ZONING BOARD OF APPEALS MINUTES OF OCTOBER 12, 2004

Meeting called to order by Chairman Zimmermann at 4:46 p.m. in the Executive Conference Room, City Hall Plaza.
PRESENT: Harry Blackwood, Wallace Reek, Don Wink, Karl Zimmermann, 1st Alternate Marvin Duerr and 2nd Alternate Jim Asplin
EXCUSED: Dean Markwardt
Also Present: Planner/Zoning Administrator Curtiss, Planning & Economic Development Director Miller (arrived at 4:48 p.m.), Deputy Clerk Panzer, Scott Koran, Jennifer Koran, Sheila Ashbeck Nyberg, Barbara Kohlbeck, Harold Kohlbeck, Renee Schulz, Jason Weiler, DuWayne Tremmel, Paul Meier and Tom Hinke (arrived at 5:30 p.m.)

Chairman Zimmermann introduced the Zoning Board of Appeals' new member, 2nd alternate, Jim Asplin.

Chairman Zimmermann announced that he would be taking the items on the agenda a little out of sequence because one of the items could take a little time. He stated that he would be excusing himself as a voting member on two of the items since he has a possible conflict.

Deputy Clerk read the variance request from Renee Schulz to construct a single-family home at 1007 Tremmel Court, in the 'R-3' Standard Single Family Residential District. Section 18-62(4)(f) of the Municipal Code requires a 25' rear yard setback. Applicant is requesting a 7.5' rear setback variance in order to construct the home where the northeast corner is setback 17.5' from the rear lot line.

Planner/Zoning Administrator Curtiss presented a statement of facts regarding the variance request.

Duerr stated that it seems that everyone wants to comply with the code and build a construction home of that size, but with the layout of this property it would almost have to have a variance or it wouldn't fit.

ZB04-020 Motion by Duerr, second by Wink to grant a 7.5' rear setback variance in order to construct the home where the northeast corner is setback 17.5' from the rear lot line. All Ayes.
Motion carried

The Zoning Board of Appeals considered the following issues in granting the variance.
1. This is an odd-shaped lot due to the design of the cul-de-sac street. The lot shape and required yard setbacks for 'corner lots' leave a smaller, irregular shaped building envelope area on the lot.
2. The applicant proposes a layout where the variance request is kept to a minimum. Approximately 25' of the rear corner of the garage would be the only portion of the house to encroach into the rear yard, with the closest corner being 17.5' from the east lot line.

Chairman Zimmermann excused himself from the next two variance requests.

Vice Chairman Blackwood took over the meeting.

Deputy Clerk read the variance request from Scott and Jennifer Koran to construct a single-family home at 2500 South Oak Avenue, in the ‘R-5’ Medium Low Density Residential District. Section 18-62(6)(f) of the Municipal Code requires a 7.5’ side yard setback. Applicant is requesting a 4.5’ side setback variance in order to build the home 3’ from the north lot line.

Planner/Zoning Administrator Curtiss presented a statement of facts regarding the variance request.

Duerr felt that the only property that this variance would affect is City property.

ZB04-021 Motion by Duerr, second by Asplin to grant a 4.5' side setback variance in order to build the home 3' from the north lot line. All Ayes. (Karl Zimmermann abstained from voting because he is the builder.)
Motion carried

The Zoning Board of Appeals considered the following issues in granting the variance.
1. While the variance request is sizeable (over half of the required side yard setback), the north side yard does not abut residential property. The lot adjoins Wildwood Park property and it is very unlikely the property would ever be developed residentially.
2. The 'side yard' on the north lot line does not serve the intended functional purpose of a side yard, which is to provide adequate space and buffer between residential properties. The reduction of the side yard would not be detrimental to the adjacent property or materially impair the purposes of code or the public interest.

Deputy Clerk read the variance request from LHM Real Estate, LLC for new development of the existing commercial building located at 108 W. 9th Street, in the 'B-4' General Commercial District. Section 18-89 of the Municipal Code requires all parking needs generated by development or use to be accommodated on-site. Section 18-89A requires 1 parking stall per every 4 seats for 'restaurant, club' uses. A total of 61 off-street parking stalls are required for the project, while the existing site allows for only 27 spaces. The applicants request a reduction to the off-street parking requirements by 34 parking spaces.

Planner/Zoning Administrator Curtiss presented a statement of facts regarding the variance request. She recommended that the Zoning Board attach conditions or stipulations if the variance is granted such as the developer would require all employees to park only in the parking spaces provided per the lease on Hiller's True Value property and that snow removal be conducted so as to maintain 27 on-site parking spaces.

Questions were raised as to how such conditions or stipulations could be enforced.

Asplin stated that there are other restaurants downtown that don't have parking spaces on their property and he questioned how they get around that, because all their people who come in have to either park on Central Avenue or park in a public parking lot. He pointed out that if you go to a big city and you want to go to a fancy restaurant you are going to park sometimes 5, 6 or 7 blocks away and have to walk to get to your restaurant.

Planner/Zoning Administrator Curtiss agreed and explained that in her statement of facts she tried to relay the similar characteristics that this has to our downtown district. The downtown district, the 'B-5' zoned properties, is primarily Central Avenue and the side streets just north of 9th Street. A lot of the existing uses downtown and new uses that occupy the sites are subject to whatever codes that they had to comply with years ago. If there is an expansion of the use or if there is new development to meet that definition of development, it will generate new parking requirements. She stated that this property exhibits a lot of the same characteristics of the 'B-5' properties, which can be granted parking exceptions based on

recognition of urban or historic characteristics which may help in considering or not granting this variance.

Asplin indicated that if there is a problem with parking in the evening, people will probably park in the Mall Furniture's parking lot.

Duerr stated that business is based on how good you are after awhile. Time will tell whether you need to increase in parking or whether if you didn't need all the parking you needed in the first place. It is very difficult to try to enforce parking as long as they are parking on the street and they are legal. Other than the fact of the encroachment on somebody's private lot and that would be up to the property owner that owns that private lot for him to get legal actions to take care of it.

Harold and Barbara Kohlbeck, owners of Kohlbeck Upholstery and B & C Storz-It, which are located directly west and adjacent to the said property, spoke in opposition of granting the variance. When we purchased our property, our number one concern was our customers parking, availability on our property. We did not consider street parking or alternate parking for our neighbors. We have numerous small businesses using our storage unit that need to get in and out at all times of the day and night. We do not need their access being blocked in anyway. Perhaps the variance committee should check the location out and the bar of this certain area and approve a sub plan. This is a very congested area with parking on both sides of the street. In less than a half of a block there is the south side Enterprise Rental, Convention Center, Furniture Mall, alleyway for 3 houses on Central Avenue and our driveway, besides semis from Marshfield Furniture and Mall Furniture trying to get through this area and people with trailers hauling supplies and furniture. The bottleneck of traffic has been created. If they could provide 64 stalls on their property and only needed 27 stalls, we would gladly say ok. But the fact is that you are talking 2/3rds of the parking being off their property and only 1/3rd on their property. The only complaint that we have is every time we mow our lawn or take care of the place there is beer bottles, beer glasses, wrappers thrown from all over the fence onto our property. We thought that people are not to leave the building with these things. Mr. Kohlbeck urged the Zoning Board to vote no on this variance, because of the extreme congestion in this immediate area with driveways, parking and traffic.

Duerr explained that if someone is blocking a driveway, that becomes a law enforcement issue. If they are parked legally on the street, whether a semi can get into Mall Furniture or not it is entirely up to the semi driver. It's hard to stifle business because of the fact that it happens to be in a location where it is not readily accessible. It is very difficult to say that you can't have a building here or a business in here because nobody can get to you. If you are good enough, people will get to you, whether they have to park over as far as Sacred Heart and walk. If the law is not broken and the vehicles don't have to be towed away, where they park and what they do when they do park as long as they are legal is difficult to control.

Karl Zimmermann, owner of Enterprise Rental, abutting property, stated that he doesn't have any objections to granting the variance.

Reek felt that this was a major variance request and was concerned with safety. This is a very congested area already and with the Convention Center going in this could be even more congested. Part of that street already has no parking signs on it. Somewhere along the line there must have been a problem that they put those no parking signs up there.

Planning and Economic Development Director Miller indicated that if Mall Furniture has a problem and they put up signs that it is parking for Mall Furniture customers only that becomes a police enforcement issue and they can certainly call in the police and have those vehicles towed. In regards to the on-street parking, our Public Works Department and our City Engineer took a very close look at this area and they said at this point, they don't see any issues with on-street parking and accessibility to either the Hotel Conference Center or the Mall Furniture site. If something presents a problem where the semi trucks are unable to make the turning radius's or whatever because of on-street parking, then they would do something similar to what they did on Cedar Avenue behind the Pick 'n Save which was within 300 feet of the driveway there was no parking there to make sure that the semi trucks could make the turning radius.

Blackwood wondered how many other business downtown were given parking variances.

Director of Planning and Economic Development Miller stated that Elixir and Rogers Cinema were granted parking variances by the Plan Commission.

Planner/Zoning Administrator Curtiss stated that these were substantial variance requests. The Utopia and Elks were not as much.

Paul Meier indicated that the parking that they would need for the daytime is not much and the parking that they have should accommodate all of their patrons during the daytime and that in the evening hours there is not going to be a lot of semi traffic. One can never predict how many patrons will come from a particular business occupying parking space elsewhere, but assuming that somewhere between 0-100% come from the Convention Center across the street from the parking lot aren't going to be needing more parking if they are staying at the Convention Center. Even if 10-20% are coming from the Convention Center to eat that would reduce the parking spaces needed down to 12 or 13. He felt that 61 parking spaces would be the maximum number of parking spots needed if everyone showed up exactly at the same time.

Sheila Ashbeck Nyberg stated that transforming those parking spots into a nearly 24 hour usage is a good use of this property versus creating a lot of space that is empty different times of the day. She explained that in the downtown area, employees can park free 1-2 blocks off of Central Avenue and some do park two blocks away to avoid having to pay a permit fee. Some employers give their employees a pass and pay for it. It is not uncommon for an employee to park 1-2 blocks away from their place of business because of the sharing that we do in the downtown.

Planner/Zoning Administrator Curtiss stated that the Code doesn't break down daytime, nighttime use of that specific restaurant usage. It does say that you need 1 space for every 4 seats. Based on the daytime, you are not really going to have that much competing use of the on-street parking. Nighttime, you will. How much? It's hard to say right now.

Scott Koran stated that Rogers Cinema was granted a substantial variance. He explained that they compete with the Elixir, Marshfield Café, their own computer patrons and Northside Computers. There is heavy competition for parking spaces and he tends to veer all hours of the busy times and has never failed to find a parking spot within a half of a block to a block away. He said that many times, he can park right on Central Avenue and walk across the street.

Paul Meier stated that he has been watching the parking situation and around 5:30 p.m. there is approximately 25 parking spots available. He said that he assumes that the Convention Center will have some signage that they will put up and that he would be more than happy to work with Tom Werthman on any signage or anything that they can do to keep people from parking in Mall Furniture parking lot.

Scott Koran said that you can train your customers not to park where they are not suppose to through signage. He gave an example of what was done at their Stevens Point Campus Cinema, which has extremely limited parking. They simply put up a sign in their lobby that basically says that if you are parked in these lots, you will be towed. It's very effective! We have a wonderful relationship with our neighbors. You just have to put in the effort to work with your neighbors and find out if there is problems. A Person to person basis is very positive and they will be very receptive to working with you.

Director of Planning and Economic Development Miller stated that there are probably going to be events at the Hotel Conference Center where their parking overflows onto on-street parking; but it is bad planning to design a parking lot or parking facilities for the worst case scenario, because majority of the time they will be vacant. It's better to have things a little more congested then have acres of parking, especially when you have competing uses. The spots will tend to turn over. She indicated that there have been no complaints about parking problems with Elixir or with the more recent Rogers Cinema variance.

Blackwood stated that 300 feet is the length of a normal block. You really have to wonder if people can't walk a block.

Paul Meier felt that signage would be very simple through the use of their menu.

Asplin stated that there are rules and regulations that we must follow, but if we don't give them the variance, they don't have the chance to help the City grow. I think that we would be making a big mistake, by not granting the variance.

Duerr stated that the availability of property around here may come in time at a price where it is affordable. A business that is lucrative is going to help themselves by growing or expanding the conditions around their building so that they can accommodate their patrons. If they don't, it is not smart business.

ZB04-022 Motion by Duerr, second by Wink to grant a reduction to the off-street parking requirements by 34 parking spaces with the stipulations that the employees park off premise and snow removal shall be conducted so as to maintain 27 on-site parking spaces. All Ayes. (Zimmermann abstained from voting, because he is an abutting property owner.)
Motion carried

The Zoning Board of Appeals considered the following issues in granting the variance.

1. The lot is developed more typical to the characteristics of the 'B-5' downtown district north of the site, where the lots are small, zero front setbacks, buildings covering majority of the lot, small yard or open area outside the building footprint, and presence of on-street parking. The code provides that the 'B-5' properties can be granted parking exceptions based on recognition of these urban or historic characteristics. This property exhibits some of the same characteristics, however, is included at the north edge of a 'B-4' commercial district.

2. The Municipal Code requires off-street parking and loading to ensure that all developments within the City provide adequate and reasonable parking on-site necessary to serve the development or use. Additional purposes of minimum off-street parking requirements is to reduce traffic congestion, reduce the crowding of on-street parking spaces, enhance traffic and pedestrian safety, and protect adjacent properties from the adverse impacts of uses with inadequate off-street parking.
3. The owners have a verbal agreement with Phil Hiller to lease 12-15 parking stalls in the Hiller's True Value parking lot. These spaces would be designated for the employees and would keep the 27 parking stalls on the property open for customer availability.
4. The City Engineer has provided a count of 40 on-street parking spaces within a 300 ft radius of the development. This 300 ft radius has been used a consistent measure of available on-street parking for review and recommendation on 'exceptions' to parking requirements for 'B-5' properties.
5. Two nighttime businesses, Nutz Deep and Potsies, could potentially compete for use of the on-street parking stalls in the 300 ft radius surrounding the development. The applicant indicates the competition should be minimal.
6. The Board has granted parking variances in the past. In 1988, a parking variance was granted to the Marshfield Clinic and in 1991 for the Target development.
7. To date, there have not been any comments or objections from the surrounding neighbors.

Motion by Reek, second by Wink to adjourn at 5:34 p.m.
Motion carried

Lori A. Panzer
Deputy City Clerk