SPECIAL ZONING BOARD OF APPEALS MINUTES OF NOVEMBER 29, 2005

Meeting called to order by Chairman Zimmermann at 4:46 p.m. in the Executive Conference Room, City Hall Plaza.

PRESENT: Wallace Reek, Don Wink, Karl Zimmermann and Marvin Duerr

EXCUSED: Dean Markwardt

Also Present: Planner/Zoning Administrator Curtiss, Deputy Clerk Panzer, Jeffrey W. Eisberner, Sue Decker, Margy Frey, Gary Grassman, Thomas Zygarlicke, Joan Zygarlicke, Betty Ptacek, Arnold Steines and Rory Retterath

Deputy Clerk read the variance request from Jeffrey W. Eisberner to create two townhouse lots at 1701 & 1703 N. Hume Avenue, zoned 'R-4' Single and Two-Family Residential. Section 18-88 requires a minimum 50-ft lot width and a minimum 6,000-sq. ft. lot size for each townhouse lot. The applicant requests a 6-ft lot width variance and a 60-sq. ft. lot size variance for each lot, in order to create two townhouse lots out of an existing duplex lot.

Planner/Zoning Administrator Curtiss stated that her statement of facts regarding the variance request along with the standards for townhomes were included in the packet.

A letter was received from Thomas and Joan Zygarlicke opposing the variance request.

Reek commented that if this variance is granted, we are not only granting a variance for one but two pieces of property. He expressed concern about setting a precedent for future variances for other properties in the area or within the City.

Jeff Eisberner explained that he purchased the property to live in one side and rent out the other side or sell the other side. Before he purchased it, he asked specific questions. Is this a townhouse? Are these able to sell separately? Otherwise he would have never purchased the property to begin with. After the deal was done, and he sold a unit he surprisingly found out that it had a single sewer system and it was zoned as a condominium. Basically, it was sold to me unknowingly from Altmann Builders under false pretense. If I can't sell a separate unit, it's not really good to me. I would be tied into always having to rent and never being able to sell a separate unit. Our only restitution on dealing with this would be that Altmann would have to buy it back. The whole area is basically all townhomes and they all sell separately. The owners that bought the unit from me have already moved their stuff in because their home closed and they have no place to go. I would just like to have the problem solved the best way that we can.

Zimmermann pointed out that the units have a double wall between them which is required for a townhouse.

Planner/Zoning Administrator Curtiss said that per the permit, it was under the developer's intention to develop the property as a two family dwelling. It can be sold as a condo.

Jeff Eisberner said that if it was sold as a condo an association would have to be set up and this would be crazy to do for just two people. With all these other things coming into play with the condominium situation, I don't know how the other players will feel or respond to that. If I lose a buyer because of it then we are going to have to go to court suing that we got something out of false pretense and everybody

will lose a lot of money. It would be nice if we didn't have to get into that kind of a mess. We could save all the other parties involved and the court some time to. The association thing is a difficult thing. It can be done.

Margy Frey said that there are separate sewer laterals that come out and Y together. Altmann is prepared and ready to separate the laterals if this variance is granted.

Planner/Zoning Administrator Curtiss mentioned that this variance would create two nonconforming lots. She explained if something were to happen to the structure, such as a catastrophic loss it would not be the structure itself that would be nonconforming to entitle it to be rebuilt to those standards, it would be two nonconforming lots where potentially a single family dwelling or other could be built. There may be additional variances required to redevelop that land. If something did happen to this and someone choose to purchase these lots and not redevelop it as a townhome, in single family lots, the minimum lot size for a single family dwelling is 8,700 square feet under the 'R-4' zoning and the minimum lot width is 60'. This substantially reduces the lot size for any development under single family use.

Tom and Joan Zygarlicke said that they had to meet all the requirements and wanted to know how this variance would affect them or anybody that would buy their house.

Planner/Zoning Administrator Curtiss replied it depends on how your deed restrictions or association restrictions might be set up for that.

Margy Frey said that if something happened to the structure, you wouldn't be developing one single family lot. You wouldn't be building on a 44' lot.

Betty Ptacek stated that a similar building could either be a duplex, townhouse or a condo.

Planner/Zoning Administrator Curtiss replied yes, as a general scenario. Visually you wouldn't know the difference. It is all a matter of paperwork that is going to distinguish a townhome, duplex or a condo.

Betty Ptacek replied than maybe you ought to change the code.

Zimmermann explained that the Zoning Board of Appeals can grant variances without changing zoning for an entire area in cases of hardships.

Duerr stated that he wouldn't have a problem with it if we could hold it from anything other than just putting the laterals in as individual properties. Except for the fact that it is a twinplex now and you want to call it townhouses and there are so many requirements for townhouses that people have already met in that neighborhood. Jeff has legal recourse and that is the action that he should take. It's not that I don't agree that it should split, I just don't want to set a precedent in a neighborhood that is conforming.

Jeff Eisberner said that if he goes to court, we are probably talking \$10,000 at least lost and that is before court costs and that is not including all the time and effort that was done.

Sue Decker said that where this is sitting the development is almost done in that area. Is it a detriment to that area to have 6' on each side not given?

Zimmermann pointed out that the only requirement that will not be met for a townhouse is the lot size.

Reek felt that it was not a good idea to start dividing property or buildings.

Duerr said that he understands that this is a difficult situation and there will be some loss, but to make a stipulation for a certain property because you were misled would make it difficult for people that have to follow the rules to the letter.

Jeff Eisberner said that the resale value on a condo is not going to be as high as the resale value on a townhouse.

Zimmermann said if this is not granted you have additional recourse to recoup your losses.

Sue Decker said that all those building permits say duplex. Zygarlickes doesn't say townhouse. It is unfortunate that Tom is not here because he was under the assumption it was a townhouse with the requirements when he took out the permit.

Mary Frey said it is always going to be an 88' or 44' lot. It is what it is whether it is called a condo, a duplex or a townhouse. Altmanns apparently made a serious mistake. I wish they were here to answer it for us. We are trying the simplest and least destructive way of correcting it.

ZB05-00 Motion by Reek to refuse this request for a variance. Motion dies for lack of a second.

Duerr said that following the guidelines of the committee, I really don't favor this, but it says that if the applicant can show extreme hardship, we have the right to grant the variance. I believe the applicant has shown extreme hardship.

ZB05-35 Motion by Duerr, second by Wink to grant a 6-ft lot width variance and a 60-sq. ft. lot size variance for each lot, in order to create two townhouse lots out of an existing duplex lot. Reek voted no, rest aye.

Motion carried

Betty Ptacek recommended that the City educate and reeducate the realtors and the builders. Something is wrong when a major builder in town produces something like this.

Jeffrey W. Eisberner, Sue Decker, Margy Frey, Gary Grassman, Thomas Zygarlicke, Joan Zygarlicke, Betty Ptacek and Arnold Steines left the meeting at 5:36 p.m.

Deputy Clerk read the variance request from Rory Retterath to attach a 4-ft wide, wrap-around canopy addition on the south and east building elevations of the structure at 500 N. Central Avenue, zoned 'B-4' General Commercial District. Section 18-63(5)(f) requires a 20'setback on Doege Street. Section 18-04 (6)(a) requires a 50' major street setback on N. Central Avenue. The applicant requests to extend the existing nonconforming structure further into the required setbacks to allow zero front and corner yard setbacks.

Planner/Zoning Administrator Curtiss presented a statement of facts regarding the variance request. She explained that if the variance is granted that the applicant would have to apply for a sign permit, because this structure would also be used as a sign. She asked if the sign would be illuminated.

Rory Retterath replied that he was going to make his own wrought iron lights coming out over the top.

Zimmermann asked about the height.

Planner/Zoning Administrator Curtiss responded that it meets the clearance requirements for construction and encroachments.

Rory Retterath stated that there is no interference with the street lights or the Don't Walk signs.

ZB05-36 Motion by Wink, second by Reek to grant extending the existing nonconforming structure further into the required setbacks to allow zero front and corner yard setbacks. All Ayes.

Motion carried

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

- 1. There is questionable compliance with all six conditions necessary to obtain a variance as specified in Section 18-35(2) of the Municipal Code.
- 2. The property is zoned 'B-4' General Commercial District.
- 3. The structure is pre-existing and non-conforming with the current zoning restrictions of the 'B-4' District.
- 4. The original structure was built in 1895.
- 5. The current 'B-4' zoning designation for the lot would require a 20' front setback from Doege Street. The Major Street general provision of the code would require a stricter 50' setback on Central Avenue.
- 6. Based on the existing structure setbacks and parking at the rear, the lot is developed more typical to the characteristics of the nearby 'B-5' district to the south.
- 7. Alteration or extension of a nonconforming structure, as proposed, requires Zoning Board approval.
- 8. The applicant is proposing the addition to provide a covered entrance into the building. The canopy will also incorporate signage for the business.
- 9. The canopy provides the minimum clearance height.
- 10. The small amount of encroachment over the public sidewalk is minimal and within the allowances for projections over the right-of-way.
- 11. Public notice has been published. Neighbors have been notified.

Motion by Duerr, second by Wink to adjourn at 5:40 p.m.

Motion carried

Lori A. Panzer Deputy City Clerk

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