

Mt. Pleasant Zoning Board of Appeals
Minutes of Regular Meeting
June 27, 2012

Chairman White called the meeting to order at 7:06 p.m.

I. Roll Call: Staff called roll.

Members Present: Ellertson (Vice-Chair), Fetting, Fokens, Palm, Quast, White (Chair)
Members Absent: Kulick
Staff: Kench, Murphy

II. Approval of Agenda:

Motion by Palm, support by Fetting to approve agenda. Motion approved unanimously.

III. Approval of Minutes from May 23, 2012:

Motion by Fokens, support by Ellertson, to approve both the minutes from the regular May 23, 2012 meeting and the minutes from the May 23, 2012 work session as submitted. Motion approved unanimously.

IV. Communications:

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

V. Public Comments:

Chairman White opened the floor for public comments.

There being no one who wished to address the Board, the Public Comments session was closed.

VI. Public Hearings:

Chairman White explained board proceedings, noting that a quorum was present.

Chairman White asked for a motion to remove the first case, which was postponed from April, from the table.

Motion by Palm, support by Ellertson, to reopen Case ZBA-09-2012.

Motion approved unanimously.

A. Case ZBA-09-2012 - 402 Greenfield.

Staff introduced Case ZBA-09-2012, submitted by the owners, Richard and Margie Smith, noting that they are requesting a variance to reduce the required front yard setback to construct a garage addition. The proposed addition would reduce the required 25 foot

setback to 7 feet. Staff reported that the site is located on a dead end street, and is zoned R-2, as are the surrounding properties. Future land use is designated as Urban Residential.

Staff shared the proposed site plan, along with photos of the existing site. Staff further shared an aerial view of the area showing the property setbacks along the street. Staff noted that there are no sidewalks along this stretch of roadway, making the front yards appear larger.

Staff explained that the applicant has provided two options; one for an enclosed two-car garage, which is their preferred option; and one for an open carport.

Richard Smith, owner and applicant, addressed the Board. Mr. Smith explained that the main reason they wish to put in the garage is due to his wife's medical issues, which make it difficult for her in the winter. Having the garage close to the house would make it much easier for her. Mr. Smith stated that the setback from the curb to the house is actually 49'. With the proposed garage there would be 25' to the curb, even though it would only be 7' from the actual property line. Mr. Smith stated he had discussed the proposal with his neighbors and they were all supportive of the garage addition.

Commissioner Fokens asked if the garage would be attached to the house and if so, whether there would be a door leading directly from the garage into the house. Mr. Smith stated it would be attached; however, they would still need to go outside to get from the house to the garage.

Chairman White noted that the Board would be discussing other options available to the applicant; such as a detached garage behind the house or a smaller addition on the south side. Mr. Smith stated that anything on the south side may create issues with water draining onto his neighbor's property. They also only have 17' on that side, which would significantly reduce the size of a garage at that location.

Chairman White commented that it appears that there was once a one-car garage that was converted to living space and asked about the configuration of the converted space. Mr. Smith stated that following the conversion, a stairwell had been relocated towards the front of the home, which would prevent them from converting the space back into a garage.

Chairman White asked if they could possibly trim some of the family room off to allow an addition on the south end. Mr. Smith stated that the room is quite narrow already, with "built-in's" along one wall. Trimming off any of the area would make the room extremely narrow.

Commissioner Fokens asked if there was anything behind the house, such as a septic system, etc. Mr. Smith stated that at one time there was one on the north end of the house; however, when the property was annexed into the city, sewer lines were put in.

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

Staff reported that there was no correspondence to share.

Board Discussion:

Commissioner Palm commented that she is hesitant to grant the setback request as all the other homes along this street meet the setback requirements and this would really stand out.

Chairman White commented that the applicant has other alternatives available, and it would be difficult to identify a practical difficulty.

Commissioner Quast commented that the request doesn't meet all of the conditions necessary to grant the variance. Commissioner Ellertson agreed.

Motion by Palm, support by Ellertson, to grant a variance for Case ZBA-09-2012, submitted by Richard and Margie Smith, to reduce the required front yard setback to construct a garage addition within the 25-foot required front setback.

Motion denied unanimously. The Board denied the request based on the alternative options available to the applicant, noting that the request does not meet the criteria necessary for granting a variance.

B. ZBA-11-2012 - L-1 Bar and Grille. 1705 S. Mission.

Staff introduced Case ZBA-11-2012, referring to the memo to the Board, dated June 15th. Staff noted that the applicant was asking for reconsideration for variances that were granted in November of 2010 to allow modifications to their business operation. Staff reminded the Board that the previous approvals granted through both the ZBA and the Planning Commission (January 2011) were based on the representations provided by the applicant and were very specific in nature based on the uniqueness of the operation as both a Class I Restaurant and Nightclub. The applicant was advised that any changes in the operation would need to be approved by the Planning Commission and Zoning Board of Appeals.

Staff noted that in April of this year it was discovered that the vestibule had been removed from the front of the business without an approved building permit. At that time it was also found that the hours of operation had been reduced and the seating layout had been changed, all of which had been part of the Special Use Permit (SUP) approval. Staff reported that the applicant was then put on notice that they were in violation of their SUP. Staff met with the owners, who quickly brought the site back into compliance with the hours of operation and seating layouts.

Staff commented that the removal of the vestibule could affect noise levels, which was a concern with the original approvals.

Staff noted that the Board will need to reaffirm if the variance requests to waive the required 8 ft. masonry screening wall between the nightclub and adjoining M-2 Zoning District and a variance to permit a nightclub on property within 50 ft. of a residential district are still warranted. Staff also noted that in addition, the applicant is also requesting that they be allowed to use the mezzanine area for additional seating and are requesting changes in the

main entrance (removal of vestibule), flexibility in the hours of operation, flexibility in the seating layouts and flexibility in menu offerings.

Kerry Chahil, representative for the applicant, addressed the Board. Mr. Chahil stated that they have done everything within their power to make this a successful business and have had no complaints from the neighboring properties regarding noise levels.

Mr. Chahil stated that they recently went through their 6 month review with the Michigan Liquor Control Commission and it was found that 62% of their revenue was from the sale of food. Mr. Chahil stressed that they are more of a restaurant than a nightclub, and noted that their liquor license is a "resort" license which also requires more than 50% of their sales be from food/non-alcoholic items.

Mr. Chahil explained that although they thought a 24 hour operation was a good idea, this has not proved to be true - there are no customers. He commented that they had put themselves in a situation by offering specific seating layouts which does not allow them the flexibility to move tables to accommodate larger parties. He reiterated that they need to have some flexibility in the seating and they also need to be able to adjust their hours of operation to accommodate their customer base.

Mr. Chahil explained that the mezzanine area, which was previously built, but has not been in use, is needed for additional storage and in addition, they would like to make it accessible to the public for larger groups/overflow. Mr. Chahil also commented that the mezzanine beautifies the restaurant and noted that they have used top notch decorations in the establishment.

Mr. Chahil referred to the vestibule area that was recently removed, noting that the patrons found it was too dark and they therefore, wanted to open it up. He further commented that this did not change the soundproofing in the ceiling and walls and they have not received any complaints on the noise since opening up the front. He also commented that by removing the vestibule it makes it more inviting for patrons.

Mr. Chahil spoke of the menu changes and noted that they are competing with several other restaurants in the area for breakfast, steaks, sandwiches, etc. and felt they needed something different. Although they still offer the traditional selections, they have added an Indian Buffet. Mr. Chahil noted that this is something unique and different for this area and they are really proud of it.

Mr. Chahil spoke of the variance request to allow a nightclub within 50' of residentially zoned property, noting that the residential property is at the opposite end of the shopping center, with more than 400' between their business and the residential properties.

Commissioner Fetting questioned whether there were problems with the mezzanine not being accessible. Mr. Chahil noted that it would be accessible once they add a stairway.

Vice-Chairman Ellertson asked if they were asking for an increase in occupancy with the addition of the mezzanine. Mr. Chahil stated they were not looking for additional occupancy, just more flexibility in the layout.

Vice-Chairman Ellertson asked if they had constructed the vestibule area prior to their previous request. Mr. Chahil responded that the vestibule had been in place for the previous building - they had re-modeled it. He further explained that they had insulated the walls, but left the windows there at the City's request, covered with black vinyl. The heat from the sun hitting the vinyl caused the windows to crack, and in addition, they wanted more light so the vestibule was removed.

Commissioner Fokens asked if the total occupancy, set at 151, would remain the same. Mr. Chahil responded it would, it would just be more open.

Commissioner Fokens asked for clarification on hours of operation - if they were originally a 24 hour operation, but wanted to change. Mr. Chahil confirmed that their original approval was for 24 hours however they did not have the clientele for that. They were required to re-open for 24 hours until they could get approval to change their hours of operation.

Chairman White asked the applicant to speak again of the soundproofing measures. Mr. Chahil stated that the ceiling had K13 soundproofing in place and the sidewalls and back wall had 3 layers of insulation.

Chairman White commented that there are several issues that were approved under the Special Use Permit that the Planning Commission will look at such as the flexibility in the hours of operation.

Staff commented that the ZBA's original approval also took into account the hours of operation. The proposed changes are the basis for bringing all things back into play. Staff spoke of the ordinance requirements that would require the entire site to have an 8 foot wall, noting that the Board would need to determine if the waiver previously granted is still warranted.

Vice-Chairman Ellertson commented that if the business doesn't justify being open 24 hours, they should have some flexibility and suggested limiting the hours of operation from 9:00 a.m. - 2:00 a.m.

Mr. Chahil commented that they want to be successful and they basically tied their own hands. He further commented that by shortening the hours it will actually be making it better for the community.

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

Staff reported that there was no correspondence related to the case.

Board Discussion:

Commissioner Palm questioned why the applicant did not have flexibility in the seating arrangements, noting that most restaurants do have that flexibility. Staff provided some background, noting that this was a unique request when it first came before the Board, as it is

the only restaurant that transitions into a nightclub. A full-fledged Class I restaurant would have that flexibility, but with this being the first request of this type, we needed to be cautious and have an easily identifiable way to determine compliance with the SUP approval, and part of that approval included the seating layout. Staff noted that nightclubs are regulated differently than Class I restaurants. The Planning Commission approved the request on the basis of the layout provided by the applicant. Chairman White also noted that the seating was looked at as verification that it wouldn't become a full-fledged nightclub.

Commissioner Quast noted that she appreciates the fact that adjustments need to be made when running a business.

Chairman White commented that he sees no issue with the reduction in hours and noted that in regards to the 50% of their sales being from food, they have expanded their menu selections. He also commented that he has no issue with flexibility in seating and the noise has not been an issue. Chairman White commented that in regards to the distance to the residential property - although the actual property is only 30' from the residentially zoned property, the actual business is closer to 450'.

Chairman White also noted that the Board would need to determine if, from an operational standpoint if the overall operations have changed to affect the original finding on the walls, commenting he did not see any changes that would require them to amend the original decision. Vice-Chairman Ellertson agreed, noting that the changes actually reduce the need.

Chairman White commented that the Board could allow the 6' wall to remain, but leave it somewhat open-ended to allow the Planning Commission to determine if additional screening, such as additional landscaping/plantings, was necessary.

Staff commented that any plantings would need to be worked out with the adjacent property owners and noted that currently, there is a four-ft. chain-link fence on the property line.

Vice-Chairman Ellertson commented that he feels it is significant that the applicant is reducing his hours of operation and not going to be open 24 hours and in many ways is lessening any impact on the neighboring properties and noted he did not feel it is necessary to impose additional screening requirements - questioning why we would make him do more. Vice-Chairman Ellertson further commented that the front is the least likely area for noise to be an issue and he is not concerned with that. Chairman White agreed.

Commissioner Quast asked if anyone had any issues with the mezzanine. Commissioner Fokens commented that there will be no increase in occupancy, so he had no issues. Commissioner Quast questioned whether the mezzanine not being handicap-accessible would be an issue. Staff responded that it would not, based on the overall size of the establishment.

Discussion ensued on flexibility of seating layout, with Board members expressing some concerns and sensitivity with allowing total flexibility. Chairman White suggested seating conducive to restaurant seating.

Staff interjected that a FOI request had been submitted to obtain the results of the LCC inspection, noting again that the resort license requires 50% of revenue to be from food sales.

Vice-Chairman Ellertson questioned why we would care what the seating looks like if the LCC is auditing the business. Chairman White stated he would like to uphold the atmosphere of a restaurant.

Commissioner Palm suggested that they be required to maintain a certain number of tables/chairs but not get concerned with the layout.

Discussion took place on whether the hours of operation should be restricted.

Motion by Quast, support by Palm, to approve variance request ZBA-11-2012, submitted by L-1 Bar and Grille, from sections 154.067 (C)(9)(b) and 154.067(C)(9)(d) of the Zoning Ordinance to waive the requirement for an eight-foot masonry screening wall and 50' separation distance from a residential district, based upon the following findings and stipulations:

1. The distance from the actual site of the business to the R-2 district is 450 ft. +/-.
2. The resort license requires the applicant to maintain at least 50% of their sales to be from food as opposed to alcohol, which is consistent with a Class I restaurant.
3. Night club hours of operation shall be limited to 10:00 p.m. - 2:00 a.m.
4. The majority of the hours of operation to be devoted to restaurant use as opposed to night club.
5. The removal of the vestibule is in no way affecting neighboring properties and is actually more conducive to a restaurant.
6. The use of the mezzanine as additional floor/seating space is acceptable provided there is no increase in the overall occupancy.
7. Seating layout shall be flexible provided the applicant maintains the same number of tables and chairs for the restaurant use as was approved in 2010.

Motion by Quast, support by Palm to amend # 5 to read the Change in the vestibule does not increase sound transmission to the residential properties; and to add

8. Waive the requirements for the 8' masonry wall, and allow the Planning Commission to condition alternate screening options if they feel they are warranted.

Chairman White noted that this would allow the Planning Commission to look at other the screening options.

Motion approved unanimously.

C. ZBA-12-2012 309 N. Adams - Michael Jarrett.

Staff introduced Case ZBA-12-2012, noting that this request is for a rear yard setback to allow an existing porch to be enclosed for additional living space. Staff reported that the applicant had been issued a building permit for a reroof; however, it was noted that a small addition was started in an area of an existing porch that was not part of the original permit approval.

Staff reported that the property is zoned R-3 and is surrounded by R-3 properties. The use is a permitted use for this zone. Staff reported that the lot is a corner lot, on the corner of Lyons and Adams. On corner lots, the Ordinance determines the front yard to be the narrower part of the lot, even though the home may face the other street. In this case, although the house faces Lyons Street, it is addressed off Adams. Staff shared the site plan, showing the placement of the home on the lot, along with photos of the site. Staff reported that the applicant has proposed enclosing the porch to expand one of the bedrooms. The proposed addition will be located in the same area as the porch and will maintain the existing setbacks.

Staff noted that with the placement of the house on the lot, the owner is very limited to where he could build on. Vice-Chairman Ellertson asked staff if it would have made any difference if the applicant had secured the proper building permit prior to commencing with the construction to enclose the porch. Staff replied that it would not have made a difference; although the addition doesn't extend any closer to the property lines than the existing home, the addition cannot meet the 25 foot rear setback, and therefore requires a variance.

Chairman White asked what the distance was to the house to the North. Commissioner Quast stated there was an alley to the North.

Michael Jarrett, owner of the property and applicant addressed the Board. Mr. Jarrett explained that the home was very old and has three very small bedrooms (9' x 8'; 8' x 7', etc.). They would like to enclose the porch to extend one of the smaller bedrooms. Mr. Jarrett noted that by enclosing the porch they would not be increasing the footprint of the building, but would be squaring it up. Mr. Jarrett further expressed some confusion on how the City determines front yards.

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

Kench referred the Board to the correspondence received from Cindy Hills, who supports the request.

Board Discussion:

Commissioner Quast commented that the shape of the property and the age of the house, along with the location of the house on the property makes this somewhat unique. She further commented that she feels this request meets the criteria for granting the request.

Chairman White commented that the Board generally frowns on construction projects that are started without proper approval; however, noted that the request would have still come to us.

Commissioner Quast asked for verification that the addition would need to meet current building codes. Staff verified that it would and the building permit process and inspections would assure that.

Motion by Quast, support by Palm, to approve case ZBA-12-2012, submitted by Michael Jarrett, for a variance from Section 154.095 of the Zoning Ordinance to permit the

construction of an 8 x 10 foot addition to expand a bedroom that will encroach into the rear setback, based on the following:

1. The placement of the house on the property creates an exceptional condition, creating a hardship.
2. The variance is necessary for the preservation and enjoyment of the property.
3. The building footprint has not been enlarged (existing covered porch).
4. The request is not recurrent in nature.
5. The request will not be a detriment to the adjacent properties as the site is fronted by two streets and an alley.
6. The need for the variance is not self-created.

Motion approved unanimously.

VII. New Business

None

VIII. Other Business

A. 1003 Douglas

Staff referred the Board to the attached letter from Jeff Gray, Planning Director, regarding the recent ZBA approval for a redevelopment of the rooming dwelling at 1003 Douglas Street. The review involved a finding on a non-conforming use under the recently adopted "Review Procedures and Standards" document approved by the Planning Commission and the Zoning Board of Appeals. The document notes that occupancy increases should be limited to one additional tenant, with two only considered on rare occasions. Staff noted that the Planning Commission is requesting the Board provide clarification, in a finding of fact, to indicate how the Board determined this to be a rare occasion to permit an increase in the occupancy by two.

Chairman White responded that for him what made this case unique is that the Board postponed the applicant for three months and the applicant responded to the Boards request for upgrades and revisions. The applicant continually moved towards the direction we requested. He also noted that the applicant had discussions with the developer of another new project in the neighborhood and received a commitment from him to step up the development of that project as well. Chairman White further commented that it boils down to the Boards findings of fact and commented that perhaps the record didn't clearly reflect the discussion and stated we need to be more clear and precise in our record keeping. He further commented that the rationale for the decisions needs to be clearly stated in the motion.

Staff reviewed the list of non-conformities that would be eliminated with the approval:

1. Elimination of rear dwelling unit
2. Parking Ratio
3. Parking-hard surface
4. Setback to comply
5. Increasing the distance between the building on the adjoining property

Staff noted that although the case was discussed in detail the motion needs to clearly state the rationale.

Vice-Chairman Ellertson stated he feels the real issue they are asking is whether the ZBA overstepping their authority. He further stated he has a distinct memory of why he was a champion for this project and he still is.

Chairman White commented that he feels the procedure document is a "guideline" and doesn't mean that we are never going to approve two.

Commissioner Palm noted that perhaps something got lost in the translation; however commented that we don't want a hard fast rule and don't want to be boxed in. She further stated that because this process has gone on for so long with this particular case, it sends a message to the developers that the Board does not easily consider more than one additional occupant. She stated however, that we need to be really careful and justify what makes a case "rare."

Chairman White commented that allowing increases in occupancy is a trend that is making some people nervous; however, noted that he feels it is justified with what we are getting in return. He reiterated that when motions are made, they need to be clear, concise and consistent and focus on how the applicant meets the requirements - that perhaps it has been too "gray". We need to use bullet points on the basis for our approval, state applicants name and address of the site, specific section that the applicant is looking for a variance under, how the case meets the requirements for granting a variance, any information provided by neighbors, etc.

Vice-Chairman Ellertson stated he does not feel they were too gray. He again stated that he has a good recollection of why he has approved each of these redevelopments. In this case particularly, he noted that the applicant worked with staff for a significant amount of time to meet the Board's requests. In addition, he not only met, but exceeded the parking requirements and reduced numerous other non-conformities. In addition, he provided an upgrade in materials and the development will mean a significant increase in property values and tax revenue.

Commissioner Fetting commented that she felt the number of non-conformities that the applicant was reducing was significant.

Chairman White noted that he had spoken with Commissioner Kulick, and although he was unable to be present tonight, had communicated to him that the applicant's offer to put stronger language in the lease agreement was another factor. Chairman White stated that it appears that each of the commissioners found uniqueness through various reasons and the majority of the Board supported and felt that two additional occupants were justified.

Staff noted that the ZBA has done a fabulous job with each of these cases and have received some really good tradeoffs from the developers. He noted however, that the Planning Commission was looking for clarification on what made this particular development stand above the rest.

Chairman White noted that this is a unique location and neighborhood, and noted that two non-conforming buildings, which did not meet setbacks, were being replaced with one that did. He further stated that there was no request for a variance for parking and the request is in line with the student neighborhood. He further stated that we want to see the non-conformities reduced and want uniqueness in floor plans, etc.

Commissioner Fetting mentioned that the applicant was actually proposing an increase in parking spaces above what is required.

Commissioner Fokens commented that he saw an extreme amount of cooperation between the developer and the city. In addition there were several tradeoffs and two non-conforming buildings were being eliminated. He also noted the cooperation between two developers on two separate projects, which will result in significant improvements to the area. He further commented that there are so many positive things gained by changing the rules just a little. Commissioner Fokens continued that you can't articulate everything that goes on in the meeting.

Commissioner Quast noted that the reason she voted against the project was because she too wanted to know what was unique with this one to warrant granting two.

Chairman White stated that we need to be clearer with the why. He further stated that we are working hand in hand with the Planning Commission, and in order to allow them to go to the next step we need to be concise in our findings. The discussion points/basis for approving the case needs to be stated in the motion so that it is part of the permanent record.

Commissioner Palm stated that she is glad the decision was not unanimous as it gives a message to the developers that we seriously consider their requests.

Vice Chairman Ellertson stated that what we are doing is unique and we are lucky to have a developer taking these risks and investing in our community.

Chairman White stated that the Planning Commission is looking for clarity in our motion and suggested a motion to re-confirm the finding.

Motion by Ellertson, support by Fetting to reaffirm the ZBA decision on Case ZBA-02-2012, filed by Joe Olivieri on behalf of Rentwood LLC, to allow a new two-unit rooming dwelling, with an increase occupancy from 9 to 11, based on the following findings:

The case is unique for the following reasons:

1. The applicant worked and cooperated significantly with staff over a period of time (3 Months) to provide a number of revisions that were requested by the Board.
2. The applicant is reducing a significant number of non-conformities, such as:
 - a. Elimination of two non-conforming dwellings, including a rear dwelling unit which did not meet setbacks, and replacing them with one building.
 - b. Parking Ratio will be increased to exceed ordinance requirements
 - c. Parking will be hard surface
 - d. All setbacks will comply

- e. The distance between the building and those on the adjoining property will meet ordinance requirements.
3. The applicant has upgraded the proposed building materials and added architectural detail.
4. The applicant has agreed to put stricter language in their lease agreements.
5. The redevelopment will mean a significant increase in property values.

Motion approved unanimously.

B. July ZBA Meeting - anticipated items.

Kench reported that there may be a request for a sign variance on the July agenda. We have not received any other inquiries; however, the deadline is not until July 3.

Adjournment

Motion by Palm, support by Ellertson to adjourn.

Motion approved unanimously.

Meeting adjourned 9:27 p.m.