

SPECIAL ZONING BOARD OF APPEALS MINUTES OF FEBRUARY 22, 2010

Meeting called to order by Chairman Markwardt at 5:01 p.m. in the 1st Floor Conference Room, Suite 108, City Hall Plaza.

PRESENT: Ed Gerl, Richard Kenyon, Dean Markwardt, 1st Alternate Kenneth Bargender and 2nd Alternate Scott Noble and Todd Zieglmeier (arriving late)

EXCUSED: Wallace Reek

ALSO PRESENT: Planner/Zoning Administrator Miller; David Thewes, First Phoenix LLC; and, Travis Strebe

ZB10-003 Motion by Gerl, second by Kenyon to approve the minutes of January 18, 2010 as submitted. All Ayes.

Motion carried

Planner/Zoning Administrator Miller read the variance request from Mudrovich Architects to exceed the required lot coverage percentage of 30 percent by approximately 1.3 percent or 1,531 square feet, at 1204 W McMillan Street zoned "R-4" Residential (low density single- and two-family district).

Background

Terry Howard wishes to exceed the required lot coverage percentage. The property is zoned 'R-4' but a conditional use permit was granted for the Community Based Residential Facility back in March 2009. The proposed development covers approximately 31.3 percent (39,389 sq ft) of the lot (126,192 sq ft).

A building permit could not be administratively approved for this plan, based on non-compliance with Sections 18-62 (5) (h) of the Municipal Code. The Applicant requested a 1,531 sq ft variance to the required lot coverage percentage, in order to build the garage, rear porch/dumpster enclosure, and the front carport/canopy.

Thewes also added that the rear porch covering will be removed from the plans.

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

1. The property is zoned 'R-4' Low density single- and two-family district.
2. The property is located at 1204 West McMillan Street.
3. The lot is a conforming lot in the 'R-4' district. Lot standards for the 'R-4' district are 12,000 sq ft lot size and 80 ft lot width.
4. The lot is 126,192 sq ft in size, with 478 ft of lot frontage along West McMillan Street.
5. Based on the 30% maximum lot coverage percent for the 'R-4' district, this parcel would only be permitted to have 37,857.6 sq ft of lot coverage.
6. Lot coverage percent is defined in the municipal code as the maximum percent of the lot which may be covered with principal and accessory structures.
7. The proposed development calls for 39,389 sq ft or lot coverage percentage, exceeding the lot coverage percentage by approximately 1.3%.
8. The applicant was granted a conditional use permit to develop the 50-unit CBRF.
9. The surrounding zoning to the west and south are 'B-4' General commercial. The zoning to the east is 'R-4' Low density single- and two-family district. The zoning across McMillan Street is zoned 'PUD' which is planned for commercial on McMillan Street.
10. The applicant was unable to purchase land from adjacent land owners to reduce the lot coverage percent for the proposed development.

Planner/Zoning Administrator Miller recommended approving the variance request based on the following findings of fact:

1. The low density site coverage, as permitted in the existing zoning district, does not allow adequate site use in relation to site cost.
2. To operate the proposed project, the dimensions for the facility are needed, including: all 50 units, all common spaces and all ancillary features.
3. Granting the variance would not negatively impact the public interest related to the safety, aesthetics or environment.

Zieglmeier was excused from the meeting, so Noble, the 2nd alternate, was in attendance to act as the 5th voting member. Zieglmeier arrived after the presentation of the background for the variance request, but he said he was excusing himself from voting because he was not there for the beginning of the meeting and that he was only there to observe. Zieglmeier did not vote or participate in the discussion at the meeting.

Noble asked for clarification of the importance of the 30% lot coverage percentage. Miller stated that in an 'R-4' zoning district, the code sets the maximum lot coverage percentage at 30%. This means that buildings and accessory structures cannot occupy more than 30% of the lot. He added that reasoning behind the rule is likely because of the impact of stormwater runoff and density. Because of the DNR requirements for stormwater runoff, Miller said that staff would review this requirement and consider recommending changes to the code regarding lot coverage percent based on impervious surface rather than building coverage.

Bargender stated that he felt the developer only met one of the three criteria. He stated that they should have known about the zoning requirements when they first designed the plans for the proposed CBRF facility. Any hardship should be considered self imposed because they didn't do their homework to determine the zoning. Miller stated that neither the developer nor the City caught the zoning violation until the final review. Both Gerl and Bargender said it didn't matter whose fault it was and that the responsibility is on the developer. Bargender added that it is important that the Zoning Board of Appeals follow the required criteria and he didn't feel this request met that standard.

Gerl felt the proposal wasn't meeting any of the criteria and that since there were no footings in the ground that they should redesign the project to meet the zoning criteria.

Thewes stated that had they known about the 30% requirement that they could have designed the project to the appropriate specs. Bargender stated that it should have been the developer's responsibility to know the requirements and the fact they didn't shouldn't constitute a hardship.

ZB10-004 Motion by Bargender, second by Gerl to deny the variance request from Mudrovich Architects to exceed the required lot coverage percentage of 30 percent by approximately 1.3 percent or 1,531 square feet, at 1204 West McMillan Street, based on it does not meet the criteria for a variance. Ayes: Bargender and Gerl. Nays: Markwardt, Noble, and Kenyon.

Motion failed

Kenyon stated that this scenario reminded him a lot of the Carolfi's driveway situation last year where they allowed a 3 foot variance after the construction of a driveway. It was pointed out that the major difference was that the driveway in that instance was already in place and that the CBRF had yet to establish footings. Kenyon also felt that requiring the developer at this stage to go back and change the plans would constitute a hardship.

Markwardt said that in the past the Zoning Board of Appeals has allowed other buildings to be built that had not yet been built. He felt there were special conditions in this case that makes a variance permissible: they went to the City for guidance; aesthetically the building will look better by allowing the variance.

ZB10-005 Motion by Noble, second by Kenyon to grant the variance request from Mudrovich Architects to exceed the required lot coverage percentage of 30 percent by approximately 1.3 percent or 1,531 square feet, at 1204 West McMillan Street. Ayes: Markwardt, Noble, and Kenyon. Nays: Bargender and Gerl.

Motion carried

Planner/Zoning Administrator Miller gave a summary of the 2009 Zoning Board of Appeals decisions. This item was for review purposes only.

Topics for a possible UW-Extension workshop with the Plan Commission were discussed. Miller stated that he has been in discussions with the Center for Land Use Education about a workshop for the Zoning Board of Appeals. He also talked to the Plan Commission about a possible joint meeting with the Zoning Board of Appeals. The Center for Land Use Education does have a workshop coming up for a Zoning Board of Appeals in Stevens Point. Members of the Zoning Board concurred that they would like more information but felt that past workshops have been beneficial and thought it would be a good idea to attend. Miller said he would get that information out to them. After the workshop in Stevens Point they would decide whether they felt they needed another workshop with the Plan Commission.

Motion by Noble, second by Kenyon to adjourn at 6:20 p.m. All Ayes.

Motion carried

Josh Miller
Planner/Zoning Administrator