ZONING BOARD OF APPEALS MINUTES OF DECEMBER 11, 2007

Meeting called to order by Chairman Markwardt at 4:51 p.m. in the Executive Conference Room, City Hall Plaza.
PRESENT: Marvin Duerr, Dean Markwardt, Don Wink and 1st Alternate Donald Schnitzler
EXCUSED: Wallace Reek and Karl Zimmermann
ALSO PRESENT: Planner/Zoning Administrator Curtiss, Planning & Economic Development Director Miller, Mayor Meyers, Deputy Clerk Panzer, Lucille Leick, John Baltus, Frank Baltus and Daniel Helwig

ZB07-018 Motion by Wink, second by Schnitzler to approve the minutes of November 13, 2007 as submitted. All Ayes.
Motion carried

Deputy Clerk read the variance request from The Baltus Oil Company to construct a convenience store & service station on the property located at 1727-1731 N. Central Avenue, zoned "B-4" General Commercial District. Municipal Code Sec. 18-04 (6) requires a 50-ft major street setback on N. Central Avenue. Municipal Code Sec. 18-63 (5) (f) requires a 20-ft rear yard setback. Applicants request a 16-ft major street setback variance and a 12-ft rear yard variance in order to construct the fueling canopy 34-ft from N. Central Avenue and construct the convenience store 8-ft from a rear lot line.

Background
The Baltus Oil Company is proposing a new convenience store development on their recently purchased properties in the 1700 Block of North Central Avenue. The development includes a 3,612-sq. ft. convenience store, a fueling canopy with 4 gas islands; a 1,404-sq. ft. laundromat building and a single-stall automated carwash. While the laundromat and the car wash buildings conform to minimum setbacks, the canopy structure and the convenience store do not. The canopy extends 16-ft into the 50' major street setback required from Central Avenue and a section of the store extends 10-ft into the required 20-ft rear yard set back. A development permit cannot be administratively approved based on this non-compliance. The applicants have appealed the decision by filing a request for a variance to the specific requirement of the Municipal Zoning Code.

The applicants have submitted a narrative introducing facts related to the variance criteria for the Board to consider in their decision. The "statement of facts" provided as follows are facts regarding the property, proposed development plan, zoning requirements, and/or general developed conditions of the property and surrounding area.

Planner/Zoning Administrator's statement of facts regarding the variance request:

1. The property consists of 2 parcels of land, zoned "B-4" General Commercial.
2. The property is a conforming lot in the "B-4" District with approximately 51,775-sq, ft. in total lot area, 257-ft of lot frontage on N. Central Avenue and 109-ft of frontage on N. Peach Avenue.
3. The minimum lot area of the "B-4" Commercial District is 12,000-sq. ft.; minimum lot width is 80-ft.
4. The property is irregular-shaped. The result of the irregular-shape is partly due to a pre-existing condition of the property and partly due to the applicants' circumstances. The irregular-shaped rear lot line is pre-existing and the result of a lot division by deed many years ago. The effect of the irregular-shaped rear lot line, not parallel with North Central Avenue, results in an irregular-shaped building envelope area. The larger irregular-shape to the property is a hardship of the applicants and not the property—that is, a direct result of the applicants not able to negotiate purchase of the adjacent lot on Peach Avenue.

5. The site designer has submitted a site plan detailing the building envelope and proposed layout of structures on the site; the fueling canopy and the convenience store extend outside the building envelope and into minimum setbacks.
6. The fueling canopy structure extends into the minimum 50-ft setback from N. Central Avenue.
7. Section 18-04 (6) requires a special 50' setback from major streets as identified in the Comprehensive Plan; Central Avenue is identified as a Primary Arterial Street.
8. The property does not qualify for major street averaging provisions. All properties on the east side of Central Avenue between Upham and McMillan Streets are developed with 50-ft setbacks and greater, with the exception of the Arby's lot developed with a 30-ft setback in the 1980s.
9. The general purpose for additional setback requirements from major streets is to provide adequate right-of-way to allow for future street widening.
10. The Department of Public Works reviewed the variance request in light of this general purpose and noted that with the existing width of North Central Ave and the 4-lane configuration already in place, maintaining the 50' setback is not as critical as on other streets like McMillan Street. The remaining 34 foot setback should be adequate.
11. The proposed layout of the convenience store encroaches into the 20-ft rear yard setback. The northeast corner of the building, an approximate 30-ft section, extends into the required rear yard and is located 8-ft from the lot line at its closest point.
12. In commercial districts, the general purpose of the rear setback requirement is to allow adequate space for "servicing" and accessibility around the building for such purpose.
13. No servicing function or accessibility is proposed around the northeast corner of the convenience store.
14. Landscaping will be installed to help screen the commercial building from the existing residence to the east.

Planner/Zoning Administrator Curtiss said the property itself is a combination of what was once three separate parcels of land. It is not a non-conforming lot in the "B-4" District, because it does exceed the size and lot frontage requirements. The property's rear property boundary that is contiguous with the existing residence is irregular shaped. It is not parallel with the right-of-way, which results in an irregular shape building envelope. The property in total doesn't have a hardship. It is certainly a circumstance of the property owners as they weren't able to acquire the adjoining residential lot and give more of the reasonable shape to the property to allow everything to fit neatly into place and still be in the setback. It is not the entire rear yard setback that is being encroached upon. It is a small section.

Daniel Helwig said there will be a landscape buffer between Baltus' property and Lucille Leick's property.

Duerr didn't feel the variance off of Central Avenue would cause any sight problems, because the variance is for the canopy which will be a drive through canopy.

John Baltus agreed and said Baltus Oil Company had a similar scenario back in 1991 where we were granted a variance for the exact same situation.

Planner/Zoning Administrator Curtiss said the only development that is built within the setback on the east side of Central Avenue between Upham Street and McMillan Street is the Arby's lot.

Duerr didn't see where the additional setback requirements on Central Avenue would be an issue in this case, because Central Avenue is already four lanes.

Daniel Helwig explained this idea is for the best canopy placement. There are many things to consider to make this work to make sure that the drives come in and it is convenient for the customer. It is important to get the correct drive ins or people are going to struggle to get to the pumps.

ZB07-019 Motion by Duerr, second by Schnitzler to grant the variance request from The Baltus Oil Company. All Ayes.
Motion carried

Motion by Duerr, second by Wink to adjourn at 5:07 p.m.
Motion carried

Lori A. Panzer
Deputy City Clerk

F:\Home\Minutes\Zoning Board\Minutes 2006\ZB071211.doc