

ZONING BOARD OF APPEALS MINUTES OF JUNE 8, 2004

Meeting called to order by Chairman Zimmermann at 4:45 p.m. in the Executive Conference Room, City Hall Plaza.

PRESENT: Harry Blackwood, Don Wink, Karl Zimmermann and 1st Alternate Marvin Duerr

EXCUSED: Dean Markwardt and Wallace Reek

Also Present: Planner/Zoning Administrator Curtiss, Director of Planning and Economic Development Miller, Building Services Supervisor Donath, City Attorney John Hutchinson, Deputy Clerk Panzer, Attorney John Adam Kruse, Stan Thomas, Steve Booher, Sheila Ashbeck Nyberg and Shelby Weister (arrived at 4:51 p.m.)

ZB04-009 Motion by Wink, second by Duerr to hold over the election of Chairman and Vice Chairman and clarification discussion on voting requirements until the next regular meeting. All Ayes.

Motion carried

Deputy Clerk read the variance request from Great Northern Investments of Marshfield, Inc. to reconstruct the existing commercial building in the same exact location on property at 204 North Central Avenue, in the 'B-4' General Commercial District. Section 18-63(5)(f) of the Municipal Code requires a 20' rear yard setback and 10' side yard setback. The applicant is requesting a 10' rear yard setback variance and a 4' side yard setback variance in order to reconstruct the existing building 10' from the rear lot line along the alley and 6' from the side lot line to the north.

Planner/Zoning Administrator Curtiss said that this request is unusual. It is outside of the usual zoning permit process in which variance requests come in based on current permits for current construction. She explained that there was a change in the code related to rear yard setbacks for corner lots such as this, surrendering a legal nonconforming status and that there are provisions in the code that address such nonconforming structures and allow them to continue indefinitely subject to those provisions. The applicants are asking for an assurance or guarantee that in case of some catastrophic event that if the structure were destroyed more than 50% of the value, they would be able to rebuild in the same footprint.

Attorney Kruse passed out a letter from Main Street Marshfield in support of the variance. He explained that Walgreens has a long-term lease and stated that they want some assurance that in the event that something catastrophic occurs that they can rebuild as is.

Shelby Weister arrived at 4:51 p.m.

Planner/Zoning Administrator Curtiss said based on approvals, it was approved with all the necessary approvals and conformities at the time. This is not a circumstance that is extraordinary to this one site. There are others out there that were rendered nonconforming that are subject to the same nonconforming provisions and are allowed to continue up until that time if it ever would happen that damage or destruction would occur. If damage or destruction would occur, they would come in with a current permit and we would look at the circumstances at the time based on any hardships.

Attorney Kruse said that the Walgreen store is an anchor store of the downtown. It is a traffic generator. Not all the properties are like that. It is also on a corner lot and there are not a lot of other properties in a similar situation. We feel that the granting of this variance will maintain and increase property values for the surrounding commercial properties. We can't see any detriment. We are not aware of any neighbors that have any problems with this. We feel that this is a reasonable request. It is very minimal and it is

something that the landlord wants to make sure that as long as it is Walgreens, they will be able to be in the downtown for a long long time to come.

Director of Planning and Economic Development Miller said that it was her understanding that once a variance is granted, it has a time limit. What they are asking for is a variance of perpetuity. It could be 100 years. That doesn't seem appropriate and under the code, a variance is good for one year from the date that it is given. In which case, then every year they would have to come back for a variance.

Zimmermann stated that the variance could be granted with a limit.

City Attorney Hutchinson said that he is not aware of where the statutes say the variance is limited to one year, but rather the section that indicates that if you get a variance to rebuild you must act on that within one year. But that merely means that you start the reconstruction within that frame of time. Since the building is fully standing, he doesn't think that that has application at this time. Essentially they are looking for the City to contract away any zoning control that they have over this property. He feels that granting this variance would set a precedent, which could come back again in future zoning requests from other property owners. There are no guarantees. The variance is granted to the property owner, not to the Walgreen store and Walgreens may elect for other reasons not to renew their lease with or without this variance.

Duerr questioned if a stipulation could be added so the variance would only be good as long as Great Northern Investments owned the property and Walgreens was the tenant. If there were any change in either one of them, the variance would be dropped.

City Attorney Hutchinson replied they are already grandfathered in now. You would be granting a variance to a property owner that doesn't need a variance at this point.

Director of Planning and Economic Development Miller said that it is against the City's interest to contract away the zoning controls on this property, which is basically what this variance would do.

Stan Thomas, Representative of Great Northern Investments, said that Walgreens is under a long-term lease that expires in June of 2043, but there is language in the lease that allows them to not maintain a store there if there is a casualty to the point of 50% or more. What the owner and Walgreens are looking for is some confirmation, because of this zoning change that the City had since it was constructed to tell everybody that it is ok. Basically, in the case of a windstorm, they would rebuild the building exactly like it is and be able to tell their customers that they are in the construction phase and when that is finished, the doors will be open again.

City Attorney Hutchinson said this is all speculative. We don't know when the building comes down if Walgreens will want to go back in there. We don't know what the nature of the neighborhood or character of the neighborhood will be at that time. As soon as you grant this variance, any other building that is grandfathered in today will come forward with the same or similar arguments.

Zimmermann stated that he is a supporter of Walgreens. He likes going there, but we need to be careful as far as setting a precedence. What are we doing by granting this variance? If there were a fire and the building were destroyed, they would come to us and we would probably grant them a variance at that point unless there is some extenuating circumstances.

Attorney Kruse said that they feel comfortable with the makeup of this present board that it would be granted, but ten years from now, we have no idea what the makeup of this board will be. They want to make sure that if there is a loss they can start construction immediately. They don't want to monkey around with bureaucratic procedures.

Stan Thomas said that it is his understanding that Walgreens is under contract to stay there for this 40 plus or minus years from this date irregardless of that disaster, if the build back to the original condition can be made. This is really a key issue, because if they can't have those assurances then I think than it's obvious that they will look for locations where they can establish their business differently than the current location. If the building burns down tomorrow or ten years from now and they don't know what the City is going to do then it is obvious that they will look around.

Attorney Kruse stated that if this variance were granted, they would be required to stay there.

City Attorney Hutchinson said that virtually every grandfathered structure in this city would be back in here again saying that they want a permanent variance also. That is really difficult to deal with.

Zimmermann stated that he feels that the board would be overstepping their bounds by granting the variance.

Shelby Weister, property owner in downtown Marshfield and business owner stated that she was appalled. Basically, you are suggesting that Walgreens find a different location and if they do so, you can look back on June 8th of 2004 and say that you made a mistake. Let's keep the Walgreens store here.

Blackwood stated that his concern all the while that he has been on this board is that the buildings are constructed with all the amenities and everything being legal when the building was built and then you change the zoning and tell them that they can't use it anymore. He feels that it is kind of ridiculous to expect someone to go to a different place and rebuild. We are trying to save downtown Marshfield.

Director of Planning and Economic Development Miller pointed out that if nothing happens to this building, Walgreens isn't going anywhere. She feels that granting this variance would set a very bad precedence for the board and for the zoning office. What we are saying is if you are Walgreens you can have this variance, but if you are Joe Smith who comes in and your property is nonconforming and you want the same thing, you can't have it because you don't have a 40-year lease.

Attorney Kruse questioned how many nonconforming buildings are in the central business district.

Building Services Supervisor Donath stated that about half of the buildings on each side of Central Avenue do not have the 20' rear yard setback.

City Attorney Hutchinson referred to the language in 18-35(2)(f) of the Municipal Code and stated that the board should keep it in mind and not be too cavalier about granting variances. The language is put in there for a purpose. It is not merely to fill up the page of paper.

ZB04-010 Motion by Duerr, second by Blackwood to grant the variance as long as Great Northern Investments own the property and the tenant is Walgreens.

Roll Call Vote: Blackwood voted Aye, Wink voted Aye, Zimmermann vote Naye and Duerr voted Aye.

Motion failed (four concurring votes are needed).

Motion by Duerr, second by Wink to adjourn at 5:15 p.m.

Motion carried

Lori A. Panzer

Deputy City Clerk