

Mt. Pleasant Zoning Board of Appeals
Minutes of Regular Meeting
7/22/15

Chairman Fokens called the meeting to order at 7:00 p.m.

I. Roll Call: Staff called roll.

Members Present: Berkshire, Ferden, Fokens, Friedrich, Orlik, Raisanen, White.

Members Absent: None

Staff: Kench, Murphy, City Attorney Scott Smith.

II. Approval of Agenda:

Motion by Raisanen, support by Friedrich, to approve the agenda.

Motion approved.

III. Approval of Minutes: June 24, 2015

Motion by Orlik, support by Friedrich, to approve the minutes from the June 24, 2015 meeting.

Motion approved.

IV. Communications:

Staff reported that following the last meeting, a communication was received from Robert Nims, which was included in Board packets.

V. 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.

VI. Public Hearings:

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

A. ZBA-9-2015 - 714 S. Main - Barberi Law/Attorney Joseph T. Barberi/Rentwood Management L.L.C.

Commissioner Friedrich, crossover member from the Planning Commission recused himself from the dais. In addition, Commissioner Berkshire recused himself as he had spoke against the request at the Planning Commission hearing.

Kench introduced case ZBA-09-2015, noting this was a request submitted by Attorney Joseph T. Barberi on behalf of Rentwood Management to appeal the decision of the

Planning Commission to deny a Special Use Permit (SUP-15-08) to establish a duplex at 714 S. Main. Kench introduced City Attorney Scott Smith to review the case.

Mr. Smith commented that the staff report provided to the Board reviews the criteria that the Zoning Board of Appeals (ZBA) should apply to this appeal, noting that this criteria was similar to what was discussed in detail in a previous appeal of a Planning Commission (PC) decision. The ZBA is to look at the record and determine if there was sufficient information before the Planning Commission to make the decision they made. If the ZBA feels there was sufficient information to support the decision, then they should ~~reaffirm~~ **affirm** the decision. If they feel there was not a basis for denying the Special Use Permit (SUP), then they could grant the appeal to reverse the PC decision; they could also choose to grant the appeal with conditions, or if they wish, they could remand the case back to the Planning Commission.

Mr. Smith reminded the ZBA that they should look at the same criteria provided to the PC, that includes the general SUP criteria along with the criteria that applies specifically to duplexes.

Joseph Barberi, Barberi Law, addressed the Board, representing Rentwood Management. Mr. Barberi asked for affirmation that the ZBA had read through the appeal documents and the argument as to why they should overturn the PC decision.

Mr. Barberi stated that he agreed to handle this appeal as it strikes at the very essence of democracy. He noted that we are a nation of laws and everything we do is governed by laws and either the law is followed or it is not. He indicated that he was hired to handle this case to point out why the law was not followed by the PC and why the ZBA should overturn the decision.

Mr. Barberi spoke of the role of the ZBA, noting the importance of knowing what their role is and what it is not. He reminded the ZBA that they are not ~~legislatures~~ **legislators**, and that their role is to enforce the zoning laws. He acknowledged that even if they don't agree that duplexes should be allowed in the R-3 zoning district, the law says they are allowed. He also referred to the criteria in section 154.071(A) of the Zoning Ordinance, noting the language states that the special use *shall* be granted if the criteria are met. Mr. Barberi stated that the word "shall" confers a property right that citizens should be able to rely on. He noted that the trouble starts when those who are charged with enforcing the law do not.

Mr. Barberi commented that when Rentwood purchased the property, it was with the knowledge that in 2007 the Planning Commission unanimously granted a SUP for the property to be converted to a duplex. The owner at that time proceeded with putting in the additional parking required for a duplex, but then changed his mind and did not proceed with the conversion. Mr. Barberi stated that the same facts and the same law apply now as what was in effect at the time. Even though the Commission members have changed, this shouldn't make a difference. He reiterated that the same law and same facts apply now.

Mr. Barberi stated that he reviewed the video from the PC meeting and listened to the community members who spoke against the duplex, noting that with one exception, no one

even addressed the criteria. Instead the discussion moved into the Owner Occupied Incentive program and student housing. Mr. Barberi commented that nowhere in the Ordinance does it speak of the Owner Occupied Incentive program, nor does it refer to "student housing" and indicated this borders on a violation of the Fair Housing Act.

Mr. Barberi reminded the ZBA that this property is located on the corner of M-20, which is a very busy road, and further noted that the access is off of M-20. He commented that to suggest that a duplex at this location would increase the traffic is ridiculous. He noted that he had painstakingly reviewed the video of the Planning Commission meeting and also noted that the staff report and presentation stated that the applicant met the criteria. He reminded the Board that if the request meets the criteria, then it becomes mandatory that it be approved. In addition, if members of the Commission did not agree with staff they needed to articulate why and what they felt did not meet the specific criteria. In addition, when the decision was announced, the PC failed to articulate why they did not approve the request. Mr. Barberi reiterated that if the project meets the criteria, it is not a legislative decision, it must be approved.

Mr. Barberi acknowledged that the people who spoke against the proposal indicated they wished to protect their neighborhood. He noted however, that this is a request to do what our zoning ordinance allows. Mr. Barberi read through the list of special uses allowed in the R Districts, commenting that a duplex use is one of the least intrusive of these special uses allowed in the R-3 district.

Mr. Barberi referred to a comment by Commissioner Ranzenberger at the May PC meeting regarding the existing density in the area, and that two more would increase the density by less than 1%.

Mr. Barberi again noted that the only thing that has changed since the 2007 approval is that a citizen's group showed up to speak against the request, whereas in 2007, no one spoke.

Mr. Barberi referred to a letter submitted by ZBA Commissioner Berkshire regarding the Planning Commission hearing stating that the Planning Commission reviewed the criteria and determined that the applicant "probably" did not meet at least two of the criteria. He again noted that there was nothing in the record to indicate "why" they said no and reiterated that the record must reflect which criteria was not met.

Mr. Barberi again noted that we are a nation of laws and there should be equal protection under the law. In this case a decision cannot be based on something that is not relevant to the zoning ordinance.

Mr. Barberi again stated that the ZBA should only consider what is in the record. He commented that even if 50 people show up to speak, this isn't something that should be considered; only the record of the May 2015 PC meeting, noting once again that not one shred of evidence was presented that said the applicant did not meet the criteria. Mr. Barberi also spoke of the adjacent and abutting properties, and commented that it is only speculation that there will be students living there, and also noted that the definition of family in our zoning ordinance is no more than two unrelated.

Mr. Barberi concluded his presentation by stating that the property owner's request should be approved under the equal protection law.

Chairman Fokens called for a five minute recess, after which the meeting reconvened.

Chairman Fokens opened the public hearing.

Chris Stovak, 1505 E. Pickard, spoke in favor of granting a SUP for 714 S. Main.

Ted Clayton, 302 E. High, spoke against the appeal. Mr. Clayton commented that if the ZBA agrees with Mr. Barberi that the PC did not offer a reason for denying the duplex, then he feels it would be appropriate for them to remand the case back to the PC for clarification. Mr. Clayton noted that he feels that allowing a duplex at this location goes against the objectives of the Master Plan, which he said states that the city is trying to increase owner occupied housing in that area. He also referred to the Owner Occupied Incentive program, which was implemented by the city in 2005. He noted that contrary to Mr. Barberi's claim that nothing has changed in the neighborhood since the 2007 approval, the boundaries for the Owner Occupied Housing Incentive were extended in 2007 and this particular property now falls within this boundary. Although he commented that he loves the students and they are crucial to the well-being of Mt. Pleasant, he feels that that the neighborhood problems have increased due to increased student density. He further commented that Rentwood owns four of the six properties on that block; therefore doesn't feel like relying on the comments from only those within 300' of the property is a valid argument.

Henry Fulton, 807 S. University, spoke against the appeal. Mr. Fulton commented that he has lived at his current location for over 40 years. He suggested that the ZBA should be careful in overturning the PC decision and suggested rather than do that, they remand it back to the PC to get a full explanation on why they denied the duplex. Mr. Fulton commented that he may feel different if the person was to live there, but feels this applicant just wishes to make money off the property. He further commented that he would hate to see a fine home like 714 S. Main be "wrecked" by converting it to a duplex.

Matt Roberson, 710 S. University, spoke against the appeal. Mr. Roberson indicated he was within 300 ft. of the property and commented that it is a question of population density, not just student density, and commented that noise was one of his concerns.

Nate Smith, 634 S. University spoke against the appeal, and also commented that rather than reverse the decision, the ZBA should send it back to the PC to hear their reasoning.

Sharon Stevenson, 318 S. Washington, spoke against the appeal, noting she believes this goes against the overall Master Plan for the area. Ms. Stevenson also commented that she doesn't feel that "family" means unrelated students. Ms. Stevenson commented that she purchased a rental a few years ago in her neighborhood to prevent student housing issues and to "save the neighborhood." She concluded by stating that she feels we need to keep a balance between owner occupied housing and rentals and feels this would break that balance.

Michael Lents, 502 S. University, spoke against the appeal, stating he champion's Mr. Clayton's comments. Mr. Lents referred to Mr. Barberi's emphasis on the word "shall" approve, noting that the second part of that is "IF" the applicant meets the criteria. Mr. Lents stated that the PC went through the seven criteria and had conversation and then rejected the request; therefore he feels that they did indeed do a finding of fact. Mr. Lents suggested that the ZBA either send this back to the PC or leave it alone.

Kristine Rowden, 1835 Chadwick, spoke in support of the appeal. She commented that she feels Rentwood Management met all the criteria and no one at the PC said why they didn't. Ms. Rowden commented that Mt. Pleasant is a beautiful town with two colleges and students need a place to live. She stated that she works with the students daily and one of their concerns is always where they will live. She noted that many of them not only want, but *need* to live close to the University. She urged everyone to remember that the life line of Mt. Pleasant is the students and they need to live in an area where they feel safe. Ms. Rowden also contradicted an earlier comment that there weren't as many parties in 2007, and concluded by stating that the ZBA has a duty to approve the SUP as there is nothing that goes against it.

Joellen DeLucia, 634 S. University spoke against the appeal, noting noise and density and student behavior. She noted that they have experienced students going through their yard; stealing from their yard and although she stated she loves the students, she does not love drunken students at 2:00 a.m. She further commented that there is not a lack of student housing and urged the ZBA to send this back to the PC to explain why they denied it.

Cindy Verway, 420 S. University, spoke against the appeal. Ms. Verway stated she has no problem living amongst the students; however feels the area is zoned R-3 for a reason and the area does not need more density. She further referred to the Master Plan wanting to keep the downtown residential.

Elaine Betts, 413 S. University, spoke against the appeal, noting she feels that this appeal violates the Master Plan and the PC had legitimate criteria in front of them to deny the request.

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

Kench commented that several pieces of correspondence were received regarding this appeal and stated that the trend has become to ask that the letters be read into the minutes. Kench explained that there is no requirement to read the letters; however, assured the audience that copies of all correspondence is provided to each member of the Board and is made part of the permanent record.

Kench noted that we received correspondence from Steven Berkshire, and Edward Clayton urging affirmation of the Planning Commission's denial. In addition, correspondence was received from Shirley Rosan, Nancy McGuirk, Joseph Olivieri, Rick McGuirk, Bill O'Dell, Ramon Beaulieu, Allie Langlois, Ron Osborne and Kim Cotter urging reversal of the Planning Commission's decision.

Board Discussion:

Commissioner Orlik commented that he spent a lot of years on the Planning Commission and doesn't feel it is a good idea for the ZBA to second guess them; however, with that being said, from reviewing both the printed record and the video he feels that the PC got this one wrong. Commissioner Orlik stated we have heard multiple references to multiple family housing and student housing, however noted that we are dealing with a duplex - not multiple-family housing. Commissioner Orlik stated that student housing is a demographic description, not an ordinance description. He further commented that looking back at the Planning Commission minutes from 2007 the request passed unanimously and nothing in the ordinance has changed since that time. Commissioner Orlik also commented that the Owner Occupied Incentive Program referred to by many does not supersede the ordinance.

Commissioner Orlik stated that if the discussion is whether duplexes should be allowed in the R-3 zoning district, those who are concerned about that need to go to the PC and ask them to take to the CC a request that the ordinance be changed. Short of that, Commissioner Orlik stated he can see no reason from the record why the SUP should not have been granted.

Vice-Chair Raisanen stated she disagrees with Commissioner Orlik and feels the PC got it right. She commented that she feels that they addressed the pertinent criteria and feels it is an unrealistic expectation that those who enter into public comments are able to cite ordinance language; however commented she feels that the members of both the Planning Commission and ZBA has the capacity to synthesize public comments with their pertinence or lack thereof to existing codes and ordinances.

Vice-Chair Raisanen stated that she reviewed the minutes and the video and feels that the PC acted appropriately. She also indicated she feels the Master Plan is clear in the desire to increase owner occupied housing and feels that when determining the compatibility of the surrounding area, you should only compare to conforming uses, not existing non-conforming uses.

Vice-Chair Raisanen commented that she doesn't feel the city is capable of handling the increased density and referred to the recent approval by the City Commission to hire an additional code enforcement officer just for that area. Vice-Chair Raisanen commented that she believes the PC took into consideration the public comments, and feels that is the point of holding a public hearing. She also referred to a request by the former owner in 2012 to rezone the property. At the very least, Vice-Chair Raisanen suggested the request be sent back to the PC for further comment.

Commissioner Ferden questioned Vice-Chair Raisanen on her numbers. Vice Chair Raisanen responded that she only looked at R-3 properties north of High. Commissioner Ferden commented that she believes the 300' circumference applies to all districts even though this property is not located in the M-2 district. Commissioner Ferden commented that when looking at the radial circumference and the properties within 300 ft., there are 23 rooming/dwellings, 7 owner occupied houses, 4 duplexes, 2 registered student organizations

and three single-family rentals and 5 multi-family apartment complexes. Commissioner Ferden stated she feels a duplex fits very well with the area and that the request meets the criteria. Commissioner Ferden commented on the lack of comments from neighbors who fall within the immediate 300 feet who would be most affected. Commissioner Ferden commented that she feels the issue is much larger than this property alone and would like to see the language move away from "student rentals" as this is a generalization and is erroneous and unfair and also appears derogatory when used like this. Commissioner Ferden commented that she did not feel that the PC worked through the criteria and she saw a lot of questions and confusion from the PC; however feels they made a mistake with this decision and it is obvious to her that the applicant meets the criteria. Commissioner Ferden encouraged residents to speak with the legislative body if they wish to see a change in the ordinance.

Kench provided some clarification on the comments regarding the Master Plan, and referred to the section on future land use, noting this area has been designated as Urban Residential which lists the appropriate uses as single-family detached dwellings and *duplexes*, noting that based on this language, duplexes are consistent with the Master Plan.

Vice-Chair Raisanen questioned the definition of "functional family".

Rather than entering into discussion on definitions, Kench reminded the ZBA that their role tonight is to look at the record from the Planning Commission meeting and determine whether to affirm their decision, overturn it, or remand the matter back to them for further discussion.

Commissioner Ferden commented that if the ZBA affirms the PC decision the applicant has the right to go to Circuit Court and feels the judge would ultimately rule in favor of the applicant.

Chairman Fokens commented that Attorney Smith has clearly explained the ZBA's role.

Commissioner Orlik agreed, noting that we are looking at the ordinance and at the record.

Motion by Orlik, support by Ferden, to reverse the Planning Commission's decision because the evidence in the record does not reasonably support the conclusion that one or more of the criteria was not satisfied.

Ferden clarified that the motion on table is to reverse the decision of the Planning Commission.

Roll Call Vote:

Ayes: White, Ferden, Orlik, Fokens. Nays: Raisanen

Motion passed 4:1.

Commissioners Berkshire and Friedrich rejoined the Board.

D. ZBA-11-2015 - 407 S. Bradley - Kenneth Bullard.

Kench introduced Case ZBA-11-2015 submitted by Kenneth Bullard requesting a variance from Section 154.021 of the Zoning Ordinance to allow a solid 3 ft. fence in the side street setback.

Kench provided some background on this case, noting that the applicant had applied for a fence permit but was denied as it was taller than the three feet allowed. The applicant revised the permit to meet the height restriction, but there was some misunderstanding regarding the required 50% openness and the applicant went forward with constructing the fence. Kench noted that he believes this was an innocent mistake and was not intentional.

Kench reported that the property is located on the corner of Bradley and Lyons and shared an overview of the site, noting that Lyons Street, being the narrowest frontage, is considered the front yard. Kench shared the language from the ordinance restricting fences in the side street side yard to three feet in height and 50% solid.

Kench reported that the property is zoned R-3 residential and this is a use by right. The property is surrounded by R-3 residential properties.

Kench shared a diagram showing allowable placement for fences on corner lots. He also showed several photos of the site, both before and after the fence was placed on the lot.

Kench referred to similar cases that have come before the Board in the past few years and were granted variances. He noted the Planning Commission is looking at possibly making changes to this section of the zoning ordinance in the very near future to allow more usage of these side yard corner lots and again referred to several recent cases dealing with this issue.

Kench explained that the applicant placed the fence to contain his small dog and commented that a 50% open fence could create an issue for that purpose.

Kench shared the Ordinance language with conditions necessary for granting a variance.

Commissioner Berkshire asked for clarification on whether the fence was already installed.

Kench stated that it was, that the applicant applied for a permit and there was a misunderstanding. He reiterated that he does not believe it was intentional, but rather an innocent mistake.

Commissioner Ferden asked for clarification on the height of the fence. Kench noted that the applicant had originally applied for a permit for a 6' fence and after speaking with staff reduced the height to the 3' allowed by Ordinance; however, there was a misunderstanding on the 50% open requirement.

Chairman Fokens asked the applicant to come forward.

Kenneth Bullard, applicant, addressed the Board, noting he has lived and worked in Mt. Pleasant for 27 years. He stated that at one time there was a chain link fence on this lot. He stated that he never intended to do anything illegal and placed the fence to contain his dog. Mr. Bullard stated that he lives near West Intermediate School and his dog likes to bark and growl at passersby, and even though he doesn't think the dog would bite anyone, he feels the fence is necessary to assure both their safety and his own. A 50% open fence may defeat that purpose.

Mr. Bullard stated they have done a lot to improve their property; new roof, siding, etc., commenting that everything they have done has been to improve their property and neighborhood. Mr. Bullard commented that the fence creates no visual obstruction and referred to several neighbors who have 6' solid fences right up against the sidewalk.

Commissioner Berkshire asked if the applicant had considered using chain link. Mr. Bullard stated he had not, he indicated that he isn't a fan of chain link. Mr. Bullard also commented ~~that~~ *that* you can't buy a 3' wooden fence.

Commissioner Orlik asked the applicant why they weren't at the June meeting. Mr. Bullard stated he didn't realize that he was required to be there and he also works two jobs.

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

Vice-Chair Raisanen read through the criteria for granting a variance, noting that taller fences exist in the neighborhood and feels this was a misunderstanding between staff and the applicant. She noted that variances have been granted to other property owners for similar requests. She further referred to the fact that the Planning Commission may be looking at possible changes to the ordinance in regards to fence placement. Vice-Chair Raisanen also noted that the fence does not interfere with the clear vision and the applicant followed through in good faith in obtaining a permit for the fence.

Motion by Raisanen, support by Berkshire, to approve case ZBA-11-2015 for a variance from Section 154.021 of the Zoning Ordinance to construct a solid 3 foot fence in the required side street yard along Bradley Street.

Motion approved.

VII. Old & New Business - None

VIII. New Business

- A. August ZBA Meeting - no new cases have been submitted at this time.
Deadline for submittals is August 3.
- B. Commissioner Berkshire stated he would like to request a meeting to review the ethics policy. Kench commented that we would look into setting up a time for a work session.

XII. Adjournment

Motion by Raisanen, support by Orlik to adjourn.

Motion approved.

Meeting adjourned at 8:47 p.m.

BAM