

Mt. Pleasant Zoning Board of Appeals
Minutes of Regular Meeting
5/27/15

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

I. Roll Call: Staff called roll.

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

Staff: Kench, Murphy, City Attorney Scott Smith, Attorney Nicholas Curcio.

II. Approval of Agenda:

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

Motion approved

III. Approval of Minutes: March 25, 2015

Motion by Orlik, support by Ferden to approve the minutes from the March 25, 2015 meeting.

Motion approved.

IV. Communications:

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

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-06-2015 - 120 S University.

Kench introduced Case ZBA-06-2015 submitted by Aimee Goudreau on behalf of Basin Lofts LLC, noting that the applicant is seeking relief from Section 154.025 of the zoning ordinance to allow a dumpster without an enclosure or screening.

Kench reported that the area is zoned C-2 Central Business as are the surrounding properties. Future land use is also designated as Central Business.

Kench provided some background for the request, noting that the property received a special use permit in April of 2014 for a Class I Restaurant. Earlier this month, the applicant applied for site plan review to construct a new entrance and patio for the

restaurant. The Planning Commission approved the site plan, which shows the dumpster enclosure.

Kench shared photos of the existing dumpster and the revised details provided by the applicant, including information on turning radius'. Kench noted that the revised detail shows the dumpster without the enclosure.

Kench acknowledged that policing downtown dumpster placement has been a challenge and referred to the recent work in Jockey Alley to consolidate dumpsters into one location to be used by all the businesses in that area.

Kench shared the conditions necessary for approving a variance from Section 154.164 of the Ordinance, noting that the applicant needs to demonstrate practical difficulty or unnecessary hardship to grant a variance.

Aimee Goudreau, 1715 Heritage Way, addressed the Board as the applicant and representative of the owner. Ms. Goudreau walked through the site plan with the Board, noting that the dumpster has been in its current location for approximately four years. The dumpster is shared between three businesses. Ms. Goudreau noted that currently semi trucks have to back into the alley. She explained that by putting in the dumpster enclosure it would reduce the turning radius to 23 ft. whereas the requirement for the waste trucks to dump is 28'.

Commissioner Ferden asked if there was a pass through for delivery trucks. Ms. Goudreau noted that only UPS and Federal Express can pass through - all the others have to back down the alley.

Commissioner Orlik commented that the Planning Commission (PC) approved the site plan with the dumpster enclosure and asked the applicant at what point did they decide it wasn't going to work. Ms. Goudreau stated it was after they submitted to the Planning Commission. The enclosure was brought up during staff review and it was discussed with the City Planner, who indicated that usual procedure is to take a variance request to the ZBA prior to site plan approval; however, Ms. Goudreau noted that they decided to take the risk and get site plan approval first and then ask for the variance in order to move the project forward more quickly.

Commissioner Ferden stated she feels it would improve the appearance of the alley if they had an enclosure and questioned whether deliveries could be made in the front. Ms. Goudreau replied that they don't wish to take up valuable parking space in front of the building during deliveries. She also commented that snow removal may be another concern if the enclosure is required.

Vice-Chair Raisanen referred to the risk they took by going to the Planning Commission first and asked what the plan is if they don't get the variance. Ms. Goudreau stated if they have to put in the enclosure they will; it will likely involve moving gas lines, etc.

Commissioner Berkshire asked if there was some way for additional consolidation.

Ms. Goudreau stated that there are three dumpsters back there and doesn't feel there is any room for additional consolidation without taking up parking spaces.

Vice-Chair Raisanen commented that she currently avoids that alley as it is "gross" and feels that the unenclosed dumpster contributes to that. She would like to move towards improved appearances.

Ms. Goudreau acknowledged Vice-Chair Raisanen's comment, but feels that this could have a domino effect and suggested that if it is difficult for downtown businesses to get timely deliveries they may move elsewhere.

Commissioner Berkshire questioned whether the applicant could consider a smaller dumpster with more frequent dumping. Ms. Goudreau stated that they currently have one of the smallest dumpsters available and it is already emptied twice a week, and they are already considering a third dump.

Commissioner Friedrich questioned whether it would be possible to put a masonry wall on the east side, rather than a full enclosure to help screen the view from the street. Ms. Goudreau stated that her concern with that would be that the dumpster would get pushed further into the alley.

Chairman Fokens asked if the waste company currently backs in, and again noted that the site plan approved by the Planning Commission shows an enclosure. Ms. Goudreau stated she isn't sure if they currently back in, but again noted that if an enclosure is required it will knock the turning radius down to 23' and the dump trucks require 28'. She also commented that the dumpster sits on private property rather than city property.

Commissioner White asked how much room is required for the Fire Trucks and also asked if the 23' took into account the dumpster across the alley. Kench noted that Fire Trucks require a minimum of 20'. Ms. Goudreau stated that the 23' did take into account the other dumpsters.

Kench commented that he believes that currently the waste company must back into the alley and roll the dumpster out to service the unit, and noted that with a dumpster enclosure, the refuse company would still service the unit in a similar manner.

Chairman Fokens revisited the consolidation idea, asking if the applicant had approached any other business owners to discuss a better plan for dumpster placement. Ms. Goudreau stated they have not discussed this with the other business owners; however maintained that she doesn't feel there is enough room.

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

Chairman Fokens opened the public hearing.

Allison Lents, 502 S. University, and business owner of Motorless Motion at 121 S. Main, addressed the Board. Ms. Lents commented that she sees the dumpster every day from her business and it is not pretty; however, feels this alley is unique as it is owned by the property owners and feels an enclosure would cause additional problems. She further commented that they receive deliveries to the back door and noted that UPS drivers are not allowed to back up without it creating additional paperwork for them. In addition, she noted that many times there are cars with trailers that bring bikes for repair that need the additional turning radius. Ms. Lents commented that even with the consolidation of dumpsters in Jockey Alley, which is a city lot, there are still three dumpsters.

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

Board Discussion:

Commissioner Orlik commented that he feels that the bigger issue with this request is that the ZBA should not be second guessing the Planning Commission (PC). He commented that when the PC looks at a site plan, they look at it in its entirety.

Commissioner Ferden commented that she commends those in the restaurant business and understands the trash issue; however, would like to see more consolidation with enclosures.

Commissioner Friedrich suggested that perhaps the PC wasn't privy to the space issue. Kench referred board members to the approved site plan showing the alley width and notes regarding the masonry enclosure that were shown.

Motion by Orlik, support by Raisanen to re-endorse the Planning Commission's original action to approve SPR-15-09.

Scott Smith, City Attorney, commented that reaffirming the PC's approval doesn't answer the question on the variance. The Board will need to decide whether to grant the variance, and if they grant a variance they will need to acknowledge their basis for approval. In addition, if they vote to deny the variance, they will need to acknowledge what criteria the applicant failed to meet.

Commissioner Orlik withdrew the previous motion.

Motion by Orlik, support by Berkshire to approve ZBA-06-2015, filed by Aimee Goudreau on behalf of Basin Lofts, LLC, seeking a variance from section 154.025 of the Zoning Ordinance to allow a dumpster to be placed without an enclosure or screening.

Commissioner Berkshire read through the criteria and noted that the site plan provided demonstrates that the dumpster enclosure could be in compliance and also noted that if it couldn't, then this should've been shared with the Planning Commission at the time of their review, therefore the request fails to meet the first criteria. In reviewing the remaining criteria, it was noted that although this alley is privately owned, other businesses have been able to consolidate and if this is approved, other businesses may be encouraged to obtain variances to allow dumpsters without enclosures.

Roll call vote was taken and the motion to approve the variance request failed. Commissioner Orlik moved, with support from Berkshire to deny the request. Motion to deny approved.

B. ZBA-07-2015 - 220 N. Kinney - John Pfeiffer, et al.

Commissioner Friedrich noted that he participated in the case before the Planning Commission, and as a result, recused himself from participating in this request. Alternate Commissioner White was asked to participate in the discussion and vote.

Kench introduced case ZBA-07-2015, noting this was a request submitted by John Pfeiffer to repeal the Special Use Permit granted to Keith and Kim Cotter under SUP-15-06 to establish a duplex at 220 N. Kinney. Kench introduced City Attorney Scott Smith to review the case.

Chairman Fokens commented that he is within the 300' notification area of this property and received a notice when this case came before the Planning Commission. Attorney Smith acknowledged Chairman Fokens comment; however advised him that this does not disqualify him from participating.

Smith explained the ZBA's role, noting they are a quasi judicial body. Like a court would do, the ZBA is to review the decision of the Planning Commission and decide whether to affirm their decision; to reverse it, or to affirm it with additional conditions. In addition, if the ZBA feels the record is lacking, they can refer it back to the Planning Commission for additional review.

Smith noted that the ZBA members may prefer that city policy be different than it is, or they might prefer that the Ordinance establish other criteria; however, noted that the ZBA is not a policy making body and their role here is to simply review the Planning Commission's decision.

Smith explained that the ZBA will be reviewing the criteria used by the PC; will review the information that was available to the PC and will review the decision by the PC to determine whether enough information was available to them to make the decision, noting that additional information is not allowed to be introduced.

Smith further explained that if the criteria for a Special Use is met the city must grant the request in accordance with State law - this is not discretionary, and acknowledged that this may be frustrating for some.

Smith also noted that another decision the ZBA will be making is whether the criteria required for filing the appeal itself was met. Based on the City's zoning ordinance, the appellant must be an "aggrieved party" and based on Michigan courts must have "suffered a substantial damage not common to other property owners similarly situated." Smith noted that Mr. Pfeiffer is more than 300 feet from Mr. Cotter's property and even if he was within the 300 feet, that may be insufficient to show that he is an aggrieved party.

Commissioner Berkshire asked if being within 300' may mean you are an aggrieved party. Smith stated that would be for the Board to determine.

Smith also noted that the grounds for the appeal needs to state why the Planning Commission was incorrect in their decision. The Planning Commission had two sets of criteria to apply: the general criteria for all Special Use Permits along with the criteria for duplexes. Smith referred to the appeal application submitted by Mr. Pfeiffer and the attachments provided to the ZBA, which included the Planning Commission Staff report; the Department of Public Works memorandum; the PowerPoint presentation prepared by City staff presented at the Public hearing; Mr. Cotter's SUP application; the approved minutes from the hearing; a letter from Mr. Pfeiffer and Tracy Collins dated March 25, 2015 and a letter from Mr. & Mrs. Dick Bellinger.

Smith commented that if the ZBA wanted to they could also have looked at the recording of the meeting. Vice-Chair Raisanen commented that she had reviewed the recording. Smith noted that based on that, it would be made a part of the record.

Vice-Chair Raisanen asked for clarification that any action taken by the Board to determine whether the applicant was an aggrieved party would not set precedent. Smith explained that a reviewing court would look at the definition to determine if the appellant is an aggrieved party. The City Zoning Ordinance doesn't have its own language to define this so the ZBA is constrained to use the same definition that the courts would use. He further noted that each case is fact specific and would be looked at independently.

Commissioner Berkshire commented that the PC minutes do not reflect the criteria the PC used to make their decision. Smith commented that the question is to determine whether the record reflects sufficient information for the Planning Commission to determine whether the criteria was met.

Vice-Chair Raisanen expressed some concern that at no time during the meeting was the communications that were received mentioned nor were they mentioned in the minutes. Smith noted that although they weren't mentioned, this isn't a basis for an appeal and he noted that the communication was available to the PC; however they may not have felt it was relevant.

John Pfeiffer, 312 N. Arnold addressed the Board. Mr. Pfeiffer commented that he had received the notification of the Public Hearing, which indicated they could submit their views in writing; however, was not aware that it would not be read into the record. Mr. Pfeiffer read the letter dated March 25, 2015 signed by himself and Tracy Collins to the Board (attached to minutes and will become part of the record). In addition, Mr. Pfeiffer read portions of Section 154.163 from the City's Zoning Ordinance pertaining to appeals and conditions for appeals.

Mr. Pfeiffer commented that Kinney boulevard is made up of beautiful homes. Moving in each direction you will find some multi-family dwellings as well. He commented that this particular home is a very nice home and questioned why it should be a duplex.

Commissioner Berkshire asked the applicant what was the contention of the appeal? Did he feel that the PC did not follow procedures?

Mr. Pfeiffer commented that he did not feel they followed it in spirit. Commissioner Ferden asked for clarification. Mr. Pfeiffer stated he couldn't imagine that the PC would think there were no objections and again noted that his letter didn't get read and therefore he didn't get heard.

Commissioner Ferden asked if the applicant knew Dr. Chamberlain. Mr. Pfeiffer indicated he did not.

Commissioner Orlik commented that the small house was used as Dr. Chamberlain's office. He noted that when reading out of the Ordinance, the aspect of compatibility is noted. He further commented that under our Ordinance, duplexes are considered a compatible use in the Residential districts if the conditions are met.

Mr. Pfeiffer commented that he didn't have any legal support system to think about this.

Chairman Fokens asked the applicant if he had looked at the Ordinance prior to submitting his appeal to see if the Planning Commission errored in some way or to see that duplexes were an allowed use and if the criteria was met. Chairman Fokens noted that there was nothing filled out in the application as to why he was objecting other than he just didn't want a duplex in the neighborhood.

Mr. Pfeiffer commented that was it, and again noted that he didn't have the legal advice to have much more discussion.

Kim Cotter, owner of 220 N. Kinney addressed the Board. Mrs. Cotter stated her and her husband have lived in the home for four years and shared a PowerPoint presentation that she prepared, including photos of the main home facing Kinney Street and the small home facing Chippewa (attached to minutes and will become part of the record). Mrs. Cotter stated they are not asking to break up the principal residence. Mrs. Cotter noted that the property is zoned R-3 and the City's Master Plan calls for Urban Residential. She noted that the property meets all the zoning requirements for a duplex and noted the uniqueness of the property as it is actually two separate residences. She explained that the prior use was for a medical office, a non-conforming use and there have not been any improvements to that portion of the property for decades. With the duplex use, there will be less traffic than the previous commercial use and the home will be updated. Mrs. Cotter further noted that if they cannot use the home then it will become dilapidated. The SUP approval would allow it to be rented under a single-family license and she reiterated that it conforms to the current zoning and Master Plan.

Mrs. Cotter shared information from the recently updated Master Plan that lists duplexes under the Residential section.

Mrs. Cotter also referred to the letter submitted by Mrs. Lents on behalf of the applicant, stating that the Planning Commission had denied SUP's for duplexes at 215 S. Pine and 612 S. Franklin. Mrs. Cotter commented that neither of these cases made it to the PC as they were denied at the ZBA level as they were under the permitted lot size requirements.

Mrs. Cotter also commented that Mrs. Lents has held seats on both the PC and ZBA and knows that letters written by the public are provided to the Commissioners and it is not a requirement to read them into the minutes.

Mrs. Cotter referred to a similar property located at 122/124 N. Kinney that was approved for a duplex in 2012 by both the ZBA and the PC. She also noted a duplex that was approved in 2014 at 202 N. Arnold.

Vice-Chair Raisanen spoke to Attorney Smith, clarifying that the Board could not consider new information. Smith confirmed that was correct.

Mrs. Cotter concluded her presentation to the Board noting that there will be no changes to the exterior of the building and reiterated that the property is zoned R-3, which allows duplexes and that the site meets the requirements outlined in the Zoning Ordinance.

Chairman Fokens opened the public hearing.

Commissioner Orlik reminded the Chair that speakers are limited to five minutes each.

Mrs. Dick Bellinger, 217 N. Kinney, addressed the Board, noting that they live across the street. She commented that her and her husband had submitted a letter of opposition to the Planning Commission and was disappointed when the letter was not read at the meeting. She noted she objects to the duplex, feeling that there will be increased traffic and noise. She commented that their block is well maintained and feels that property values will decline if the zoning is changed. She commented that this is a large property and could house several people.

Commissioner Berkshire referred to Mrs. Bellinger's comment noting that this property could only be rented to a single-family or no more than two unrelated per unit. It was also noted that there has been no request to change the R-3 zoning of the property.

Mike Lents, 502 S. University, spoke against a duplex, asking that the ZBA reject the Planning Commission's approval. Mr. Lents commented that the PC erred in procedure only in their finding of facts, noting that they never discussed the 6 criteria and they didn't do a "finding of fact." He commented that the letters were not in the packets but were placed on the dais the day of the meeting. Mr. Lents further commented that he isn't sure anyone could prove they were an aggrieved party based on the definition. He ask that if the ZBA upheld the Planning Commission's approval that they place a condition on the property that one unit is to remain owner occupied and that the owner can't sell it as an investment property.

Marie Koper, 509 S. University, spoke in support of the appeal noting that she fully supports owner occupied housing as much as possible. She also commented that she would like to see conditions attached that it has to remain owner occupied. Ms. Koper commented that duplexes undermine the tax base that we want to preserve.

Tracy Collins, 312 N. Arnold, commented that she understood the zoning when she signed the letter to the Planning Commission and knew that duplexes are possible in the Residential zone; however commented that just because you can, doesn't mean you should. Ms. Collins commented that she feels she will be an aggrieved party noting that as far as ensuring compatibility, there are no other duplexes on that street. She stated that although Mrs. Cotter commented that the condition of the property may deteriorate if they can't use it, she is concerned with what will happen if it is rented. She commented that renters don't stay long and expressed concern over what is socially going to happen to that neighborhood as a result.

Mr. Cotter, owner of 220 N. Kinney, addressed the Board. Mr. Cotter stated they have met all the stipulations and rules and this is a legal use allowed on the property and they have a right to use the property this way. He further commented that everything that was said by those against the duplex is based on what they think is going to happen in the future. He further commented that his property value will actually increase as a result of the duplex. He noted that following the PC approval, he began making several updates to the property. He commented that this is currently on hold pending the outcome of the appeal; however stated that this will be one of the nicest two-bedroom apartments he has seen. He commented that because of that they will attract good tenants. Mr. Cotter commented that the Board should make their decision based on the law, and not on what people speculate could happen in the future.

There being no one else who wished to speak, the Public Hearing was closed.

Kench shared the correspondence submitted by Edward Clayton and Jessica Jernigan, 302 E. High, who asked that the letter be read into the minutes. Vice Chair Raisanen read the letter submitted by Mr. Clayton and Ms. Jernigan, expressing opposition to duplexes in the residential area.

In addition, Kench referred to the email submitted by Allison Lents, which was included in Board packets.

Board Discussion.

Commissioner Berkshire referred to the letter submitted by Mr. Clayton and Ms. Jernigan, noting that any home in the residential districts can be put into the rental program, noting that what the ZBA needs to focus on is whether the PC erred in their review of the case.

Kench confirmed this was true, any property in the residential district could become a rental for a family or no more than two unrelated individuals. The ZBA is to focus on whether the PC erred in their decision.

Vice-Chair Raisanen commented that the City Commission, the ZBA and the PC have all worked hard to encourage citizen and resident input and commented that it is nice to see the interest and participation. She commented that the citizens need to understand that their boards are bound by Ordinances and Regulations that have been adopted by the city, and that is what guides their decisions. She noted that if it is the Ordinances that the public does not agree with, they need to communicate that to the City Commission. She noted that she doesn't want the public to feel that their opinions do not matter.

Commissioner Orlik also reminded the audience that the ZBA is not a policy making body. He also commented that when you look at the definition of an aggrieved party, the appellant is not an aggrieved party. Based on that, motion was made by Orlik and supported by Ferden that because Mr. Pfeiffer is not an aggrieved party, that the ZBA affirm the Planning Commission's decision on this case.

Commissioner Orlik also commented that whether or not the ZBA agrees on how the Ordinance treats duplexes is irrelevant. The task before the ZBA is to interpret the Ordinance and see that it is followed.

Motion approved.

Further discussion:

Commissioner Berkshire commented again that there was no discussion in the minutes addressing the criteria and the letters submitted were not mentioned; therefore the public feels it was not heard.

Vice-Chair Raisanen suggested that any communication received should at least be acknowledged whether it is read into the minutes or not. She noted she would like to see the PC go into a little more detail.

Commissioner Orlik commented that although the criteria was not addressed explicitly during the meeting, it was used as the basis for making the decision.

Commissioner Raisanen asked Mr. Cotter about the parking on the site. Mr. Cotter responded that there was plenty of parking; two spots in the garage, room for two in the carport and additional space on the driveway.

Commissioner Berkshire asked Kench about the previous commercial use. Kench explained that it was a legal non-conforming business in the R district. The ability to reestablish a similar use expired after a year of the business closing. In order to reinstate a non-conforming business, an applicant would need to bring the request to the ZBA under section 154.007.

Kench also noted for the record, that the staff report provided for the Planning Commission spoke about the conditions necessary for granting the Special Use Permit and were reviewed to assure they were met. In addition, the PowerPoint presentation that was presented to the Board went through each of the criteria necessary to make sure the

conditions were met. He commented that if there had been discussion points regarding criteria that was not met, or was questionable, it would have been brought up during the meeting and would have been reflected in the minutes.

Commissioner Friedrich rejoined the Board at this point.

VII. Old Business

Kench reported there was no old business.

VIII. New Business

- A. June ZBA Meeting: Kench noted there will likely be another appeal on the June agenda. Commissioner Berkshire announced that he would be out of the country for the June meeting. Commissioner White will be called on to participate.

XII. Adjournment

Motion by Raisanen, support by Orlik to adjourn.

Motion approved.

Meeting adjourned at 9:03 p.m.