since that time.

Ronald Rhynard, owner of the property, addressed the Board. Mr. Rhynard stated he purchased the property in 1983, at which time there was an apartment on the second floor. He stated that they have made improvements to the property, i.e., they tore down an old metal portion of the building and re-built with blocks. Mr. Rhynard explained that he lived in the apartment for some time and then began renting it.

Mr. Rhynard further stated that a couple of years ago, a separate boiler which heated the floors malfunctioned, resulting in lines freezing up and causing extensive damage. At the time he wasn't in a financial position to make the needed repairs, and therefore decided to let the license lapse, unaware of the non-conforming status of his property and the one-year time limit. Recently, he had someone he knew who needed a place to stay, so they did extensive work on the apartment and then found out they couldn't get it relicensed. Mr. Rhynard further stated that he first became aware of the City's licensing program in the early 1990's after a transformer fire. He wasn't clear on why he wasn't required to go through this process at that time.

Commissioner Kulick asked whether Mr. Rhynard had ever rented to tenants who didn't own vehicles. Mr. Rhynard replied that he did not believe so. Commissioner Kulick asked if the tenants' cars had ever been a problem. Mr. Rhynard stated there has never been any issues with this – they generally park in the northeast corner of the lot. Discussion followed on the configuration of the lot and whether dedicated parking spaces should be considered. Consensus was that with the entire lot paved, the Board did not feel it was their concern where the applicant put dedicated parking for tenants and indicated they were comfortable with staff working that out with the applicant.

Chairman Curtiss suggested that there were other uses such as this on Mission Street. Commissioner Benison suggested that this use is not inconsistent with the Mission Street Design that has been proposed, with mixed uses being encouraged.

Chairman Curtiss stated that if the license hadn't lapsed, the applicant wouldn't even be here. Mr. Rhynard stated that having someone living on the premises has cut down on vandalism problems.

Commissioner Olivieri asked if the Fire Department had gone through the property. Mr. Rhynard stated that they have not; that when he called to begin the process of having the property re-licensed, he was referred to Jeff Gray (Director of Planning & Community Development).

Chairman Curtiss opened the Public Hearing. There being no one who wished to address the Board, the Public Hearing was closed.

Chairman Curtiss asked Mr. Kench if there were any communications received on the case. Kench stated the only comments were from the Department of Public Works and Fire Safety and neither of these departments had any concerns with the request.

Board Discussion:

Motion by Ellertson, support by Benison, to reinstate the legal non-conforming status of the property with the condition that the applicant works with staff on the placement of dedicated tenant parking spaces. The Board approved granting the reinstatement on the basis that the request is consistent with the Mission Street Overlay guidelines.

Motion approved unanimously.

Commissioner Kulick suggested staff ask the city attorney for an opinion on the issue with non-conforming uses. He stated he feels that the discontinuance of use is only one part of the equation and that there also has to be the intent to discontinue the use. He further stated that this last case is a prime example – as he feels the applicant never intended to permanently discontinue the use. Commissioner Ellertson asked if staff could research the issue without engaging legal counsel. Kulick stated that the attorney is on a retainer so we may as well ask for legal opinion.

VII. Adjournment

Motion by Kulick, support by Benison to adjourn. Motion carried unanimously. Meeting adjourned at 7:45 p.m.