

Mt. Pleasant Zoning Board of Appeals
Minutes of Regular Meeting
9-23-15

Chairman Fokens called the meeting to order at 7:03p.m.

I. Roll Call: Staff called roll.

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

Members Absent: Ferden, White

Staff: Kench, Murphy.

II. Approval of Agenda:

Kench reported that Item VI.3., ZBA-14-2015 has been canceled as the applicant was able to reduce the signage to comply with the ordinance. It appears on the agenda because it was publicized.

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

Motion approved unanimously.

III. Approval of Minutes: July 22, 2015

Commissioner's Orlik and Raisanen noted two changes on page 2 and one on page 9 as noted below.

*If the ZBA feels there was sufficient information to support the decision, then they should ~~reaffirm~~ **affirm** the decision.*

*He reminded the ZBA that they are not ~~legislatures~~ **legislators**, and that their role is to enforce the zoning laws.*

*Mr. Bullard also commented ~~that~~ **that** you can't buy a 3' wooden fence.*

Motion by Orlik, support by Berkshire, to approve the minutes from the July 22, 2015 meeting with the noted changes.

Motion approved unanimously.

IV. Communications:

Staff reported that no communications were received.

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-12-2015 - 104 E. May - Olivieri Builders.

Kench introduced case ZBA-12-2015, noting that this case was submitted by Joe Olivieri on behalf of the owners, Marshall Real Estate Investment. Kench reported that this was a request for a finding on a non-conforming use under Section 154.007 of the Zoning Ordinance, to permit the demolition of a party store and construct a new rooming dwelling. As part of the consideration, the applicant is asking to increase the occupancy by two.

The property is located in the M-2 zoning district and is surrounded by M-2 zoning on all sides, with a mixture of rooming dwellings and apartments. Future land use is designated as Multiple Family Residential.

Kench shared text from section 154.054 listing the requirements for a rooming dwelling.

Kench shared photos of the existing site, along with an aerial view and the proposed site plan for the new development. Kench reviewed the non-conformities that would be eliminated from the site as:

- The Party Store, a commercial use which is typically found in Commercial Districts, will be eliminated from the M-2 Multiple Family District and be replaced with a use that is consistent with the district and the City's land use plan.
- The sale of beer/wine authorized in 1983 by ZBA approval to exchange one nonconforming use for another will be eliminated.
- The use will be more in line with the student housing and the homes found in the residential neighborhood to the east (154.054).
- The redevelopment will bring the front setback from 9 feet to 13.6 feet to match the established setback. Open porches may extend into the front setback by 6 feet.
- The rear setback will be increased from 4 feet to 20 feet (154.095 and 154.007).
- The west side setback will increase from 2 feet to 10 feet to meet the minimum requirements of the ordinance and to provide the 12 feet required between buildings.
- Parking will be removed from the 10 ft. greenbelt and be provided with approved landscaping (154.106 Cb).
- The redevelopment will bring the distance between buildings on the adjoining site from 2 foot to 12 feet to comply with the ordinance (154.095).
- The amount of impervious surface will be reduced from 100% coverage to 39 percent where 25% would be required. Noted improvement (154.54C2).

Kench noted that although the existing lot is nonconforming, (53.5 feet in width and 66 feet in depth) it is consistent with other nonconforming parcels in the district. It was further noted that the proposed density for the site is consistent with the rooming dwelling on the adjoining site (903 Main 4521/7=645ft² land area).

Kench referred to the elevation drawings provided by the applicant, commenting that the Board may wish to request that the brick on the east elevation be brought up to the same level as on the north elevation.

Kench provided the background on this property, explaining that the site is non-conforming, and has operated commercially for 40 years. The site was approved by the ZBA in 1983 to operate as a party store, exchanging one non-conforming use for another. The approval permitted sales of take out beer and wine under a SDM (Beer and wine) license and also restricted hours of operation to 7:00 a.m. to 11:00 p.m.

Kench noted that several requests have been made over the years to lift the restriction on the hours of operation and also to add a SDD (package liquor) license, however, all requests were denied on the basis that it would increase the degree of non-conformity. In addition, Kench reported that a request to rezone the property in 2007 also failed as the requested zoning was inconsistent with the future land use.

Commissioner Orlik commented that the rear yard setback will still be non-conforming. Kench acknowledged that it would, but would be markedly improved. Currently the setback is 4 ft. and it will be increased to 20 ft. where 25 ft. is required by ordinance. Kench noted that the amount of impervious surface would also remain nonconforming; however, it too would be improved and be reduced from 100% coverage to 39% where ordinance would limit it to 25%.

Joe Olivieri, applicant representing the owner of the property, addressed the Board offering to answer questions.

Commissioner Orlik referred to the M-2 Redevelopment procedures and noted that in order to allow two additional occupants, as being requested, a project must be characterized by three things:

- 1) Elimination of notable nonconformities: Commissioner Orlik commented that this appears to have been met.
- 2) Durable and distinct building design: Commissioner Orlik commented that provided the applicant agrees to extend the brick on the east elevation, he feels this criteria has also been met.
- 3) Demonstrated track record or capacity for long-term maintenance and code enforcement. Commissioner Orlik questioned who owns the property and what is their code compliance record in the past.

Mr. Olivieri responded that the property is owned by Mr. Marshall and he has been a landlord for many years.

Commissioner Berkshire asked if the owner of this property also owned the adjoining property. Mr. Olivieri said he owns the property in front and to the south.

Commissioner Berkshire asked if the adjoining property was the one that had an issue with the fence a couple of years ago. Kench acknowledged that it was; however, after his request to remove the fence failed before the ZBA, the owner put the fence back in.

William Marshall, owner of the property, addressed the Board and spoke of the lease agreements for his rentals, noting that they include strong language which includes a party clause stating that if there is more than one guest per tenant, they will be fined. He further noted that they have a local leasing agent who monitors the properties each week, especially Thursdays through Saturdays. Mr. Marshall stated they make every attempt to rent to the right people and check references on all potential renters.

Commissioner Raisanen asked how much the party fine was and how often they have to fine their tenants. Mr. Marshall stated it was \$300 and rarely - maybe once per year they have to fine someone.

Kench asked if they had anything in the lease that deals with loud music. Mr. Marshall stated that their lease states no loud music after 11:00 p.m.

Commissioner Berkshire asked if the project would be feasible if they only had one additional occupant. Mr. Marshall said it would not.

Commissioner Berkshire asked if they were willing to increase the brick on the east side and asked about landscaping plans. Mr. Olivieri stated they could add the additional brick to match the north side and commented that they would include mature shrubs as in most of the redevelopments.

Commissioner Raisanen asked if the existing tree would be saved. Mr. Olivieri noted that the tree was located in the right-of-way and would only be taken down if there were issues with sewer or water lines that would require it to be removed.

Kench commented that if the ZBA approves the request, the applicant will appear before the Planning Commission for a Special Use Permit and Site Plan Review. The City Planner will be looking at landscaping and will work with the applicant on a landscaping plan.

Commissioner Friedrich asked about the south and west sides. Mr. Olivieri stated that he is planning to do the detail he put together on the east elevation with a band of brick, because those areas will not be visible. Mr. Olivieri noted that most people will drive by the home and will not notice the west elevation due to the distance to the other home. He agreed to increase the height of the brick on the east wall due to the visibility to the residential district.

Commissioner Raisanen asked if the lease addressed parking across city sidewalks. Mr. Marshall said it does and also addresses parking on lawns.

Discussion ensued on putting in a berm, bumper blocks, fencing, or some other means to prevent driving onto the lawn. Commissioner Raisanen asked if Kench would articulate to the City Planner their desire for additional landscaping.

Chairman Fokens opened the public hearing.

Nancy Casey Fulton, 807 S. University, addressed the Board, commenting that she can see this property from her home and indicated that she likes the plan and will not miss the party store. She also encouraged the applicant to save the tree and encouraged planting of trees over shrubs. She also questioned how wide the house would be, referring to the narrow lot. Mr. Olivieri stated it would be 22' wide. Ms. Fulton stated she would like to see the project approved for only four applicants, but indicated she understands why the applicant needs five to make the project feasible. Chairman Fokens thanked Ms. Fulton for her positive comments. Ms. Fulton also commented that she is very appreciative of the various boards upholding the limitations on the party store throughout the years.

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

Kench shared the communications provided by the Divisions of Public Works and Public Safety.

Board Discussion:

Commissioner Berkshire asked about the new proposed language for the M-2 transition area and if it would affect this request. Kench indicated the occupancy would be limited to four under the new ordinance.

Commissioner Raisanen commented that she would've liked to see a demonstrated track record for code violations on properties under the same ownership. Kench noted that he feels that the numbers would be pretty low, with occasional trash or yard parking violations.

Commissioner Raisanen commented that the Party Store was required to close at 11:00; however, student parties don't.

Commissioner Raisanen asked if the building would be designed as a house or dormitory style. Mr. Olivieri stated they are all houses.

Commissioner Orlik acknowledged Commissioner Raisanen's comment about a proven track record; however noted that he accepts staff's report.

Motion by Orlik to approve case ZBA 12-2015 filed by Joe Olivieri/Olivieri Builders, Inc. on behalf of Marshall Real Estate Investment Inc., seeking a finding on a nonconforming use under section 154.007, to allow the redevelopment of the Party Store at 104 East May Street to construct a new rooming dwelling for five occupants.

The Board finds that the redevelopment will reduce the manner and degree in nonconformities based on:

- The Party Store, a commercial use which is typically found in Commercial Districts will be eliminated from the M-2 Multiple Family District and replaced with a use that is consistent with the district and the City's land use plan.
- The sale of beer/wine authorized by the ZBA in 1983 to exchange one nonconforming use for another will be eliminated.
- The use will be more in line with the student housing and the homes found in the residential neighborhood to the east.
- The redevelopment will bring the front setback into compliance with the district standards.
- The rear setback will be increased to meet ordinance requirements.
- The west side setback will increase from 2 foot to 6.5 feet to comply with the ordinance.
- Parking will be removed from the ten foot greenbelt
- The distance between buildings on adjoining properties will be brought into compliance with the ordinance.
- The amount of impervious surface will be reduced from 100% to 39%
- The existing lot size is consistent with other nonconforming parcels found in the district and immediate area.

The project is consistent with conditions agreed upon in the M-2 Redevelopment guidelines to grant a request to construct a rooming dwelling for five occupants. It is noted that the density is consistent with other rooming dwellings located in the immediate area.

The approval is subject to compliance with the site plan, building elevations presented to the board, and the owner/applicant implementing more stringent lease standards to ensure that tenants comply with all City standards related to trash, litter, nuisance parties, etc.

Commissioner Berkshire stated he would second the motion if a stipulation was added that the owner place a fence or some other type of boundary acceptable to staff to prevent parking in the right-of-way. Commissioner Orlik agreed to that amendment.

Commissioner Raisanen commented that she would like to further amend the motion to require the owner to provide additional security on high priority weekends. Commissioner Orlik stated he would not accept that amendment as he did not feel that would be appropriate on this size of a development.

Chairman Fokens noted that rather than the rear setback meeting the ordinance requirements it is being substantially reduced.

Amended motion to read:

Motion by Orlik to approve case ZBA 12-2015 filed by Joe Olivieri/Olivieri Builders, Inc. on behalf of Marshall Real Estate Investment Inc., seeking a finding on a nonconforming use under section 154.007, to allow redevelopment of the Party Store at 104 East May Street to construct a new rooming dwelling for five occupants.

The Board finds that the redevelopment will reduce the manner and degree in nonconformities based on:

- The Party Store, a commercial use which is typically found in Commercial Districts will be eliminated from the M-2 Multiple Family District and replaced with a use that is consistent with the district and the City's land use plan.
- The sale of beer/wine authorized by the ZBA in 1983 to exchange one nonconforming use for another will be eliminated.
- The use will be more in line with the student housing and the homes found in the residential neighborhood to the east.
- The redevelopment will bring the front setback into compliance with the district standards.
- The rear setback will be increased from *4 feet to 20 feet*.
- The west side setback will increase from 2 foot to 6.5 feet to comply with the ordinance.
- Parking will be removed from the ten foot greenbelt
- The distance between buildings on adjoining properties will be brought into compliance with the ordinance.
- The amount of impervious surface will be reduced from 100% to 39%
- The existing lot size is consistent with other nonconforming parcels found in the district and immediate area.

The project is consistent with conditions agreed upon in the M-2 Redevelopment guidelines to grant a request to construct a rooming dwelling for five occupants. It is noted that the density is consistent with other rooming dwellings located in the immediate area.

The approval is subject to compliance with the site plan, building elevations presented to the board, and the owner/applicant implementing more stringent lease standards to ensure that tenants comply with all City standards related to trash, litter, nuisance parties, etc. *and the owner placing a fence or some other type of boundary acceptable to staff to prevent parking in the right-of-way.*

Motion approved unanimously.

Further discussion ensued on property owners being more accountable for activities taking place on their properties and providing additional security during high-profile weekends.

Kench reiterated that this particular property has a local manager that monitors the properties Thursday through Sundays and further noted that additional security may be more appropriate for larger apartment complexes.

B. ZBA-13-2015 - 1205

Kench introduced Case ZBA-11-2015 submitted by Richard L McGuirk/United Apartments requesting a finding on a non-conforming use. Kench explained that this is the final phase of a project that began in 2005, noting that most of the reductions in non-conformities took place at that time.

Kench reported that the site is located in the M-2 zoning district and is surrounded by rooming dwellings and apartments on the north, east and west, with CMU's campus located to the south. Future land use is designated as Multiple-Family Medium.

Kench reported that the use is appropriate for this district and is regulated under a Special Use Permit. Provided the ZBA approves the redevelopment, the applicant will appear before the Planning Commission for a Special Use Permit and Site Plan Review.

Kench shared photos of the existing building, noting it is a two story 6-unit with four occupants per unit. The proposed building will be a 2 1/2 story design and will also consist of 6 four-occupant units. Photos were also shared of the buildings that were redeveloped under Phase I in 2005.

Kench shared the site plan, noting again that the non-conformities were handled through the first phase. He noted that this building will replace 1 for 1 for both number of units and number of occupants. The building will be slid to the south to bring the setback requirement between buildings into compliance.

Kench provided some history on the project, noting that in 2005 the overall occupancy on the project was reduced from 246 to 224, where 169 would be allowed by Ordinance. In addition, the number of dwelling units was reduced from 61 to 56, where 52 would be allowed. On-site parking was increased from 109 to 186, along with updates to the drive aisles to comply with current requirements.

Tim Bebee, Central Michigan Surveying & Development, addressed the Board on behalf of the owner. Mr. Bebee commented that when the first phase took place, the building that they now want to redevelop was the newest of all the buildings; however, it has reached the point that they would like to replace it with a new, safer building. Mr. Bebee noted this is the only building left in the complex that has not been updated. He noted there would be no changes to the parking or sidewalks.

Commissioner Orlik questioned what non-conformities would be eliminated with this particular project, as he views this as a separate action from the 2005 redevelopment. Mr. Bebee stated that the only non-conformity that is left is the setback between buildings, which will be eliminated with this phase. Overall, he noted this request ties in with the overall development.

Commissioner Orlik asked if there was any way for this phase to increase or enhance the parking. Mr. Bebee noted there may be the potential for two spaces, but more likely one to maintain turning area.

Kench mentioned that there is also parking on the street, and noted that the city recently modified the overnight parking restrictions to allow overnight street parking from April 1 through December 1.

Commissioner Friedrich commented that he walks through that area most every day and the parking lot is rarely full so he isn't concerned about additional spaces.

Commissioner Raisanen asked if there was parking for bikes and if there was potential to add bike parking.

Rick McGuirk, applicant, noted that there are bike racks in four locations and they would be willing to add an additional rack.

Chairman Fokens commented that a new building would need to be brought up to current fire and building codes. Kench shared some of the updates to the codes.

Commissioner Friedrich asked about existing trees and whether they would be removed. Mr. Bebee stated that in order to move the building to the north, the trees in that area would need to be removed. He further commented that they would make every effort to keep the trees on the west.

Commissioner Raisanen asked if the trees to the west didn't survive the demo process if the applicant would be willing to replace them. Mr. McGuirk stated that based on the history and the owner's feeling regarding trees, it was safe to say yes.

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

Kench shared the correspondence received from the Divisions of Public Safety and Public Works.

Board Discussion:

Commissioner Raisanen asked if the Planning Commission would be looking at the landscaping. Kench indicated that the City Planner would likely work with the applicant and suggested this could be added to the motion.

Motion by Raisanen, support by Berkshire to approve Case Number ZBA 13-2015 filed by Richard L. McGuirk / United Apartments, who is seeking a finding on a nonconforming use under section 154.007, to allow the redevelopment of a six unit rooming dwelling for 4 occupants in each unit at 1201 West Campus Drive.

The Board finds that the proposed redevelopment will allow the building to be razed and permit a new 6 unit building with 4 occupants per unit to be constructed in roughly the same location, moving slightly to the north to reduce a nonconformity and to bring the distance between buildings in compliance with the 20 foot required by Section 154.095 I.

The project represents the final phase of work that began in 2005. The project at the time provided improvement in the on-site parking, increases in the floor area per person and improvements in the site circulation to accommodate emergency personnel to comply with adopted standards. In addition, the new construction will replace an aging building of the same

size and occupancy of the current building. The Board also recognizes the building is consistent with the character of the neighborhood. The approval is granted with the following conditions:

- The applicant shall agree to provide on-site security during welcome back weekend, CMU Homecoming, Western Weekend and similar high density exciting events.
- The applicant will work with the City Planner on an acceptable landscape plan to replace any current landscaping lost during the redevelopment.
- The applicant will add a bicycle rack near the entrance to the building.
- The approval is subject to compliance with the site plan, building elevations presented to the board, and the owner/applicant implementing and/or maintaining stringent lease standards to ensure that tenants comply with all City standards related to trash, litter, nuisance parties, etc.

The Board finds there is a marked decrease in the manner and degree of nonconformity and the proposal will enhance the desirability of adjacent conforming uses.

Motion approved unanimously.

VII. Old & New Business - None

VIII. New Business

- A. Proposed Text Change:** Kench referred to the memo included in the Board packets and the proposed text change from the City Attorney regarding updates to the Zoning Board of Appeals section of the ordinance. Kench noted that the text change is being proposed to provide clarification for those going through the appeals process and has been provided to the ZBA for informational purposes.
- B. Joint Meeting with ZBA and PC:** Kench noted that a time has been scheduled for the ZBA to meet with the PC to discuss the M-2 regulations in a work session. The work session is scheduled just prior to the October 28, 2015 regular ZBA meeting. The Board will need to make a motion to set this meeting.
- C. October 28, 2015 Meeting:** Kench reported that we have had two requests for sign variances which will likely appear on the October agenda.

Motion by Orlik, support by Friedrich, to modify the ZBA schedule to accommodate a work session with the Planning Commission to take place on October 28, 2015 at 6:00 p.m.

Motion approved unanimously.

Kench reported that United Apartments held an open house earlier this month to provide board members *the opportunity* to conduct a walkthrough of one of the redevelopments. Kench suggested that Board members take advantage of these opportunities to meet with developers and tour the projects.

Commissioner Raisanen commented that she would like to see more equality in the burden we place on landlords to provide additional security during high profile weekends, especially in areas closer to Residentially zoned areas and suggested discussing this item as well during the work session with the Planning Commission.

Kench noted that some of the larger apartment complexes (United Apartments) are already doing this. In addition, property owners are partnering with the city and strengthening their lease agreements. He also noted that they are monitoring their properties better and feels that with the smaller homes having an agent monitoring the site is sufficient.

Commissioner Orlik also commented that for the larger complexes he feels extra security is a good idea; and feels it needs to be equal *to* what we expect from the smaller homes.

Commissioner Berkshire noted he would not be in attendance for the October work session or regular meeting.

XII. Adjournment

Motion by Raisanen, support by Orlik to adjourn.

Motion approved.

Meeting adjourned at 8:19 p.m.

BAM