

Mt. Pleasant Zoning Board of Appeals
Minutes of Regular Meeting
November 23, 2010

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

I. Roll Call: Kench called roll.

Members Present: Benison, Ellertson, Kulick, Rowley, White.

Absent: Brockman

Others Present: Kench, Murphy, Appellants

II. Approval of Agenda:

Motion by Benison, support by Rowley to approve the agenda. Motion approved unanimously.

III. Approval of Minutes from October 27, 2010:

Motion by Ellertson, support by White to approve the minutes from October 27, 2010, as written. Motion approved unanimously.

IV. Communications:

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

V. Public Comments:

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

VI. Public Hearings:

Chairman Kulick explained board proceedings and noted that a quorum was present.

Case ZBA 13-2010 - 1007 S. Main. Request to raze existing building and build new rooming dwelling for Registered Student Organization with 13 occupants.

Kench explained that this request involves two variances: an increase in allowable occupancy from 9 to 13 and a decrease in required parking for RSO should the occupancy request be granted. Kench noted that following the ZBA's consideration on the request/s, the applicant would be required to file an application for Site Plan Approval and a Special Use Permit for an RSO before the Planning Commission.

Kench provided the Board with a brief history on the change in use of the property, following review and approval by the ZBA and the PC back in 2005/2006 when the current RSO was established on the site. The property was considered a legal non-conforming rooming dwelling on the basis of the occupancy, lot size and parking at the time. The ZBA approved

the request to change the use to the RSO, showing that a reduction in the occupancy from 12 to 9 represented a marked decrease in the non-conformity. In addition, improvements were being made in the parking. Following the ZBA's ruling, the applicant presented their request to the Planning Commission for approval of a Site Plan/SUP for the RSO, which they were granted. Shortly after the approval, the RSO placed their letters on the Building.

Kench, noted that this request for redevelopment calls for a new RSO dwelling having a similar footprint to the building recently approved by the ZBA, located at 1001 S. Main Street. The applicant is redeveloping this site simultaneously with the adjoining parcel at 1005 S. Main Street, which is also on the agenda, adjustments are being made to the shared lot line to create two conforming parcels in the M-2, Multiple Family district, meeting both lot width and lot area. The current lot size is 64' x 122 (7,869 sq. ft). With the added area from 1005 S. Main, both lots will be 69'9" x 122 (8,510 sq. ft). Kench suggested that when the Board is considering the density, they take an overall view of the other lots in the area.

Chairman Kulick asked for clarification on lot size. Kench reported that the applicant is taking a portion of the lot width from 1005 S. Main, which is currently 75' wide by 122' in depth and adding it to the 1007 S. Main site. Kench reiterated that the applicant is also asking for a variance to allow an increase in occupancy for 1005 S. Main Street as well, from 10 to 12 occupants.

Kench noted that all setbacks for the redevelopment can be met. The applicant is looking for an increase in the occupancy from 9 to 13 for the proposed use. Parking is required at two parking spaces, plus one space per person or 15 spaces if the occupancy is granted. Therefore, a variance to reduce the parking from 15 to 14 spaces would be needed if the occupancy increase is granted.

Kench presented the proposed elevations, photos of the area and a map depicting the uses on the adjoining site, with both occupancy and the land area per person calculation based on that occupancy. Kench reminded the Board, that the Planning Commission has been supportive of *reasonable increases* in occupancy to encourage better design and redevelopment. Kench provided the history of the last three cases involving requests to increase the occupancy, 802 S. Main, 1023/1025 S. Washington and 1001 S. Main where the ZBA permitted an increase from the land area calculation or the current rental license by one additional person.

Chairman Kulick commented, that in reviewing the 5-year history of code enforcement violations (included in the report), that he is uncomfortable with the numerous violations, which may increase, given the significant increase in occupancy from 9 to 13.

Mr. Olivieri addressed the Board regarding the case, stating he shares the goal of the Board to improve the area. He further commented that he would be tearing down a 134 year old structure and replacing it with a new building and that an increase in occupancy is one of the consequences of getting a new building. Mr. Olivieri commented that the increase in occupancy will likely not be noticed by neighboring properties as the proposed house will be big enough to house the number of requested occupants. In addition there will be sufficient parking, with no more parking in the front. The parking will be paved and organized, the

building will be much improved and there will be noticeable improvements to the area immediately. Mr. Olivieri further stated that he feels the new building, improved parking and replacing the dumpster with trash carts will help alleviate many of the code enforcement issues, as it has at the recent redevelopment at 802 S. Main. The trash carts will be located right outside the back door.

Chairman Kulick questioned how increasing the number of occupants would reduce the problems, and that he is bothered more by this request than recent approvals. Mr. Olivieri commented that the residents understand the concept of "*give them a nice place to live and they treat it better.*" He further commented that the design of the building is such that if he has trouble with the residents, he can convert the building into a duplex within a day.

Commissioner Benison questioned why he didn't simply build a duplex. Mr. Olivieri stated that he is responding to the demand and after the first redevelopment he has received several requests.

Commissioner Benison questioned why the applicant was asking for 13 occupants at 1007 S. Main, but only 12 at 1005 S. Main, as the lot sizes will be identical after the lot adjustments. Mr. Olivieri stated, that following his 802 S. Main Street project, he began receiving calls from other interested parties, he is simply responding to their requests.

Chairman Kulick opened the Public Hearing.

Mrs. Hinkley, owner of 1024 and 1026 S. University spoke against the request citing problems with parking, broken doors and windows and attempted break-ins.

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

Kench reported the only communication received was from DPW and DPW. If approved, the applicant will be required to meet the requirements of these departments.

Board Discussion:

Chairman Kulick asked if we could obtain information from the Police Department on the number of times they have been called to this address for nuisance parties and suggested that the Board could stipulate that they could lose the RSO status for violations where tickets are issued.

Kench reported that nothing was received.

Chairman Kulick questioned whether the property could be required to come back before the Board if they are cited for a nuisance party. Kench stated the Planning Commission could make that a condition for granting a Special Use Permit. Commissioner Ellertson voiced reluctance on placing a condition for one call, which could happen to anyone. He also voiced concerns regarding the number of litter violations and questioned whether simply changing the container would change the behavior. He also commented that he is sensitive to Mrs.

Hinkley's concerns and questions increasing the occupancy from 9 to 13, stating he would have no problem approving 10 occupants as this is somewhat consistent with what has been done in the past.

Chairman Kulick questioned whether the Office of Student Life would be able to step in to help control the behavior of the RSO's.

Commissioner Benison also questioned the significant increase in occupancy being requested and commented that there may be a universal code of conduct for RSOs.

Commissioner Rowley commented on the issues with property and trash concerns and stated she feels an increase in occupancy may increase problems associated with trash/litter.

Chairman Kulick stated that they could approve the request for 10 occupants and if that isn't viable for the applicant, then we may be stuck with a 134 year old home. Commissioner Ellertson asked the applicant if 10 occupants would be viable. Mr. Olivieri stated that he feels there are some issues related to the current occupancy that still need to be resolved and asked the Board to postpone a decision until they can be worked out.

Motion by Ellertson, support by Benison to postpone Case ZBA-13-2010 at the applicant's request.

Motion approved.

Chairman Kulick asked staff to obtain answers to some questions such as:

1. Can the Police Department provide us with a list of nuisance parties at this site.
2. Check with Student Life to see if there are things they can do to help with repeated code enforcement violations.
3. Check to see if there is a Universal Code of Conduct for RSOs.
4. Check with the City Attorney to see if a variance or SUP can be revoked for nuisance parties.

Case ZBA 15-2010 – 1705-1721 S. Mission - A request for a variance from **Section 154.067(C)9(B)&(D)** of the Zoning Ordinance. The applicant is seeking approval to establish a Nightclub/Restaurant, which is on a property located within 50 feet of a residential district. In addition, the applicant is seeking relief from the requirement to provide an 8-ft. masonry screening wall where the property abuts an M-1, M-2 or OS-1 district.

Kench reported the applicant is looking to establish the Nightclub/Restaurant out of one of the suites in the strip mall located at 1705-1721 S. Mission – the site of the former R & R Laundromat.

Kench reported the applicant has noted that they will be operating for a majority of the time similar to a *Class I Restaurant*, which does not have the same requirements as a Nightclub. The

applicant was concerned whether they could meet requirements related to food sales in relationship to alcohol to maintain the use - (Information included in the Staff Report - *i.e. no more than 50% of the gross revenues of the establishment shall be derived from the sale of alcoholic liquor*). Kench noted that should the Board approve the request; the applicant would be required to appear before the Planning Commission for a Special Use Permit.

Kench explained that the ordinance requires a 50 foot separation from a Residential district, as measured from property line to property line, to allow a nightclub. Kench shared an aerial photo of the area, which illustrated a separation distance of 30 feet to the residential district, where the actual measurement to the proposed suite was more than 400 feet. In addition, the site adjoins the M-2 zoned properties to the North, South and East of the property which requires an eight foot masonry screening wall. There is currently a 6' wall separating the site from the M-2 property to the north. Kench shared photos of the site, in addition to drawings from the applicant showing the layout and proposed updates to the façade.

Commissioner Ellertson asked for clarification on the length of the opening on the existing wall to the North. Kench stated it was approximately 30 ft. which is located to the east end of the wall, which is poured concrete, and provided a photo of the area.

Kerry Chahil addressed the Board as applicant for the request. Mr. Chahil stated that the entrance would be off the front of the building – with the back only to be used as an emergency exit – and there would be very little traffic back there.

Mr. Chahil explained that the intent is for an upscale restaurant, offering breakfast, lunch and dinner, with an after-hour's nightclub operation. The establishment will be open 24 hours. Mr. Chahil stated there is more than ample parking in front and there is a complete 6 ft. masonry wall on the north side. He asked that the Board accept the 6 ft. wall as sufficient screening. Mr. Chahil reiterated that the actual use will be 400 ft. from the residentially zoned property based on their location within the complex. He stated they would be doing a complete renovation of the inside, and will offer upscale dining with white tablecloths, good music, etc.

Chairman Kulick asked if there would be dancing and what the capacity would be. Mr. Chahil stated there would be dancing beginning at 9:00 p.m., at which time some of the tables would be removed for a dance floor. Capacity would be set at 120 for the breakfast through dinner hours, increasing to 175 once the tables are removed.

Commissioner Rowley asked the applicant to speak to the façade improvements. Mr. Chahil stated they plan on removing the windows from the front and replacing them with stonework. They are planning on putting approximately \$28,000 into the façade renovation. He further stated that the owners have recently received approval for a new building in front of the complex and have also considered façade improvement to the entire complex. They have a lease agreement in place that when the remaining façade work is completed, the applicant will be required to match their façade to conform to the complex. He further commented that the proposed improvements would help beautify the building.

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

Kench reported that the only communications received were from the Departments of Public Safety and Public Works. If approved, the applicant will be required to meet the requirements of these departments.

Commissioner Benison stated his main concern would be with noise levels. Chairman Kulick agreed that noise was a concern for him as well. Mr. Cahil stated that one of the reasons for removing the glass front was to address the noise. He further stated that all cracks will be sealed and the interior will be insulated with K-12 insulation, which provides the best sound control inside and prevents the noise from traveling outside.

Commissioner Benison questioned whether there would be a need to control vehicular access. Mr. Cahil commented that the traffic is already controlled with speed bumps, etc. There is an access drive, along their suite, that goes to the apartments behind the complex. Commissioner Ellertson asked if they would be receiving deliveries through the back entrance. Mr. Cahil stated they would, however did not foresee any problems. He further stated they have an interest in the store next door which receives deliveries in the back and there have never been any problems.

Chairman Kulick acknowledged that with the proposed floor plan, most of the sound would travel to the front. Commissioner White stated that noise coming from inside the establishment did not concern him; it was the noise from patrons leaving and congregating in the parking lot that concerns him more.

Mr. Cahil stated that since no Class I liquor licenses were available; they have obtained a *Resort License*, which requires 50% of the operation's sales to be from food. Because they will be open 24 hours, he does not think there will be an issue with noise from the parking lot as everyone will not be leaving at the same time. He further commented that they wish to make this a model franchise, and as a business owner, will control any issues with their patrons. He further commented that there would be no reason for anyone to go behind the building and there will be security at the front door. He also stated they are targeting a higher clientele which will help alleviate that type of behavior.

Chairman Kulick suggested the Board deal with the separation issue first before proceeding with discussion on the screening wall.

Motion by Ellertson, support by Benison to approve the construction of a Nightclub/Restaurant within 50 feet of a residential district based on the location within the complex. Motion approved.

Board discussion took place on the existing 6 ft. wall and whether there would be room for plantings/landscaping.

Chairman Kulick stated that the purpose of a screening wall is to buffer from residentially zoned properties, and at this location, a wall would not really serve the purpose.

Commissioner Ellertson stated he feels the 6 ft. existing wall on the north side is sufficient and has no concerns with the wall not extending to the east line, due to the building will serve as a buffer. He commented however, that he does not feel this is a good location for this type of establishment.

Mr. Chahil stated that they are more of a restaurant than a nightclub and the variance request is based on the nightclub/bar use, due to the dancing and hours of operation; however, he reiterated that the *resort license* requires their sales to be 50% food. He also commented that the other businesses in the complex will be closed during the hours when the music and dancing are taking place.

Motion by Ellertson, support by Benison to waive the 8 ft. screening requirement based on the distance to the single family residential property.

Commissioner White stated that he is not against developments of this nature, but questioned how we can assure the applicant adheres to the 50% food sales, and further, what basis they have for granting the request.

Motion by Ellertson, support by Benison to withdraw the previous motion. Motion passed.
Board Discussion

Kench stated that in establishing a basis for granting a variance, the Board may consider that the operation, Nightclub/Restaurant, as described by the applicant to comply with the liquor license requirements, is similar in nature to our Class 1 restaurant, which has different requirements for separation between uses. Should the use change and the applicants secure a different license to operate a nightclub only, the applicant would be required to come back to the Board for review.

Commissioner Rowley is concerned should a different license (State License) become available, that the use would change to a nightclub only, if that is really the sole purpose of the operation. She indicated she would be more supportive of the request if the Board made the approval contingent upon a certain percentage of the operation being for food sales, 50 or 40 percent.

Mr. Chahil stated it should be 50 percent food sales, which is required by their resort license.

Kench noted that with 50% food sales, the use is very similar to a Class I restaurant, where additional buffering would not be required. You would still have a 6 foot wall along the north line.

Board Discussion:

Kench reviewed section 154.164 governing the conditions that must be necessary for allowing a variance. Kench pointed out that the screening requirements for Nightclubs lend themselves more to a use being established on an individual site adjacent to residential districts. Kench

pointed out that if the use were established on an individual lot in front of the complex, the issue regarding screening requirements would go away; however, many of the issues related to noise from people leaving the facility and/or parking area may still remain. Kench noted that given the Nightclub/restaurant is being considered in a suite in a large commercial complex, much of the concerns that were raised by the Board will be buffered by the building itself. Unlike other Nightclubs, the applicant noted, they are anticipating that many of the patrons will remain on site to order food, which should relieve some of the noise associated with everyone leaving the business/parking area at the same time.

Motion by Benison, support by White to approve the request to waive the additional screening wall requirement between the Nightclub/Restaurant and the M-2 district on the basis the operation will be very similar to a Class 1 Restaurant, provided they can maintain the minimum 50% food sales, which is consistent with the Resort License issued to the site. Any changes in the representation of the use will be subject to Planning Commission review and approval.

Motion approved 4:1.

Case ZBA 16-2010 – 1005 S. Main. Applicant is seeking approval to demolish existing structure and replace it with a Registered Student Organization dwelling for 12 occupants.

Kench stated that if approved, the applicant will need to appear before the Planning Commission for Site Plan Approval and a Special Use Permit. Kench explained that this site is currently licensed for 10 occupants. The applicant is requesting the new development be licensed for 12. Kench further stated that the parking would be hard-surfaced per ordinance requirements and setbacks will be met. Kench reminded the Board that lot width and lot area will be reduced to create two conforming lots with 1007 S. Main in Case 13-2010 presented earlier. Based on the adjusted lot size, the site would be large enough for 9 occupants. Kench shared the calculations showing the square footage per occupant based on 9, 10, 11 and 12 occupants. In addition, he referred the Board to the density on the surrounding sites. Kench stated the proposed site plan shows 14 parking spaces, located off the back, which meets ordinance requirements and which will eliminate a drive off Main Street. He also showed the proposed elevations.

Chairman Kulick and Commissioner White both commented that this case is directly impacted by the outcome of Case ZBA 13-2010, which was postponed earlier this evening.

Mr. Olivieri commented that this case is pretty much the same request as the previous case. He has applied under an RSO, but that is subject to change. He commented that the greatest percentage of code violations on both sites were related to solid waste and dumpsters, which he believes will be alleviated with the use of trash carts and new development.

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

Board Discussion:

Commissioner White reiterated that the Board postponed the previous case, which directly impacts this one based on lot size, and that it doesn't make sense to postpone one case without postponing the other. Commissioner Benison agreed.

Motion by Ellertson, support by Rowley to postpone Case ZBA 16-2010.

Motion approved.

VII. Old Business: None

VIII. New Business: None

IX. Other Business:

Commissioner White reported that parade applications for the Dickens Christmas parade are being accepted. Information on activities can be found on line at www.downtownmp.com.

X. Adjournment:

Motion by Ellertson, support by Benison to adjourn. Motion approved.

Meeting adjourned 9:25 p.m.

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