

**ZONING BOARD OF APPEALS
APPROVED MINUTES**

March 24, 2016

Call to Order:

Chairman Paul Jackson called the Zoning Board of Appeals meeting to order at 7:00 PM

Roll Call: Paul Jackson, Bob King, Paul Long, Jayne Graham, Ralph Manting, Chris Jane

PRESENT: Paul Jackson, Bob King, Paul Long, Jayne Graham, Chris Jane

ABSTAIN: None

EXCUSED: Ralph Manting

ABSENT: None

ALSO PRESENT: Mark Sweppenheiser, Director of Neighborhood Services, Eric Williams, City Attorney, Gail Dolbee, City Assessor

There were 7 person(s) in the audience.

Moved by Chris Jane, seconded by Paul Long to approve the minutes of the January 28, 2016 ZBA meeting.

Motion passed unanimously

Public Comment Not Related to Items on the Agenda: None

Public Hearing #1:

Chairperson Jackson reviewed the Public Hearing procedure for the audience and opened the Public Hearing at 7:05 PM to consider the request for 1056 North Fourth Avenue. The applicant has submitted an application to the ZBA requesting relief from Section 3.4:4 for an eighteen (18) ft. variance to the rear yard setback to construct a home addition.

Staff Report

The applicant is requesting a variance to Section 3.4:4 to allow a home addition to be built within the thirty-five (35) ft. rear yard setback. The applicant is requesting a variance of eighteen (18) ft. to allow construction seventeen (17) ft. from the property line.

1056 N Fourth Avenue is located in the R-1 zoning district. The lot size is 70' X 152'.

An aerial photo with delineated property lines has also been provided, accuracy is estimated at plus or minus one (1) foot.

When considering a non-use variance, the applicant must show the ZBA the following:

1. The ordinance restrictions unreasonably prevent the property owner from using the property for a permitted purpose; and/or

The ordinance restrictions prevent the applicant from constructing an addition following the same setback of the current house.

2. The variance would do substantial justice to the applicant, and possibly other property owners in the district, and a lesser relaxation of the regulations than that requested would not provide substantial relief to the property owner; and/or

The variance would do justice to both the applicant and surrounding property owners by allowing an improvement to the property.

3. The plight of the property owner is due to the unique circumstances of the property, and not a general condition of the neighborhood; and/or

The unique circumstance is the wide right-of-way for the White Pine Trail.

4. The alleged practical difficulty has not been created by any person presently having an interest in the property.

The practical difficulty has not been created by the applicant.

Staff recommends approval of the requested eighteen (18) ft. variance to the rear yard setback to construct a home addition.

Applicant's Statement: - None

Chairperson Paul Jackson called for those who wished to speak in support of the request:

Peg Brennan, who resides at 1038 North Fourth Avenue, stated that she was in support of the applicant's request and believes that the home improvements would be a nice addition to the neighborhood.

Chairperson Paul Jackson called for those who wished to speak in opposition of the request – None

Chairperson Paul Jackson called for any written or telephonic correspondence received by staff – None

Applicant Rebuttal - None

Chairperson Jackson closed the Public Hearing at 7:08 PM and went into fact finding.

Fact Finding:

Paul Long asked Mark Sweppenheiser what the required setback for the front of the house is. Sweppenheiser stated that it was twenty-five (25) feet.

Long stated that if both the required front and backyard setbacks were enforced, the property owner would only have one (1) foot of buildable space.

Jayne Graham said that she believes the applicant's request is a reasonable one.

Paul Jackson suggested that the board should consider granting the applicant a nine (9) foot variance to the required front yard setback at this time as well to avoid future petitions to the ZBA. Sweppenheiser agreed.

1. The ordinance restrictions unreasonably prevent the property owner from using the property for a permitted purpose; and/or

The current setback requirements would prevent the

homeowner from being able to build an addition. **The first requirement was met.**

2. The variance would do substantial justice to the applicant, and possibly other property owners in the district, and a lesser relaxation of the regulations than that requested would not provide substantial relief to the property owner; and/or

The proposed home improvements would enhance the structure and the neighborhood. Neighbors are in support of the home addition. **The second requirement was met.**

3. The plight of the property owner is due to the unique circumstances of the property, and not a general condition of the neighborhood; and/or

The unique circumstance of the property is the shape of the lot is due to the White Pine Trail running behind the property. **The third requirement was met.**

4. The alleged practical difficulty has not been created by any person presently having an interest in the property.

The practical difficulty has been created by the applicant. **The fourth requirement was not met.**

MOTION

Motion was made by Paul Long, seconded by Chris Jane to:

Motion has been made to grant relief from Section 3.4:4 of the Zoning Ordinance to allow an eighteen (18) ft. variance to the required rear yard setback, for a distance of thirty-four (34) feet from the existing house, and a nine (9) foot variance to the required front yard setback in order to construct a home addition at 1056 N. Fourth Ave.

Yeas: Paul Jackson, Bob King, Paul Long, Jayne Graham, Chris Jane

Nays: None

Motion passed.

Public Hearing #2

Chairperson Jackson opened the Public Hearing at 7:20 PM to consider the variance request at 113 Chestnut Street to reduce the number of parking spots from the required twenty-two (22) to seventeen (17).

Staff Report:

The City is the applicant for this request. The owner has Planning Commission approval to construct a four-unit apartment complex at 113 Chestnut Street. There are three, four bedroom units and one, two-bedroom unit. The required parking spaces for the fourteen-bedroom development is 22 spaces. The amount of parking required by ordinance necessitated that the developer design the parking area in an L-shaped configuration. A variance of one parking space would allow the developer to design a rectangular parking area, leaving additional green space and making for a better development project in the applicant's opinion.

The requested variance is for five parking spaces. Section 5.2:1, Parking Space Requirements, requires that a fourteen bedroom, four-unit complex have 22 parking spaces. The variance would reduce the required parking to 17 spaces.

An aerial photo with delineated property lines has also been provided, accuracy is estimated at plus or minus one (1) foot.

When considering a non-use variance, the applicant must show the ZBA the following:

1. The ordinance restrictions unreasonably prevent the property owner from using the property for a permitted purpose; and/or

The ordinance restrictions prevent the applicant from constructing a rectangular lot that is more characteristic for the neighborhood and would preserve green space.

2. The variance would do substantial justice to the applicant, and possibly other property owners in the district, and a lesser relaxation of the regulations than that requested would not provide substantial relief to the property owner; and/or

The variance would do justice to both the applicant and surrounding property owners by allowing a better parking design.

3. The plight of the property owner is due to the unique circumstances of the property, and not a general condition of the neighborhood; and/or

The unique circumstance is the ability to place multiple units on the lot in the R-3 district, the applicant is a couple of feet short to being able to construct the rectangular lot. Parking areas must be five (5) feet from the property line.

4. The alleged practical difficulty has not been created by any person presently having an interest in the property

The practical difficulty has been created by the applicant.

Staff recommends approval of the requested five parking space variance from Section 5.2:1 of the Zoning Ordinance.

Applicant's Statement:

The applicant Kyle Smoes, who resides at 61 Chelsea Ct. Rockford MI 49341, stated that he purchased 113 Chestnut St. with the intention to construct a four (4) unit building to be used for student housing.

Mr. Smoes stated that he has discussed several different designs with Sweppenheiser, and received Planning Commission approval for a plan with an L-shaped parking area. If he were granted a variance for fewer parking spaces, he could have a rectangular shaped parking area, which would allow for more green space.

Mr. Smoes is also concerned about the practical difficulty of snow removal from the lot, an L-shaped parking area would not provide enough room to store snow piles.

Mr. Smoes believes that with fourteen (14) bedrooms in the structure, he would likely need one parking space for each room. Reducing the number of required parking spaces by only one (1) would still provide for fifty percent (50%) more parking than routinely necessary, and would allow plenty of spaces for guest parking.

Mr. Smoes stated that if the variance for fewer parking space(s) was denied, he would continue forward with construction using the already approved L-shaped parking area.

Chairperson Paul Jackson called for those who wished to speak in support of the request – None

Chairperson Paul Jackson called for those who wished to speak in opposition of the request – None

Chairperson Paul Jackson called for any written or telephonic correspondence received by staff – None

Applicant Rebuttal - None

Chairperson Jackson closed the Public Hearing at 7:37 PM and went into fact finding.

Fact Finding:

Chris Jane asked Sweppenheiser how far away from the alley way the parking lot was required to be. Sweppenheiser replied that, according to Zoning requirements, it must be five (5) feet away.

Paul Long stated that it was refreshing to have an applicant ask for a variance to reduce parking rather than increase it. Universities all over the country are reducing available parking. This request is in line with the type of development that Long prefers to see.

Paul Long asked Sweppenheiser a reduction of how many spaces did he agree with. Sweppenheiser answered that he felt three (3) spaces less would do justice to both the applicant and the City.

Chris Jane asked what the formula was to figure out the required number of parking spaces for any particular unit. Sweppenheiser stated that it is one (1) space per bedroom plus one (1) space per unit for structures two (2) units and under, one (1) space per bedroom plus two (2) spaces per unit for structures three (3) units or more.

When considering a non-use variance, the applicant must show the ZBA the following:

1. The ordinance restrictions unreasonably prevent the property owner from using the property for a permitted purpose; and/or

The ordinance would not prevent the applicant from constructing the proposed structure, however it would prevent him from having more appropriate green space. **The first requirement has not been met.**

2. The variance would do substantial justice to the applicant, and possibly other property owners in the district, and a lesser relaxation of the regulations than that requested would not provide substantial relief to the property owner; and/or

Reducing the required number of parking spaces by one (1) space up to five (5) spaces would provide adequate relief for the applicant. **The second requirement has been met.**

3. The plight of the property owner is due to the unique circumstances of the property, and not a general condition of the neighborhood; and/or

The unique circumstance of the property is the fact that there is an alley on either side. **The third requirement has been met.**

4. The alleged practical difficulty has not been created by any person presently having an interest in the property.

The practical difficulty has been created by the applicant due to the size of the proposed structure. **The fourth requirement has not been met.**

MOTION

Motion was made by Chris Jane, seconded by Bob King to:

Motion has been made to grant relief from Zoning Ordinance Section 5.2:1 to reduce the number of required parking spaces from twenty-two (22) to nineteen (19) for the four-unit apartment complex at 113 Chestnut Street.

Yeas: Paul Jackson, Bob King, Paul Long, Jayne Graham, Chris Jane

Nays: None

Motion passed.

The board took a five (5) minute recess.

Public Hearing #3

Request for 802 Division Street – Appeal of Lot Split Denial

Chairperson Jackson opened the Public Hearing at 7:51 PM to consider the appeal of the Lot Split Denial at 802 Division Street.

Staff Report:

Eric Williams, City Attorney, explained to the ZBA that the specific request from the applicant is to allow the lot spit that was previously denied by the City Assessor, Gail Dolbee.

Applicant's Statement #1:

Steve Lobert (Lobert Law Office 119 S. Michigan Ave. Big Rapids, MI), attorney representing Robert Whalen, Olya Duzey and Arjen, LLC stated that he is the third attorney to work this case since 2008.

Mr. Lobert stated that Robert Whalen first approached West Michigan Credit Union about vacating the undeveloped alley between their properties before construction of the Credit Union had begun in 2008. Mr. Whalen was willing to pay any cost associated with the alley vacation in an effort to obtain the west half of the alley in order to reconfigure the parking area at his apartment complex, Walnut Knoll.

The City agreed to vacate the alley in 2008. Per Michigan State Law, all of the property resulting from the alley vacation was attached to the land owned by the West Michigan Credit Union because the property owned by the other interested parties was located in a different plat.

The West Michigan Credit Union completed construction of its building, including a parking lot that was located within one (1) foot of the center of the vacated alley. West Michigan Credit Union also began paying taxes on the vacated alley at that time.

Mr. Lobert referred to a City Tax Map and pointed out several vacated alleys throughout the City.

Mr. Lobert stated that initial concerns about granting the requested lot split were voiced in a meeting between himself, Gail Dolbee and Eric Williams because of the fact that doing so would join a portion of a platted lot to an un-platted lot.

Lobert believes that Dolbee's decision to deny the lot split was based solely on her interpretation of certain portions of the Land Division Act and not the Land Division Act in its entirety.

Lobert stated that he doesn't believe, in this case, it is necessary for his clients to petition the Circuit Court for a Plat Amendment. He stated that could be a very expensive process as well.

Lobert asked that Dolbee reconsider the denial and grant the lot split request to accomplish the goal of each party interested in owning a portion of the property resulting from the alley vacation.

Lobert stated that, until the lot split request was denied, West Michigan Credit Union owned the vacated alley, giving them the right to ask for a lot split and to give portions of that land to adjoining property owners.

Lobert stated that if the request were considered as a non-use variance, as required by the Zoning Ordinance, the following criteria would have to be considered:

1. The ordinance restrictions unreasonably prevent the property owner from using the property for a permitted purpose; and/or
2. The variance would do substantial justice to the applicant, and possibly other property owners in the district, and a lesser relaxation of the regulations than that requested would not provide substantial relief to the property owner; and/or
3. The plight of the property owner is due to the unique circumstances of the property, and not a general condition of the neighborhood; and/or
4. The alleged practical difficulty has not been created by any person presently having an interest in the property.

Lobert believes that his clients meet all of these conditions.

Applicant Statement #2:

Scott Steiner (Rhoades McKee Law Office located at 55 Corporate NW Suite 300 - Grand Rapids MI 49504), attorney for West Michigan Credit Union, stated that this case is based on two (2) different things: the first being the amendment of a plat, and the second being ownership of the property resulting from the alley vacation.

Mr. Steiner believes that the West Michigan Credit Union already owns the property in question. Mr. Steiner referenced emails that were exchanged between Lobert Law Office and Eric Williams a few years ago where Williams acknowledged that the “the vacated alley accrued or attached to the Credit Union parcel is within the plat”.

Steiner added tax descriptions that West Michigan Credit Union received after the alley vacation included the twenty (20) foot strip of land that was formerly the alley. The Credit Union paved, maintained and paid taxes on that property because they believed that it was owned by them. Steiner also stated property was removed from the tax description received by West Michigan Credit Union, without explanation or notice, in 2016.

Mr. Steiner stated on behalf of his client, West Michigan Credit Union, they support the request to overturn the lot split denial.

Chairperson Paul Jackson called for those who wished to speak in support of the request – None

Chairperson Paul Jackson called for those who wished to speak in opposition of the request – None

Chairperson Paul Jackson called for any written or telephonic correspondence received by staff – None

Applicant Rebuttal - None

Chairperson Jackson closed the Public Hearing at 8:18 PM and went into fact finding.

Fact Finding:

Gail Dolbee, City Assessor, was asked to explain how she arrived at the decision to deny the lot split request.

Ms. Dolbee stated that varying interpretations of the statute in question have created this issue.

Dolbee stated that the City of Big Rapids vacated the public's interest in the alley.

Dolbee stated that she referred to case law, had numerous conversations with the State Boundary Commission and consulted with peers and other professionals in the assessing field prior to making her decision to deny the lot split request.

Dolbee stated that vacating an alley is a two (2) step process: 1) The City vacates the alley 2) Abutting property owners file with Circuit Court to receive fee simple interest to the vacated land. Dolbee said that the second step in this process never happened.

Statute details how Circuit Court should divide the property. Property owners, in the plat, on either side of the vacated land each get fifty (50) percent. If there is only one property owner in the plat, all of the vacated land vests to that parcel.

Dolbee stated that Mr. Lobert's clients have no vested interest in the property. All three (3) parties are outside the plat. In order to perform the lot split as requested, Dolbee would have to amend the plat and she does not have that authority. Dolbee stated that amending the plat is a Circuit Court action.

Dolbee stated that the lot split request was not denied based solely on the split itself, it was denied because she does not have the authority to amend the plat.

Paul Jackson asked Dolbee to read the statute that she is referring to from the Land Division Act 560.26 (C)

Members of the board questioned exactly what relief they would be able to provide, without violating State Law. Eric Williams pointed out Petitioner's Exhibit 9 (Land Title Standard) for guidance.

Paul Jackson stated that he believes if the ZBA overturned the lot split denial, the board would be going against State Law. The board is sworn to uphold State Law. Mr. Lobert informed the board that they would not be violating State Law if they decided to overturn Dolbee's denial.

Lobert stated there is a difference between "Perfect Title" and "Marketable Title".

Sweppenheiser stated that after further review of the appeal process, he does not believe this matter should have been referred to the ZBA. The lot split was denied based on restrictions in the Land Division Act - it was not denied based on requirements of the Zoning Ordinance (for example minimum lot width or minimum square footage of a lot), to which variances can be granted.

Mr. Lobert stated that his clients and the West Michigan Credit Union would be willing to agree in writing that they wish to re-plat the property, record the re-plat information with the Register of Deeds and notify abutting property owners, by certified mail, of the intent to re-plat. The City of Big Rapids already passed a resolution to vacate the public's interest in the property when the alley was vacated.

Dolbee stated that the applicants never approached her about the possibility of having the property re-platted. The lot split is the only request that the City of Big Rapids received.

Bob King asked Dolbee why, after a number of years, West Michigan Credit Union stopped paying taxes on the vacated property. Dolbee's reason was that West Michigan Credit Union did not own the property.

Eric Williams was asked by the board what options for resolution could be considered. Williams replied that there were three (3) potential outcomes: 1) Grant the appeal (with or without conditions) and reverse the decision to deny the lot split 2) Deny the appeal and let the lot split denial stand 3) Grant a variance, if applicable

Mr. Steiner stated that when considering the lot split request, Dolbee should have considered nothing more than the dimensional criteria, whether or not the property could be titled should not have been part of her decision.

Mr. Lobert proposed that the topic be tabled for now, in an effort to allow the interested parties to prepare documents of intent to re-plat the vacated property.

MOTION

Motion was made by Paul Jackson, seconded by Bob King to:

Motion has been made to approve the appeal of the lot split request at 802 Division Street; conditional upon the re-plat being approved by the required State agency.

Yeas: Bob King, Paul Long

Nays: Paul Jackson, Jayne Graham, Chris Jane

Motion failed.

Other Business:

There being no further business to come before the board, the chair declared the meeting adjourned at 9:58 PM

Respectfully submitted,

Stacey Johns
Secretary