

Mt. Pleasant Zoning Board of Appeals  
Minutes of Regular Meeting  
June 26, 2013

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

**I. Roll Call:** Staff called roll.

Members Present: Berkshire, Fokens, Kulick, Palm, Raisanen.

Absent: Quast, one vacancy

Staff: Kench, Murphy

**II. Approval of Agenda:**

Motion by Kulick, support by Raisanen, to approve agenda. Motion approved.

**III. Approval of Minutes from April 24, 2013 regular meeting:**

Motion by Kulick, support by Berkshire, to approve the minutes from the April 24, 2013 regular meeting as submitted. Motion approved.

**IV. Recognition:**

Staff presented a plaque to outgoing Board Member White, thanking him on behalf of the city for his service as a member of the Zoning Board of Appeals from 2008-April of 2013, and noted that for the past several years, Mr. White served as our Chairman and was a major player in working with the Planning Commission on the development of the M-2 Redevelopment Procedures.

Mr. White accepted his plaque, stating that he enjoyed his time on the Board and commended staff for all the guidance and help provided in understanding our Ordinance. Mr. White indicated that he learned a lot and encouraged others to get involved in serving on these Boards.

**V. Communications:**

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

**VI. Public Comments:**

Chairman Fokens opened the floor for public comments.

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

**VII. Public Hearings:**

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

**A. ZBA-03-2013 - 214 N. Franklin - Greentree Cooperative - Sarah Christensen**

Staff introduced case ZBA-03-2013 noting that the property is a legal non-conforming use, operating as a grocery store in the OS-1 Zoning District. The applicant was before the Board in 2008 for a finding when they obtained a SDM license to add beer and wine to their inventory. At that time, staff reported that the Board found that adding these items was not an increase in the manner of nonconformity due to the limited display area - noting that the store was a grocery store, not a liquor store. The Board placed a condition on their approval at that time that no more than 3% of the total inventory consist of beer/wine and that the hours remain consistent with what was already in place for the store, closing no later than 8:00 p.m.

Staff reported that the current request before the Board is to lift the restriction on the hours of operation by one hour to allow the store to remain open until 9:00 p.m.

Commissioner Raisanen noted for the record that she is a member of the Greentree Coop. Chairman Fokens also noted that he has some interests in neighboring properties. Staff asked if either Board member would have anything to gain in any way from this request. Both Board members indicated they would not and therefore, did not feel that there was any conflict of interest to prevent them from voting on the request.

Sarah Christensen, 1007 Harold, addressed the Board as the applicant for this case. Ms. Christensen stated that they wish to increase their hours of operation by one hour due to customer feedback and research on other co-ops, indicating that sometimes the last hour of the day comprises 10% of their sales.

Commissioner Kulick asked if Ms. Christensen anticipated the additional hour to generate more beer/wine sales or grocery sales. Ms. Christensen responded that she anticipates the ratio to be similar to the other hours; however, noted that generally when people come in later it is for grocery items that they forgot to get earlier in the day. Commissioner Kulick asked what percentage of sales were from beer/wine. Ms. Christensen noted about 1% of the sales.

Commissioner Kulick stated he doesn't feel that increasing the hours by one hour will make any difference.

Commissioner Berkshire asked how they received the customer feedback. Ms. Christensen stated they did a customer survey in 2012, noting that the response rate was only 3%, but again referred to the benchmark study on other co-ops as part of their reason for the request.

Commissioner Kulick asked if the applicant found the extra hour to be unproductive, would they return back to the 8:00 p.m. closing time. Ms. Christensen noted that there would have to be a significant financial deficit shown to do so, as she did not feel that would be good customer service.

Commissioner Raisanen referred to the concern expressed by one of the neighboring property owners regarding parking and asked if the applicant had given any thoughts to that. Ms. Christensen noted that the gate that was put up by the neighboring insurance

company has greatly reduced the problem of her customers parking in their lot. She noted that although she did not see any way for her to direct parking; if she noticed a patron parking somewhere they shouldn't she would address it with them.

Commissioner Palm asked if the Co-op had a newsletter that was sent to customers and if so, could they include something in that addressing the parking issue. Ms. Christensen said they could.

Commissioner Berkshire asked if the Crapo Insurance Agency was open during the time that the additional hour was being requested. Staff indicated he did not believe they were. Commissioner Kulick noted that the additional hour may actually help reduce parking issues.

Chairman Fokens opened the Public Hearing. There being no one who wished to speak the Public Hearing was closed.

Staff shared the correspondence received from the Crapo Agency noting their concerns with parking and delivery trucks. A second letter was received from William Cain, Managing Member of 210 Court Street Group LLC, indicating they had no objections with the request. In addition, staff noted that the Departments of Fire Safety and Public Works had both responded that they have no concerns with the request.

Commissioner Kulick asked if the store had ever been open past 8:00 p.m. Ms. Christensen indicated that it had never regularly stayed open past 8:00 p.m.

Commissioner Raisenen asked about the schedule of delivery trucks. Ms. Christensen stated that their large delivery was received at 7:00 a.m. on Mondays. Smaller deliveries are received throughout the week; however, the only evening deliveries consist of local farmers/vendors and they do not have large delivery trucks - only personal vehicles.

Commissioner Kulick asked if the applicant would be okay with providing signage for the Crapo Agency, if they desired it, to state parking for Greentree Co-op prohibited in this lot. Ms. Christensen stated she would be open to that idea.

Motion by Kulick, support by Berkshire that the Board finds that allowing an increase in the hours of operation by 1 hour does not represent an increase in the manner and degree of the non-conforming use. The Co-op will continue to operate as a full service grocery store. The Board requests that the Co-op provide signage if desired by Mr. Crapo for the Crapo Insurance agency's parking lot prohibiting Greentree Co-op parking.

Board Discussion.

Motion by Kulick, support by Berkshire to amend the motion to include that the applicant is required to maintain the ratio of beer/wine sales consistent with the 2008 approval and that the display be no more than 3% of the floor space.

Motion approved.

**B. ZBA-06-2013 1033 S. Arnold - L. Thomas Properties, LLC**

Staff introduced case number ZBA-06-2013, noting that the applicant recently purchased the property. The applicant has requested a finding on a non-conforming use to allow alterations and modifications to take place. The property is non-conforming based on lot size and is currently a licensed rooming dwelling for 4 occupants, which is a regulated use in the district.

Staff noted that the surrounding property includes a single-family duplex, rooming dwellings and some light commercial. The property is zoned M-2 multiple-family and the future land use is designated as multiple residential.

Staff shared the proposed site plan, noting that the applicant is proposing taking a 1 1/2 story home and raise the roof to a full 2nd story within the existing setbacks. The renovation project will include all new wiring and plumbing as well as egress windows. Staff noted that the property meets the side and front setbacks and although the existing structure is non-conforming as it projects into the required back yard setback, the proposed renovation will be constructed within this established setback, as noted in the staff report.

Staff explained that the use is allowed in the M-2 zoning district and is regulated by a special use permit; however the lot is a non-conforming parcel as it lacks the width and area required for the regulated use. Staff noted however; that the lot is consistent with the other lots in the area and reviewed the aerial map of the area.

Staff noted that the applicant is not looking to increase the current occupancy, but wishes to maintain the current occupancy of four. The proposed renovation also will consolidate the parking along the north side of the home. Four hard surface spaces will be provided, and although a portion of the parking will consist of stacked spaces; this will allow a portion of the existing parking to be removed from the front yard to allow the lawn to be reestablished and landscaped.

Staff shared a rendering of the proposed project and noted that the Board may wish to consider the following points to determine if the request can be approved:

- the lot size is consistent with lot sizes in the area with similar uses
- The applicant is not looking to increase the occupancy, but will maintain the current occupancy of 4
- The parking, although stacked, will consolidate tenant parking, removing a portion of the spaces from the front yard to allow landscaping to be provided .
- Parking will be hard-surfaced

Staff noted that approval of the request will permit alterations to the existing rooming dwelling to include raising the roof to allow a full second floor within the established setbacks, permit the construction of an open front porch, and allow the complete restoration of the home.

Commissioner Kulick asked for clarification of the zoning on the property to the north. Staff responded that it is also zoned M-2.

Commissioner Berkshire asked if the neighbor, Sarah Douglas, who wrote the letter was next door.

Commissioner Palm stated Ms. Douglas lived on Kinney Street.

Commissioner Raisanen noted that the applicant appears to be mindful of neighboring concerns and questioned whether his lease agreements incorporate language that addresses code enforcement issues. She also questioned if there were mechanisms in place to deal with over-occupancy issues.

Staff responded that we don't necessarily monitor visitors; however, if it appears that there is an over-occupancy situation, there are mechanisms in place to address this. Commissioner Kulick noted that if there is consistent problems in this regards, the Planning Commission can revoke the special use permit.

Staff also noted that the Building Safety office is required to do annual inspections for Special Use Permits and the Department of Fire Safety conducts inspections annually of the rental units.

Les Thomas, applicant, addressed the board, commenting that he has a number of properties in town. He recently was awarded the Community Improvement Award for his property at 750 S. Fancher. In addition, he owns the property across the road from 1033 S. Arnold (1032 S. Arnold) and has made some recent improvements there as well.

Mr. Thomas noted that the remodel of this home will include all new wiring, all new plumbing, floor boards and will have egress windows in the bedrooms, which are currently lacking. He also noted that the parking will be an obvious improvement.

Mr. Thomas noted that he has worked closely with our code enforcement office to get information included in lease agreements and also works closely with the tenants.

Commissioner Kulick asked how long the applicant has owned the property. Mr. Thomas stated he has had it for about 6 months. Commissioner Berkshire noted that the code enforcement history provided by staff took place prior to his owning the property.

Commissioner Berkshire asked for some details on sizes of the proposed bedrooms/ layout and questioned what would prevent the den on the main floor from being used as a bedroom. Mr. Thomas indicated the bedrooms would all be on the 2nd floor and vary in size, from approximately 146 square feet - 169 square feet. He also noted that the main floor will be an open floor plan, which prevents the den from being used as a bedroom.

Commissioner Berkshire asked if the fence between the properties belonged to the applicant. Mr. Thomas indicated it did and it would remain.

Commissioner Raisanen asked what type of material would be used for the hard surface parking. Mr. Thomas noted it would be concrete.

Commissioner Kulick asked if staff had an opportunity to compare Mr. Thomas's lease language to leases for other recent redevelopments. Staff noted that he has not and deferred lease questions to the applicant.

Mr. Thomas stated that he would be happy to provide a copy of his lease agreement and make any amendments to it that the Board felt necessary.

Commissioner Palm noted that the applicant does not live in Mt. Pleasant as many of the other owners of recent redevelopments do, and who are able to monitor their properties, questioning how the applicant would monitor his properties. Mr. Thomas noted that he has a vested interest in maintaining his properties and noted that he owns four properties in Mt. Pleasant and he visits frequently to keep up on any maintenance issues. He also indicated he works closely with the code enforcement department and has had a good relationship. He has a lawn service that takes care of all the lawn care. Commissioner Raisanen asked about snow removal. Mr. Thomas noted that the lease agreements put that responsibility on the tenants. Commissioner Kulick noted that we have no ordinance language that requires residential properties to remove snow from sidewalks - only commercial and business properties.

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

Staff shared the correspondence received from Sarah Douglas, who expressed some concern with the overall student density of the area; but who indicated no problems with this request provided there was no increase in the occupancy.

In addition, staff noted no concerns from the Department of Fire Safety and commented that the Department of Public Works had indicated if the property was turned into a duplex, it would require a separate water service and meter; however, as it is remaining a one unit rooming dwelling that won't be necessary.

Commissioner Kulick commented that there have been several renovations in the general neighborhood and noted that this one has some single family homes in the area and feels it is important to protect the single family homes on this block. He indicated that he had some concerns with the parking configuration and asked if there was something that could be done to physically prevent cars from parking on the lawn. In addition, he noted he would like to see some specific language in the leases dealing with code enforcement issues.

Commissioner Berkshire expressed some concern with the landlord being two hours away.

Mr. Thomas commented that he hopes that his track record with the three other properties he owns will work in his favor. In addition, he stated that he has no problem putting in some type of barrier to prevent cars from parking in the yard. He also noted that he has others in the area that could help keep an eye on the properties as well, and he is open to solutions.

Commissioner Berkshire asked if his other properties were student rentals. Mr. Thomas stated they were.

Chairman Fokens asked if the applicant had a local agent or management company. Mr. Thomas stated he did not but has a real estate agent who may be willing to serve in that capacity and he has no problem with having a local presence.

Commissioner Kulick asked how the new redevelopments and lease agreements have helped with code enforcement. Staff noted that with the new developments, landlords have taken on more of the responsibilities. If Code Enforcement sees an issue, they have the capability to e-mail the landlord right from the field.

Commissioner Raisanen stated that she would like to see the new lease language incorporated in to this property as code enforcement already has a significant burden.

Staff noted that with the previous redevelopments there were a larger number of occupants; whereas this one is on a smaller scale.

Mr. Thomas responded to the Boards comments stating he has no issue with revising lease language. He currently has no leases in place for fall and no plan to occupy the house for some time as there is a lot of work to be done.

Commissioner Berkshire questioned why he didn't just tear it down and start over. Mr. Thomas noted that the foundation is good and the first floor walls are good. The problems are in the 2nd floor and have become more apparent as they get further into the project.

Motion by Berkshire, support by Kulick to make a finding in favor of the applicant that the proposed use is nonconforming on the basis of the lot size for a regulated use, but is consistent in size with similar rental properties found in the neighborhood to grant approval on the proposed upgrades to the property which include.

Increase in the height of the 1.5 story building to two stories to provide better use of the second floor space within the established setbacks, construction of an open front porch, complete remodel of the existing building, and upgrades to the on-site parking. With these upgrades, the project will represent an improvement in the character of the neighborhood and is a decided benefit to adjacent conforming uses. The Board finds that the proposal meets the intent of section 154.007 to grant the request with the following stipulations:

1. The owner will personally conduct monthly inspections.
2. The front yard landscape will be such that it prohibits front yard parking - details to be worked out with staff.
3. The lease shall include language to include increased owner responsibilities for code enforcement, nuisance parties and gatherings, etc.
4. There shall be no more than four occupants.
5. The applicant shall secure a local agent to help oversee the property.

Commissioner Kulick suggested the Board review the conditions necessary for granting a variance prior to taking a vote on the motion. The board noted that the abutting properties in the vicinity are also student rentals; the lot size predates current ordinance standards; the applicant is not asking for an increase in occupancy; the upgrades will

make the property safer and more aesthetically pleasing; the revised lease language will help with code enforcement issues; the upgrades will improve the character of the neighborhood and will be an asset to the adjacent properties.

Chairman Fokens called the question.

Motion approved unanimously.

**C. ZBA-05-2013 303-305 N. Main - Jean Prout**

Staff introduced case ZBA-05-2013, noting that this property was formerly licensed as a duplex and used primarily as a student rental. The applicant has recently purchased the home and is residing in one of the units, and wishes to convert the other unit to a Bed and Breakfast. Staff noted that the use is an allowed use for the zoning district, and is regulated under a Special Use Permit; however, per Ordinance, the parking for a Bed and Breakfast is required to be located in the back yard. The applicant is asking for a variance to allow the parking to be in the front.

Staff reviewed the Ordinance language for parking requirements for Bed and Breakfast dwellings as follows:

- “(8) (b) Parking shall be required in the rear yard, with two spaces per dwelling and one per rental unit with total....”
- All required parking shall be hard surfaced
- Parking spaces shall be so configured so as not to disturb the residential appearance of the neighborhood.
- Planning Commission may require additional landscape buffering to preserve neighborhood appearance.
- A five-foot planting buffer shall be provided to screen the parking area from adjacent residential property.

Staff reported that the parking for the duplex was located in the front and was primarily gravel. The site is situated in a way that does not allow for parking in the rear, due to the former railroad property and a steep bank that drops to the river behind the home. The applicant wishes to pave the existing parking area.

Staff noted that the neighboring sites to the north and south both have parking in the front yards similar to the applicant's request.

Staff referred to communications from the property owner to the south who is questioning ownership of a portion of the property. Staff referred to a survey of the property from 1993 from the previous property owner, which was on file with the city, which corresponds with the property description the city has on record.

Commissioner Kulick commented that the property is zoned OS-1 and if the site was converted to office use, they could essentially pave the entire front yard. He further

commented that when the Planning Commission changed the Ordinance to allow Bed and Breakfasts, the intent of having the parking in the rear was to preserve the residential appearance in a residential neighborhood and not have the property stand out. He continued to say that in this area, he feels the request is reasonable and fits in with the surrounding properties.

Commissioner Berkshire commented that the parking on the lot to the south is not screened at all and with the proposed screening and landscaping for this site, does not feel like the parking will affect the neighborhood. Commissioner Berkshire also asked about the parking being constructed on the site to the north, which is also owned by the applicant. Staff noted that the applicant is finalizing the requirements and approvals granted by the Planning Commission for that site.

Jean Prout, applicant, addressed the Board, noting that they purchased the property two years ago and moved into it 2 months ago. They are refurbishing bedrooms and felt it was a good time to pursue the idea of a Bed and Breakfast. If approved, she plans to name the Bed and Breakfast the Chateau Riviera. She has plans to add landscaping and would like to pave the parking and clean up the site.

Chairman Fokens asked what type of hard surface was planned for the parking area. Mrs. Prout stated it would be asphalt. The pad for the dumpster will be cement.

Commissioner Raisanen asked about water run-off. Mrs. Prout indicated she could make the grade of the driveway however the city wished to eliminate potential problems. Commissioner Kulick speculated that with the size of the yard, there shouldn't be any problem. Staff concurred that there shouldn't be any change in the water run-off.

Commissioner Palm questioned if the number of parking spaces was increasing or if the request included just adding hard surface. Commissioner Kulick commented that the duplex required 6 spaces as well so the area is consistent with what is currently there; the request for the Bed and Breakfast is to allow them to keep the parking in the front.

Chairman Fokens opened the Public Hearing.

Peter Reale, owner of 233 N. Main, addressed the Board, speaking of adverse possession in regards to a five foot strip of land separating his property from the applicants. Mr. Reale also referred to some attorney correspondence from 1993 that was copied for the Board, which spoke about some encroachments onto his neighbor's property, and questioned the language in the letter.

Commissioner Kulick questioned how this information was pertinent to the case and noted that if there are questions on where the property line is, and matters related to adverse possession, then Mr. Reale may need to go to court to figure it out, but stated this is not an issue for the Zoning Board of Appeals.

Chairman Fokens addressed Mr. Reale, asking him to present only information that is relevant to the case.

Mr. Reale contended that the information is relevant and also referred to the property to the south of him and questioned how the city's approval of that site years ago affected his

property. He commented that he does not want parking to be placed in front of the applicant's property.

Commissioner Palm commented that there was already legal parking for the duplex in front of the applicant's property and asked Mr. Reale where the students who lived in the duplex previously had parked. Mr. Reale responded that they parked "all over the place." Commissioner Palm reasoned that the request before the Board will assure the parking is orderly.

Anne Reale, 233 N. Main also spoke regarding the boundary line, claiming that they have maintained this property for years and now the applicant wants to take it from them.

Chairman Fokens again noted that the Zoning Board of Appeals is not here to question the property line or to discuss adverse possession. He noted that this is a point that the Reales would need to have adjudicated by the Circuit court.

Commissioner Kulick commented that if the applicant's request is approved and the variance is granted and the neighbors have the property line dispute settled in court in their favor, and if it turns out that the applicant's parking affects this in any way, then they would need to come back to the Board; however, it appears that the parking area in question does not appear to affect the property line anyway.

There being no one else who wished to speak, the public hearing was closed.

Staff noted the only other communications received other than from the Reales, were comments from the Department of Fire Safety, who indicated no concerns. The Department of Public Works listed some standard requirements that would need to be met.

Board Discussion:

Commissioner Berkshire asked if the bushes between the sites was the supposed property line and suggested the applicant place a fence there.

Commissioner Raisanen referred to a photo of the sites showing the area of the 5 1/2 foot property dispute. Staff again noted that there was nothing in our city records to indicate that the 1993 survey had ever been disputed.

Commissioner Kulick asked for clarification from Chairman Fokens, who he noted was a former surveyor, on who makes the ruling on adverse possession. Chairman Fokens stated it would need to be decided in circuit court.

Motion by Kulick, support by Berkshire, to grant the variance as requested to allow the construction of a parking lot for 6 vehicles in the front yard to establish a bed and breakfast at 303/305 N. Main on a finding that if the property were to be used as offices, the entire front yard could be paved. In addition, it was noted that the property is unique in that the rear property limits parking in the rear and the proposed parking is equal to what would be allowed for a duplex.

Commissioner Berkshire asked to amend the motion to include the requirement that the applicant put in a decorative fence separating it from the property to the south. The motion was so amended.

The Board also reviewed the conditions required for granting a variance and noted in their finding that the lot is unique as it does not permit parking to be located in the rear yard due to the river that runs behind it. In addition they noted the property next door has a similar configuration and the request is consistent with the surrounding area. The Board also noted that the proposed landscaping will help screen the parking from the street.

Chairman Fokens called the question.

Motion approved unanimously.

**IX. Old Business:**

None

**X. New Business**

None

**XI. Other Business**

A. July Meeting - Staff noted that we may have several cases on the July agenda.

**XII. Adjournment**

Motion by Kulick, support by Raisanen to adjourn.

Motion approved.

Meeting adjourned 8:52 p.m.

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