
**MINUTES OF REGULAR MEETING
BOARD OF ZONING APPEALS
September 12, 2019, 6:30 P.M.
Neighborhood Empowerment Center - 600 W. Maple Street**

I. ROLL CALL

The meeting was called to order by Marcie Alling at 6:30 p.m. Roll call was taken.

Present: M. Alling, J. Leaming, M. Rice, K. Berryman, C. Iannuzzi, M. Solak, R. Fryling
& E. Jefferson

Absent: J. Hovey

Staff: S. Stachowiak

A quorum of five members was present, allowing voting action to be taken at the meeting.

II APPROVAL OF AGENDA

It was moved by Mr. Leaming, seconded by Mr. Rice to approve the agenda with the addition of "excused absence" under New Business. On a voice vote, the motion carried 8-0.

III. PUBLIC COMMENT

IV. PUBLIC HEARING/ACTION

A. BZA-4050.19, 613 & 621 Cherry Street & 309-321 E. St. Joseph Street, Variances to the front yard setback and parking location requirements

Ms. Stachowiak said that this is a request by R. James Gorenflo, Nederveld, Inc. to permit a 52 unit apartment building on the properties at 613 & 621 Cherry Street and 309- 321 E. St. Joseph Street that would be combined into one parcel for development of the project. Section 1284.13(a) of the Zoning Ordinance prohibits parking in a front yard in the "DM-4" Residential district, which is the zoning designation of the subject properties. One of the proposed parking spaces on the site would extend into the front yard along Cherry Street. Section 1258.07 of the Zoning Ordinance requires a 35 foot front yard setback for the proposed building. The proposed building would have a front yard setback of 20 feet along both streets with porches that would extend an additional 5 feet into the required front yard setbacks. A variance to permit one parking space in the front yard along Cherry Street and variances of 15 feet to the front yard setback requirement for the proposed building and 20 feet to the front yard setback requirement for porches on the front of the building are therefore, being requested. Ms. Stachowiak stated that the staff recommendation is to approve the variances based on a finding that the request complies with all of the applicable criteria of Section 1244.06 (c) of the Zoning Ordinance and the impact criteria of Section 1244.06 (e), as described in the staff report for this request.

Ms. Stachowiak said that if the variances are denied, the building, including the porches, would have to be located at the 35 foot front yard setback which would be

inconsistent with the existing setback pattern in the area and with the desired placemaking characteristics described in the master plan. She said that all of the buildings in the surrounding area have setbacks that are significantly less than 35 feet. In fact, most are even less than what the applicant is proposing. In addition, if the building were to be located at the 35 foot setback, there would not be enough space behind the building to accommodate parking on the site. Ms. Stachowiak said that the proposed Form-Based Code (FBC) that the City has been developing to replace the Zoning Ordinance would actually prohibit a front yard setback that exceeds the average setback of the other buildings in the blockface. Under the proposed FBC, the required setback for this development would be even less (closer to the front property lines) than the proposed setbacks. She said that the applicant is seeking variances because the process for adopting the FBC may take several months which would unnecessarily delay the project.

Ms. Stachowiak said that the request to allow one of the parking spaces to extend into the Cherry Street front yard is due to the small size of the site which presents significant design challenges in providing the required number of parking spaces in compliance with all dimensional requirements for parking lots. If denied, the applicant would need to either seek a variance of 1 to the required number of parking spaces or purchase adjoining properties to provide additional parking which would necessitate demolition of buildings in the area. Demolishing buildings to provide parking would have a far greater impact on the neighborhood than allowing one space to extend a slight distance into the Cherry Street front yard.

Ms. Alling opened the public hearing.

Jacob Horner, PK Companies, 500 E. Michigan Avenue #417, spoke in support of the request. He said that PK Companies has been in the area for 30 years and is a local company, headquartered in Okemos. He also said that they are applying for tax credits through the State of Michigan for this project and are under a deadline to do so and thus, they would like a decision at this meeting.

James Gorenflo, Nederveld, Inc., 3037 Miller Road, Ann Arbor, MI, reviewed the proposed development plan. He said that the site has been designed to minimize the number of variances that would be necessary. Mr. Gorenflo said that the setback variance meets the intent of the ordinance which is to create a uniform development pattern in the area. He said that they tried to minimize the number of variances that would be necessary and while they could have built a 100 foot tall building on the site, they wanted to construct something that would fit in with the character of the area. Mr. Gorenflo said that some of the units will be for low income occupants and 44 of the 52 units will be efficiency units.

Mr. Berryman asked about the required number of parking spaces.

Mr. Gorenflo said that based on the number of units by bedroom count, they are required to provide 66 parking spaces.

Penelope McNitt, 609 Cherry Street, stated that she lives in the historic Darius Moon house. She said that she prefers to have less units on the property and would like the City to make sure that the development fits in with the neighborhood.

Mary Toshach, 645 S. Grand Avenue, stated that she is on the Cherry Hill Neighborhood Board, that she has a background in planning and was a member of the

City's Historic District Commission. Ms. Toshach said that new development brings new vitality to a neighborhood as long as it fits in with the character of the neighborhood. She said that she is concerned about the precedent that could be set by allowing a parking space in the front yard along Cherry Street and suggested that if it is to be approved, perhaps it could be screened by plants to minimize its appearance.

Linda Fausey, 224 E. Hillsdale Street, stated that she is here on behalf of other property owners in the area as well and is concerned about the front yard parking space not fitting in with the neighborhood. She said that she is not happy with the proposed 44 efficiency units and she also expressed concerns about traffic, flooding and criminal activity in the area.

Joel Christie, 1521 Reo Road, stated that he also owns 343 E. St. Joseph Street and he is concerned about the lack of parking on the site. He said that the developers should have purchased additional land to create more parking since there is no on-street parking along E. St. Joseph Street.

Marie Walker, 249 Hannah Road, Mason, stated that she owns 3 buildings on Cherry Street, all of which are in a historic district. She said that there are very strict guidelines on what can be done with a building in a historic district and she said that it is important that the new building fit in with the historic character of the neighborhood. Ms. Walker stated that the properties in the area are well maintained. She expressed concerns about parking, the poor condition of the streets and traffic in the area. Ms. Walker questioned why the neighborhood was not informed about this project but for receiving a notice in the mail about this meeting.

Ms. Stachowiak stated that the multiple family residential use of the property is permitted by right. She said that the only reason for this meeting is to consider the reduced setbacks and the projection of one parking space in the Cherry Street front yard.

Seeing no one else wishing to speak, Ms. Alling closed the public hearing.

Mr. Leaming stated that the plan for the development illustrates how the proposed setbacks are consistent with the established setback pattern in the area. He also asked if requiring screening around the parking space would necessitate further notification.

Ms. Stachowiak stated that requiring the parking space to be screened by evergreen plants is a very good suggestion and could be made a condition of the variance approval.

Mr. Rice stated that the variance allows the building to fit in with the neighborhood which is the intent of the front yard setback ordinance requirement. He also said that the proposed front yard parking space, particularly if screened by evergreen plants, will not be disruptive to the development pattern in the area since it will still be located further back on the lot than the structures along Cherry Street.

Mr. Leaming made a motion, seconded by Mr. Rice to approve BZA 4050.19 for variances to permit a multiple family residential building on the properties at 613 & 621 Cherry Street and 309-321 E. St. Joseph Street that would have front yard setbacks of 20 feet for the building and 15 feet for the porches and one parking space that would be located in the front yard along Cherry Street, on a finding

that the variances are consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application, with the condition that the parking space in the Cherry Street front yard is screened by evergreen plants. On a roll call vote, the motion carried unanimously (8-0).

B. BZA-4051.19, 5920/5924 S. Pennsylvania Avenue, Variance to the separation requirement between marijuana provisioning centers

Ms. Stachowiak said that this is a request by OP Holdings, LLC for a variance to permit a medical marijuana provisioning center at 5920/5924 S. Pennsylvania Avenue that would be located within 500 feet of another proposed provisioning center at 6001 S. Pennsylvania Avenue. Section 1300.13(A)(2) of City Ordinance 1217 prohibits a medical marijuana dispensary within 500 feet of another medical marijuana provisioning center. A variance to the required separation distance between 2 provisioning centers is therefore, being requested. Ms. Stachowiak stated that the attorney representing the applicant is present and is requesting an adjournment of the variance case. She said that the attorney provided a letter stating that "... this matter should be adjourned for good cause because the matter is not yet ripe for appeal."

Ms. Alling opened the public hearing.

Seth Tompkins, Pollicella Tompkins, PLLC, attorney representing the applicant, OP Holdings, LLC, said that the City's ordinance prohibits a provisioning center within 500 feet of another provisioning center. He said that there are no existing provisioning centers within 500 feet of the subject property and thus, there is nothing to vary at this time. Mr. Tompkins stated that the City has not even determined if either of the applications that are relevant to this matter will score in the top 5 out of the pool of applications. He said that the only time that pursuing the variance would make sense is if both applicants did score in the top 5. Otherwise, the variance is not even necessary. He said that the variance application was filed after receipt of a letter from the City Clerk's Office stating that they had to do so within a certain time frame in order for his client's application to remain under consideration for issuance of a license. Mr. Tompkins said that the most appropriate course of action would be to adjourn the matter but if the Board decides to proceed, he would ask that the variance be approved so that his client would have a better chance of being issued a license in the unlikely event that both applications score in the top 5.

Seeing no one else wishing to speak, Ms. Alling closed the public hearing.

Ms. Stachowiak said that, according to the City Attorney's Office, when there are license applications for two provisioning centers within 500 feet of each other and both score in the top 5:

- * If both applicants seek and are granted a variance, both could be issued a license.
- * If only 1 of the applicants seeks a variance and it is granted, the applicant who sought the variance would get the license, even if they have a lower score.
- * If neither applicant seeks a variance, the Clerk could award the license to the higher scorer and deny the lower scorer.

Mr. Berryman asked Mr. Tomkins why he doesn't just withdraw the variance request.

Mr. Tomkins stated that his client received a letter from the City Clerk's Office stating that he would have to apply for a variance to the separation requirements in order to stay in the running for a provisioning center license.

Mr. Iannuzzi asked about the timing for developing the list of the top 5 applicants.

Ms. Stachowiak said that there is no established time frame.

Mr. Leaming said that he agrees with Mr. Tomkins letter in that the appeal should take place once the case becomes ripe which it is not at this time because the applicant does not know if his client's application will score in the top 5 of the applicant pool.

Ms. Jefferson agreed that the case is not ripe for appeal at this time.

Mr. Iannuzzi stated that he agrees with the legal analysis provided by Mr. Tomkins and would be in favor of voting to table the variance request.

Mr. Rice stated that it is premature for the Board to take action on this request and he would also be supportive of tabling the matter until the top 5 scoring applications have been determined.

Ms. Alling said that the ordinance needs to be revised so that these cases do not come to the Board prematurely.

Mr. Leaming made a motion, seconded by Mr. Solak to table BZA 4051.19. On a voice vote, the motion carried unanimously (8-0).

V. OLD BUSINESS - None

VI. NEW BUSINESS

A. Excused Absence

Mr. Rice made a motion, seconded by Mr. Leaming to grant an excused absence for Mr. Hovey. On a voice vote, the motion carried unanimously (8-0).

VII. APPROVAL OF MINUTES

A. Regular Meeting, August 8, 2019

Mr. Leaming made a motion, seconded by Solak to approve the minutes from the regular meeting held on August 8, 2019, as printed. On a voice vote, the motion carried unanimously (8-0).

VIII. PUBLIC COMMENT

IX. ADJOURNMENT AT 7:28 p.m.

Respectfully Submitted,

Susan Stachowiak, Zoning Administrator