

Mt. Pleasant Zoning Board of Appeals
Minutes of Regular Meeting
September 26, 2012

Staff called the meeting to order at 7:02 p.m.

I. Roll Call: Staff called roll.

Members Present: Ellertson (Vice-Chair), Kulick, Palm, Quast

Absent: White (Chair), Fokens, one vacancy.

Staff: Kench, Murphy

II. Approval of Agenda:

Motion by Kulick, support by Quast to approve agenda.

Staff asked that Case ZBA-18-2012 - 506 Broadway be removed from the agenda, as the applicant has asked for a postponement.

Motion to approve agenda as modified approved.

III. Approval of Minutes from July 25, 2012:

Motion by Kulick, support by Palm, to approve the minutes from the July 25, 2012 meeting as submitted. Motion approved.

IV. Communications:

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

V. Public Comments:

Vice-Chairman Ellertson 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:

Vice-Chairman Ellertson explained board proceedings, noting that a quorum was present. Vice-Chairman Ellertson further noted that based on the Board's By-Laws, because there were only four voting members present, the applicant's would have a choice on whether to proceed with their case or postpone.

A. Case ZBA-14-2012 - 1205 N Fancher.

Staff asked the applicants for Case ZBA-14-2012, Tom and Pam Weaver, if they wished to proceed with their case. Mr. Weaver indicated they wished to proceed.

Staff introduced the case, noting that the site is home to the Central Vending operation, and a mini-storage unit building. The applicant has a buyer for the Central Vending business who is not interested in purchasing the mini-storage building. He would like to split the lots; however, in order to do so, a variance is required for the side yard setbacks.

Staff noted that the site is located in the Industrial Zoning District, is surrounded by Industrial zoning and is designated for future land use as Industrial as well. Both the vending and mini-storage uses are permitted by right in the Industrial zone.

Staff shared a copy of the survey and site plan submitted by the applicant showing where the split would occur. Staff noted that both parcels would provide sufficient parking to meet Ordinance requirements. Staff further noted that both buildings were granted variance requests in the past when they were constructed.

Staff spoke about the number of requests that the ZBA has heard in the Industrial zone, noting that the ZBA has asked the Planning Commission to look at the Ordinance to see if changes are in order. Based on the current setback requirements and the average lot sizes in the area, basically any new structure would require a variance.

Tom Weaver, applicant, addressed the Board, explaining that they have an opportunity to sell the vending business; however the new owner didn't have the money to invest in the mini-storage building as well. Mr. Weaver noted that at the time they built the mini-storage unit, they had no plans to sell the vending business. Mr. Weaver stated that there will still be plenty of access provided for both buildings, explaining that the parking for the Central Vending business is in front and on the north side.

Commissioner Kulick asked if there were any plans to put a fence on the dividing line, commenting that he would be more comfortable if that area was left open and in addition, would like to see some sort of easement agreement put in place to allow for more maneuverability for the mini-storage units. Mr. Weaver indicated that neither he nor the new owners had any plans to put up a fence. Mr. Weaver also noted that the mini-storage building is small and there is very little traffic in and out of there.

Vice-Chairman Ellertson asked if the purchaser had any interest in purchasing both buildings and questioned whether the purchaser was aware of this request. Mr. Weaver stated he did not have any interest in purchasing both; he is only interested in the Vending business, he is aware of this request, and they are in fact waiting on the outcome of this meeting prior to closing the sale.

Vice Chairman Ellertson opened the public hearing. There being no one who wished to speak, the public hearing was closed.

Correspondence: Staff noted the only correspondence received was from Margo Link, who was in favor of granting the variance.

Motion by Kulick, support by Palm to grant the side yard variance request based on the fact that the lot sizes in this Industrial area are small and not able to meet setback requirements of the Ordinance and remain usable. In addition, the proposed variance will not create an atypical situation for that area.

Commissioner Kulick commented that he would feel more comfortable if there was a written easement agreement in place. Commissioner Palm stated she would be more comfortable if the motion included no fence to be built along the common lot line

Commissioner Quast suggested that the Board consider the conditions necessary to grant a variance:

(1) That there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or classes or uses in the same zoning district; exceptional or extraordinary circumstances or conditions normally include:

(a) Exceptional narrowness, shallowness or shape of a specific property on the effective date of this chapter; (b) Exceptional topographic conditions or other extraordinary situation on the land, building or structure; or (c) Use or development of the property immediately adjoining the property in question.

The Board noted that all the lots in this area of the Industrial zone have exceptional narrowness, etc., when looking at setback requirements. Vice-Chairman Ellertson also noted that the applicant isn't proposing to build anything new - the buildings are already there.

(2) *That such a variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity.*

The Board noted that several other properties in the area have been granted similar variances based on the small lot sizes.

(3) *That the variance request is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practicable.*

Commissioner Kulick commented that this area has already been identified by the Zoning Board of Appeals as a problem area and they have asked the Planning Commission to look at the Ordinance, therefore does not feel this applies in this particular situation.

(4) *That the authorizing of such variance will not be a substantial detriment to adjacent property.*

The Board noted there would be no detriment to adjacent properties.

(5) *That authorizing of the variance will not materially impair the purposes of this chapter or the public interest.*

Commissioner Kulick noted that the 10' separation distance is being maintained for fire safety.

(6) *That the need for the variance is not created by any action of the applicant or previous owner.*

The Board noted that if the parcels had been separate at the time they were built, they would have still required a variance.

Commissioner Kulick called the question.

Motion approved.

B. Case ZBA-15-2012 1018 S. Franklin - Joe Olivieri.

Staff asked Mr. Olivieri if he wished to proceed with the case. Mr. Olivieri indicated he wished to proceed.

Staff introduced Case ZBA-15-2012, submitted by Joe Olivieri, on behalf of Tim Driessnack, requesting a finding on a non-conforming use, under section 154.007, to allow the redevelopment of a rooming dwelling on a non-conforming lot. As part of the review, the applicant is requesting consideration to reduce the land area per person to allow an increase in occupancy from 9, which the property is currently licensed for, to 10.

Staff noted that the site currently has three separate units; two in the principal structure and one in a rear unit. Staff stated this request is for a two unit dwelling with 5 in each unit. (Mr. Olivieri later clarified that the request was for one unit with 10 occupants).

Staff reported that this is a non-conforming lot in the M-2 zoning district, with the rooming dwelling use regulated under a Special Use Permit. The M-2 zoning district calls for lots to have 66' of frontage, and 8,000 square feet of area. This lot has 50' of frontage and an area of 5,900 square feet, which is consistent with the lots along this block.

Staff referred to the M-2 redevelopment standards that the Planning Commission and Zoning Board of Appeals have been working on as a way to encourage better developments by allowing a slight increase in occupancy. Staff shared photos of the site along with the proposed site plan and elevations. Staff reported that the proposed building meets all setback requirements, noting that open porches are permitted to encroach 6' into the required front setback.

Staff noted the reductions in non-conformities proposed with this redevelopment as:

- Parking Ratio will be brought into compliance.
- Parking will be consolidated and placed on hard surfaced materials.
- Stacked parking will be eliminated
- The building area per person will be increased to comply with Zoning Ord.
- Rear Dwelling unit will be eliminated
- Setbacks will be brought into compliance with the Zoning Ordinance.

Staff shared density information regarding the surrounding properties, noting this request is consistent with the area.

Joe Olivieri, applicant, addressed the Board, offering to answer any questions.

Vice -Chairman Ellertson noted that this proposal includes covered parking and asked Mr. Olivieri to explain the reasoning behind this. Mr. Olivieri stated that based on the lot size, it is the only way to get the number of occupants and parking spaces needed. He

further commented that he feels the enclosed garage gives the property a more residential look.

Commissioner Kulik commented he doesn't particularly like the enclosed parking in the garage, noting that it could become a problem with this particular population and has some concerns with the parking in front of the garage. He noted, however, that he gives the developer credit for making this work on a site this size and commented that other communities would like to be getting these types of developments. He also stated that he feels the concerns he stated are offset by the number of non-conformities that are being eliminated.

Commissioner Palm asked if the landlord for this property has stricter language in their lease similar to the others that have recently come through this process. Mr. Driessnack stated that his lease is as tight as the law allows. He further noted that he has a business right down the street from this development and is in the area every day.

Mr. Olivieri commented that landlords can only do so much. With his new developments, he stated that if he gets a call from code enforcement, he notifies the office to give the tenants an hour to clean up the place and if it isn't done, they have it cleaned up and charge the tenants. He further commented that there is a sense of pride with these new developments and they want them to look good.

Commissioner Kulick asked staff if the Building Code had any restrictions on living space above a garage. Staff noted that there is a one-hour fire separation, but they do not require sprinklers.

Mr. Olivieri noted that with the proposed design, there is no door leading from the garage directly into the house.

Staff questioned whether there was a way to shorten up the length of the house and eliminate the front parking. Mr. Olivieri stated that the bedrooms were already as small as he feels he can make them and still be marketable.

Commissioner Quast stated she doesn't like the looks of this project; noting the roof pitch. Mr. Olivieri stated that they could do something different with the roof, i.e., add dormers, or gable roof.

Staff suggested if the Board has things they would like to see incorporated in the design, they could postpone and allow the applicant to make the changes.

Commissioner Kulick stated that he feels a gable roof is more in character with the neighborhood and suggested approving with conditions and let the Planning Commission deal with the details.

Commissioner Palm asked if there would be any fencing along the alley. Mr. Driessnack stated that the neighboring property had fencing along a portion of the south property line. Commissioner Quast asked if they could put any fence along the alley to somehow

define the parking area. Mr. Dreissnack stated he feels the alley is too narrow for a fence to be practical. Commissioner Kulick suggested a post at the easterly most corner of the parking area to help define the space.

Vice-Chairman Ellertson opened the public hearing. There being no one who wished to speak, the public hearing was closed.

Staff reported the only correspondence received was from the Fire Department and stated that if the Board wishes to approve the request, they should include the fire departments requirements.

Motion by Kulick, support by Palm that the ZBA has made the finding that the proposed redevelopment, for a new rooming dwelling with 10 occupants, is a marked decrease in the degree of nonconformities on the property. The approval is contingent on the applicant changing the hip roof system to a gable on the front elevation to face Franklin Street, which is more in line with the neighborhood, subject to staff approval. The applicant shall place a bollard along the parking space adjacent to the alley. The applicant shall provide stricter lease agreements to ensure compliance with City code enforcement issues, and shall install a residential sprinkler system. In addition, the Board grants approval to construct a regulated use on a non-conforming lot having less than 66 ft. of frontage and 8,000 square feet of land area on the basis the lot is consistent with the neighboring properties, and existing uses.

Discussion: Vice-Chairman Ellertson noted that he is not comfortable requesting that the owner install a residential sprinkler system in the building that is not required by the current building code, and would not support the motion, and asked that the sprinkler requirement be deleted from the motion. Commission Kulick agreed to amend the motion, provided that an irrigation system be installed to maintain the lawn area, which also seems to discourage horseshoe pits, etc., from being placed in the front yards. Vice-Chairman Ellertson agreed to that exchange. Palm supported the amendment to the motion.

The Board reviewed the number of non-conformities that would be eliminated with the redevelopment to recommend approval of the request. The ZBA noted that two non-conforming buildings (main house and rear dwelling unit) will be replaced with a single building, the parking ratios will be brought into compliance with current zoning provisions; the parking will all be hard-surfaced; rear yard and front yard setbacks will be brought into compliance; and the minimum floor area per person will exceed Ordinance requirements.

Vice-Chairman Ellertson called the question.

Motion approved.

C. Case ZBA-16-2012 1028 S. Washington - Joe Olivieri.

Staff introduced case ZBA-16-2012 noting that this was another request for a finding under Section 154.007 to determine if the proposed redevelopment is a reduction in non-

conformities. The applicant is requesting an increase in occupancy in exchange for reducing the non-conformities on the property. Staff noted that the lot is non-conforming as it does not meet the lot width or area for the M-2 Zoning district. Staff reported that the proposed use is allowed in the M-2 zone and is regulated under a Special Use Permit.

Staff reported that the proposed new building would meet all setback requirements; would increase the side yard setback and would eliminate the driveway along Washington Street and re-instate the greenbelt. Staff shared the proposed site plan, noting the following non-conformities that would be brought into compliance:

- Parking Ratio will be brought into compliance
- Parking will be removed from front yard & partially from the side street yard
- Stacked parking will be eliminated
- Parking will all be hard surface
- Greenbelt will be reinstalled at Washington and a portion of Bellows
- Building area per person will be increased
- Open Landscape area of 25% will be brought more in line with Ordinance requirements
- The driveway within 40 feet of intersection will be removed off from Washington Street

Staff noted that the property is currently licensed for nine occupants and the applicant is asking for an increase to 10. Staff shared the density information for the surrounding properties, noting that this request is consistent with a majority of properties in the area.

Staff shared photos of the existing site along with the renderings that were originally submitted with the request and the latest submissions which include additional architectural details.

Joe Olivieri, applicant, addressed the Board, noting this is a very high profile corner and both he and the owner are excited about this redevelopment.

Vice-Chairman Ellertson questioned whether this was a duplex or a single unit. Mr. Olivieri clarified that both requests before the Board tonight are for one unit rooming dwellings for 10 occupants. He noted that they are designed in such a way that they can be converted to a duplex very easily.

Commissioner Quast asked if the porch would be poured concrete. Mr. Olivieri stated that there would be a poured concrete foundation with a concrete slab.

Commissioner Quast asked that the applicant incorporate some sort of decorative brackets or trim on the porch and also noted that the Planning Commission may not like the fact that the home is all vinyl siding. Mr. Olivieri stated that he believes the Planning Commission wanted upgraded materials such as brick, cement board, etc., when asking for two additional occupants, whereas this request is only for one additional occupant.

Vice-Chairman Ellertson asked what the price difference is for cement board vs. vinyl siding, along with a comparison of the useful life. Mr. Olivieri responded that he didn't have any numbers to share on cost comparisons; however he knows it is very pricey. He also noted that the installation costs alone are more than double compared to vinyl siding. He noted that both have a long life, but also noted that the cement board requires caulking.

Commissioner Quast stated she would like to more color added. Mr. Driessnack stated that he expects to have at least two different colors.

Various types of screening options were discussed with the applicant. Mr. Driessnack stated that they had discussed using masonry columns, with something durable. Mr. Olivieri commented that they had used vinyl fencing at one of the developments and it is constantly being knocked down. They have discussed using some sort of steel, metal or wrought iron fencing between the masonry columns to prevent that from happening.

Commissioner Quast stated she would like to see more trees planted in the Right-of-Way.

Commissioner Kulick commented that the revised plan was a nice improvement over what was originally submitted.

Vice-Chairman Ellertson opened the public hearing. There being no one who wished to address the Board, the public hearing was closed.

Staff shared the correspondence from the Fire Department, noting that any approval should include Fire Department requirements.

Board Discussion:

Commissioner Quast stated she is comfortable with the design; however hopes to see added details. Commissioner Palm commented she is pleased with the revised plans.

Motion by Quast, support by Kulick that the ZBA has made a finding that the proposed redevelopment for a rooming dwelling for up to 10 occupants is a marked decrease in the non-conformities, that include bringing the parking ratio into compliance with current zoning standards; the parking will be removed from the front yard (Washington Street) and partially removed from the side street yard (Bellows Street); the stacked parking will be eliminated; the greenbelt will be reestablished along Washington and partially along Bellows Street; the building area per person will be brought into compliance with ordinance standards; the open landscape area will be increased to bring the site more in line with the ordinance requirements; and the nonconforming driveway that is currently located within 40 feet of an intersection will be removed. In addition, the Board grants approval to construct a regulated use on a non-conforming lot having less than 66 ft. of frontage and 8,000 square feet of land area on the basis the lot is consistent with the neighboring properties, and existing uses.

The applicant is to meet the requirements of the Fire Department; provide strict lease agreements in regards to code enforcement and will upgrade the proposed fence to include masonry pillars approved by staff; variations in exterior colors and detailing consistent with similar redevelopments, and decorative trim work shall be incorporated in the porch construction, trees shall be planted in both right of ways as allowed by the Department of Public Works, and lawn irrigation is to be installed on the Bellows and Washington Street yards to maintain vegetation.

Motion approved.

Vice-Chairman Ellertson commented that he appreciates the applicant including the estimated property taxes on the property, noting that he feels it is wonderful that the developers are willing to invest in their properties this way. Commissioner Kulick agreed; however noted that even without the increase in the taxes, the redevelopments are a great improvement to the neighborhood.

D. Case ZBA-17-2012 601 S. University - William & Alexis Dailey.

Staff asked the applicants for Case ZBA-17-2012 if they wished to proceed with their case. Mr. Dailey indicated they did.

Staff introduced Case ZBA-17-2012, noting that this was a request for a variance under section 154.021, which restricts the height of a fence in a required side street yard. The applicant is proposing a 6 ft. solid fence, where the ordinance limits fences in the front or side street side yards to 3 feet in height and not more than 50% solid.

Staff noted that the property has frontage on Maple and University Street, and the house sits fairly close to the center of the lot, with a detached garage in the back yard. Staff noted that the lot meets the minimum lot size for the district, and further noted that with the house and accessory building, the amount of area the applicant has available is limited. Staff shared the site plan submitted by the applicant, noting the applicant's reason for the request was to secure their pet in the yard and to give them some added privacy.

Staff shared an illustration of a corner lot showing the limitations for a 6 foot fence.

Staff also shared photos provided by the applicant showing a number of corner properties in the city that have either privacy screening/fencing and/or landscaping that reaches 6' in height. Staff stated he is unsure if these particular properties installed fencing that pre-dates the Ordinance or if it is a difference in the interpretation of this section of the Ordinance. Staff noted that if the fence was pre-existing, they would be allowed to make repairs.

Mr. William Dailey, owner of the property addressed the Board, offering to answer questions.

Commissioner Kulick commented that his concern with the request would be the limited visibility for pedestrians walking along Maple Street if someone were backing out of the garage. Mr. Dailey stated that they are not using the garage as a garage at this time and

their long-term plan includes removing the old garage and putting in a new one which would be accessed off the alley. Mr. Dailey also commented that the portion of the fence that was being questioned is actually within regulations.

Commissioner Palm commented that if the applicant were to plant dense shrubbery along that section, there would still be the concerns over the visual obstruction, however, it would be legal for them to do so.

Commissioner Kulick stated that he would like to see the applicant put up a sign on his garage to remind them to beware of pedestrian traffic. Commissioner Quast stated that if pedestrians see a driveway they should be using caution. Vice-Chairman Ellertson noted he was concerned that it may be dangerous for a youngster on a bicycle who may not see a car pulling out, and asked if chain link would be an option.

Mr. Dailey indicated that would not accomplish their goal.

Commissioner Kulick commented that if he put up a chain link fence and planted dense shrubbery, it would be legal even though the visibility issues would be the same.

Vice-Chairman Ellertson opened the public hearing. There being no one who wished to address the Board, the public hearing was closed.

Staff stated that the only correspondence received was from the Fire Department who indicated no problem with the request.

Commissioner Quast suggested reviewing the criteria necessary for granting the variance.

The Board determined that the placement of the house and garage on the property creates an extraordinary situation for the applicant, limiting their options. In addition, there are several other similar properties that have privacy fences. The Board determined that this is a someone unique request, not recurrent in nature and it should have no negative impact on the neighboring properties. Commissioner Kulick noted that the ordinance would allow the placement of shrubbery that would have the same affect, and therefore feels that this request will not impair the purpose of this chapter or public interest. Based on the age of the house and garage, the Board also determined that the problem is not self-created, and therefore meets the criteria necessary to grant the variance.

Motion by Kulick, support by Quast to grant the variance request submitted by William and Alexis Dailey, who reside at 601 S. University, to construct a privacy fence with 5 1/2 " slats with 1/2" space and no more than 72" high within the required side street yard along Maple Street. The Board granted the variance based on the finding that the request meets the criteria necessary for granting a variance.

Motion approved.

Commissioner Kulick questioned whether this is a section of the Ordinance that should be added to the list for the Planning Commission to look at for possible revisions. Staff noted that this is the first request of this nature to come before the Board in the 7 years that he has been here and does not feel that the Planning Commission needs to look at it.

Vice-Chairman Ellertson commented that maybe just point out that there is some inconsistency there based on the fact that plantings that have the same effect as a privacy fence are allowed whereas a fence is not.

VII. New Business

None

VII. Other Business

- A. September Meeting - Staff noted that the postponed case for 506 W. Broadway will be back on the agenda and that there are some other potential redevelopments that may be coming through.

VIII. Adjournment

Motion by Kulick, support by Palm to adjourn.

Motion approved.

Meeting adjourned 8:55 p.m.

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