

Meeting Minutes of the Board of Zoning Appeals
Tuesday, February 9, 2021
Meeting Minutes

The Board of Zoning Appeals met by Virtual Zoom Meeting on Tuesday, February 9, 2021 at 5:15 P.M. with the following members in attendance: Ryan Gaylord, Jim Badger, Anne Poliakoff, Janie Salley, and Reed Teague. Livia Cantrell was absent. Representing the Planning Department were Martin Livingston, Community Development Director; Emily Thomas, Planner I; and Julie Roland, Administrative Assistant.

Roll Call

Mr. Gaylord, the Chair called the meeting to order and stated that public notice of this meeting was given twenty-four (24) hours in advance, limited to a request for pre-litigation/mediation or an appeal to the Circuit Court, to be filed within thirty (30) days after the decision of this Board in accordance with Section 603.6 of the City of Spartanburg Zoning Ordinance. Mr. Gaylord went over the procedures for tonight's Zoom Meeting.

Roll call was taken – Four Board Members were currently present and signed on to the meeting, and constituted a quorum; and he had each Board Member introduce themselves.

Approval of Agenda for the February 9, 2021 Meeting

Mr. Teague moved approval of the Agenda for the February 9, 2021 meeting, and he was seconded by Mr. Badger. The motion was unanimously approved by a vote of 4 to 0.

Disposition of the Minutes from the December 8, 2020 Meeting

Ms. Salley moved approval of the minutes from the December 8, 2020 meeting; and she was seconded by Mr. Badger. The motion was unanimously approved by a vote of 4 to 0.

Old Business – None.

New Business:

VAR 21-02-01 – 616 Massachusetts Boulevard – Variance to district standards – The Owner is seeking permission to reduce the side yard setback in order to construct a single-family home on a property in the R-6 zone district. (TMS # 7-16-09-092.00); John Bagwell, Owner.

Mr. Livingston was sworn, and submitted tonight's presentation and previously provided meeting packets into evidence.

[Editor's Note: Board Member Anne Poliakoff signed on to the meeting at 5:20PM.]

Mr. Livingston said Mr. Chairman, members of the Board, I'll read this item for the record, to be entered into the record with the presentation and slides into evidence as Exhibit A. This request is before the Board of Zoning Appeals to request a variance to district standards at 616 Massachusetts Boulevard. The owner is seeking permission to reduce the side yard setback in order to construct a single family home on the property in the R-6 zoned district, tax map number 7-16-09-092.00. John Bagwell is the owner. The project site is approximately a 4,000 square foot lot in the R-6 zone district. The lot is considered substandard because it does not meet the minimum 50 foot minimum lot width. This lot is a Lot of Record having been recorded in the Office of the RMC on April 26, 1954. The lot does not contain any structures, so it is a vacant and undeveloped lot. This site is located on the corner of Massachusetts Boulevard and Tennessee Avenue and is a part of the Branyon Heights subdivision. The surrounding neighborhood is comprised entirely of single family dwellings, but the owner is seeking a variance to the street side yard setback from 15 feet to 5 feet in order to construct a 1,064 square foot, single family home, three bedroom, and two bath, to sell. The current buildable area of the lot is 20 feet wide, which would not allow for the construction of this home. According to the Area Dimension Requirements, Zoning Section 401-A of the City's Zoning Ordinance, a minimum lot area for R-6 zone district is 4,000 square feet, whereas this lot does meet that requirement, with a maximum building coverage of no more

than 50%. So, no more than a 2,000 square foot home, which this is 1,064 square feet. This requirement, the proposed 1,064 square foot structure, is within the allowable building size of the property. According to research, this subdivision was platted in 1954 with a 20 foot by 100 foot lot, so they started off being substandard in the beginning, and have been combined over the years. The Zoning Ordinance Consistency, the Board of Zoning Appeals must make the determination based on several factors. "Are there extraordinary and exceptional conditions pertaining to a particular piece of property, " these conditions do not generally apply to other properties in the vicinity", "because of these conditions, the application of the ordinance of a particular piece of property would effectively prohibit, or reasonably restrict the utilization of the property", and "the authorization of the variance will not be a substantial detriment to adjacent properties, or to the public good and the character of the district, and will not be harmed by the granting of the variance." "In granting the variance, the Board may attach to its conditions regarding the location, character, and other features of the proposed building. Structures or uses the Board may consider advisable and will protect the established property values of the surrounding area, or to promote the public health, safety, and general welfare". The property was platted prior to the adoption of the zoning ordinance. As a Lot of Record, the lot is 10' shorter than the Minimum Lot Width, the Lot lines shown in section 401-A of the City's zoning ordinance. This places further limitations on the uses of the lot, as the 15' side street setback requirements limit the available area to 20', rather than 30' that would be allowed if the lot width met the minimum requirements are 50'. The degree of this requirement would limit the owner's ability to construct a single family home matching the characteristics of the neighborhood. The property is among the smallest lots in the subdivision neighborhood, just meaning the minimum lot size of 4,000 square feet for R6 zoning with dimensions of 100' by 40'. Many of the surrounding properties are larger homes constructed prior to the adoption of the zoning ordinance. Other properties of the same dimensions are interior lots, and therefore are not subject to the same setback requirements. The current setback allows for a buildable area of 20' by 65'. These dimensions are appropriate for construction of mobile homes, but prohibit the construction of a single family home that would advance the characteristics of the surrounding neighborhood. The variance would authorize the home to be built closer to the street, and would not encroach closer to the adjacent properties, so no closer to the existing homes. Because of the many other homes in the neighborhood that encroach upon the side streets setbacks due to the date they were built, the authorization of this variance would not be a detriment to the character of the district. In the event the Board finds the variance finding can be met, the required conditions of approval are attached to the report. The Board may choose to approve or amend these based on the outline of the proposal. On the conditions of approval attached states, "If one or more of the following conditions is not met with respect to all terms, then approval may be revoked. So all setbacks, including the side street setback shall meet the setback requirements of the City's zoning ordinance where the maximum building coverage is 50%." "Front yard setback is 15', rear yard setback is 20', and interior side setback is five feet from the property line. You shall meet the standards and shall be developed within the limits established by Chapter 501.10 of the Spartanburg Municipal Code as to the emissions of noise, odor, smoke, dust, vibrations, waste fumes, or any other public nuisance that arise or occurred incidental to this establishment operation. The applicant shall acquire a new plat showing the new side yard setbacks prior to construction. The applicant shall be responsible for the completeness and accuracy of all forms and supporting materials submitted in connection with any application. Any errors or discrepancy found therein may result in the revocation of any of the approval of permits issued in connection with their land." "The development of the site shall be substantially in accordance with the proposed plans submitted on file is the Spartanburg City planning department. All aspects of the construction must be completed prior to use. Major modifications, plans, or exceptions to complete may be granted only by the City authority which approved the project. All requirements: building, fire, water, streets, storm water departments shall be completed prior to building occupancy permit issuance, and continuously maintained thereafter. Site pre-construction begins with the City's Stormwater Manager Jay Squires. Building preconstruction meeting is required prior to all vertical construction." So we have a short presentation of the slides showing the site. So this is the site on the corner of Massachusetts and Tennessee. This is the front yard. This is side setback adjacent to an adjacent home. So it's not going to

get any closer than what the building requires. Its five feet on the sides. And this is the rear, which is 20 feet in the rear. What we're asking to do is to change the side yard. The side yard is supposed to be 15 feet, we're asking to change it to five feet so that the house will come closer to the street on this side. Here is the view of the side street, again, this side. There is a street on this side. No homes on this side. Here's a view from the front, and so these are the requirements that need to be met in order to approve this variance for the Board, and staff is recommending approval based on the findings. And I'll answer any questions that you may have.

Board Questions

Ms. Salley said just curious, the house will face as the one adjacent to it. It will face the street front, which would be Massachusetts.

Mr. Livingston said it will face Massachusetts. It will have an address of 616 Massachusetts. The front door will face Massachusetts. Since this is the side way, you can place the driveway over in your side yard if necessary, but the front of the house will face Massachusetts.

Ms. Salley said thank you.

Mr. Gaylord said any other questions of the Board members. Mr. Livingston, it appears to me, at least to some degree that, and let me just address this. So folks, again, as I mentioned earlier, there will be opportunity for public comment a little bit later in the presentation. So you'll then have the ability to make any comment as you see fit. Given the timing of the subdivision of this property, and then the subsequent adoption of zoning code, it would seem that largely this is just a lot that got created as part of an overall plan, but then got left out when the code was applied, and then became a lot that was unbuildable, not because of the initial plan of the neighborhood, but rather the subsequent adoption of a City zoning ordinance. Would that be a fair assessment.

Mr. Livingston said so these lots typically were created before the zoning ordinance was created. So they're called the "Lot of Record", which means when the zoning ordinance was adopted, these lots were in existence. Over the years, some property owners have combined lots. But they were too small, they were 20 foot lots. This is a case where two lots were combined to remain the Lot of Record for several years.

Mr. Gaylord said okay.

Mr. Teague said I've got one question. You currently have interior lots that are of the same or similar size with structures built on them.

Mr. Livingston said yes.

Mr. Teague said okay. And on those interior lots, each side has a five foot setback.

Mr. Livingston said that's correct.

Ms. Poliakoff said so there already have been exceptions, is that what you're saying.

Mr. Teague said no. If it's an interior lot, you have five feet from each property line, but since this is a road it's different circumstances.

Mr. Gaylord said Mr. Livingston, it appears that there are no other questions for you of the Board. So you may have a seat, and we will see. Mr. Bagwell, are you with us.

Mr. Bagwell said yes.

Mr. Gaylord said Mr. Bagwell, is there anything that you would like to present.

Mr. Bagwell said no sir. I think Mr. Livingston presented all the facts as they are.

Mr. Gaylord said okay, thank you, sir. Well then by all means, have a seat. We'll see if there's any evidence offered in opposition. So folks next, if there's anybody that's desirous to present evidence in opposition to this application, this will be an opportunity for you to come forward, to present that under oath. There will be a subsequent opportunity for you to make public comment. Okay. So if it's just a matter of you saying something, we can do that later. If there's something that you want to present evidentiary, this would be the appropriate time. So is there anybody that cares to present any evidence in opposition to this application. Yes, sir. Please come forward. Sir, if you would just tell us your name and your address, please.

Mr. Odell Waddell of 106 Tennessee Avenue came forward and was sworn.

Mr. Waddell said all the evidence I really want to submit is your own zoning ordinance. Based on what was submitted so far, if the front of the lot is going to be facing Massachusetts Boulevard that means it's a 40 foot lot. In the zoning regulations, it says it has to be a minimum of 50 feet. And also, one thing that was left out about this particular lot, this lot is on a slope or a hill, which means anything that is built on that property and will increase the rain water on that property will increase the flow of water coming off of that property to other properties below off of Massachusetts Avenue. And building closer to the road, the visibility already; I'd say when you get to the bottom of the hill, you've got a stop sign, and it's already, I would say, kind of hard turning, and right. If I'm making a left hand turn going back up that way. But like I say, I just wanted to submit your own zoning ordinance, and it's highlighted the setbacks, because like I say even these setbacks, you say they have to be a minimum of five feet from the side, 15 feet from the road. So that means you're only going to have like a 20 foot strip left over in the middle. And I've been at that location ever since I was born in that house, well not at the house, but ever since I was little. I'm 56 years old. No one has built anything on any lots that size in that neighborhood, except for one house that was built. And it was built, I'd say, without any building permits. And like I said, I guess the City just accepted it because somebody was living there. But throughout the whole neighborhood you really won't see anybody living up so close to anyone in that neighborhood. And that lot has been vacant, I want to say, for more than 60 years. And that's the main reason was because of the size of the lot, and also because of the runoff from that lot because like I say, it comes to the house directly across.

Mr. Gaylord said if there's no objection we'll accept this table from the zoning ordinance, from Section 401 from the Zoning Ordinance accepted as exhibit two to the application. Thank you, Mr. Waddell. Is there anybody else that cares to present any evidence in opposition to this application.

Mr. Roosevelt Hunter of 645 Massachusetts Boulevard came forward and was sworn.

Mr. Hunter said this parcel of property here, I've been living there, I was born there 645 Massachusetts right across the front of that parcel of land. Willie B. Black was the one that owned that house that's on the corner, and there's never been anything on that corner because the strip of land is not large enough to put anything of any conducive use. It's a small piece of property. No one is in that area but senior citizens. Like Mr. Waddell here said, his mother lives behind that house. And she's just about bed ridden. She's in the house all the time. My sister lives in the house across in front of her at the present time, 645, and as he's saying, the drainage coming off that hill now, it's bad on Massachusetts coming off of Tennessee. So to really go in and try to construct a building, it wouldn't be conducive to that property. We don't have

anything else out on Branyon Heights that would be small like that dwelling he's speaking of on that small parcel of land. So I would definitely speak against it because it will bring down the value of my home, across in front of it.

Mr. Gaylord said all right. Mr. Hunter, anything else that you care to add.

Mr. Hunter said not at the present, but in the meantime, since this is my first time coming to one of these zoning rolls, since I got this letter, I'll go back and do some homework and bring some documentation on this.

Mr. Gaylord said well, depending on how this goes, it may be that that would be a moot endeavor in that it may be that we decide one way or the other this evening. Ultimately, we try to provide that notice so people can come and be heard, and present whatever they think to be prudent. And we can try to make decisions and move forward with the facts and the record in front of us. But if there's something else that you would like to express, please, as the expression goes, speak now or forever hold your peace.

Mr. Hunter said I would rather not crowd that area out there because like I said, we don't have nothing but senior citizens. They already took over half the property out there, from New York Avenue on the bottom end, all the way up to Virginia. So we really need to try to preserve that area because nothing out there but senior citizens, most of them deceased at the present time. We might have three seniors left in that area, and there's no homes out there this small. So I wouldn't want to make that in to a hood, you understand. It's a quiet community.

Mr. Badger asked Mr. Hunter is the airport approach lights behind the house on Massachusetts. Is that behind your house there on Massachusetts Avenue, the approach lights.

Mr. Hunter said yes, the airport is established at the end of California and Massachusetts. They built the airport, that was Spring Lake. They built that airport and took all that property. They moved all the houses off of New York on the end down there. And then they moved Ms. Cooley's house on the end of Massachusetts, just for the airport property. They've been trying to tear that property down the past 15 years, I guess. So I just hate to see someone just start throwing dwellings in there and it's gone. I've been out there, 54 years. I'm 72 now. So that's where I was born and raised, right there on Massachusetts.

Mr. Badger said thank you.

Mr. Gaylord said thank you, sir. Appreciate you. All right. And is there anybody else that wants to present any evidence in opposition to the application. All right. First, Mr. Bagwell I'll give you the opportunity to rebut any of the testimony or evidence presented.

Mr. John Bagwell of 204 Beechwood Drive came forward and was sworn.

Mr. Bagwell said in regards to drainage, you'll probably see it on some of the slides, the brick house next door, why it's dug out so that house can be in there. We'll have to do the same thing. We'll control the drainage. We're actually supposed to put it down, we'll scoop it up. And we've built three houses in the last year over there, within two blocks, and all three of them sold to younger people, which, he's right. A lot of elderly people are there. When they are sold, and these houses are as big as my bedroom, most of the houses. I didn't look up the square footage files on each, three bedroom, two bath. So I don't know the square footage on a lot of the houses. Some of them are a lot smaller.

Mr. Teague said what were the size of houses that you recently built.

Mr. Bagwell said same footprint as this one, 28 by 38.

Mr. Teague asked was it siding or brick.

Mr. Bagwell said siding. I submitted a picture of one that's in that neighborhood. Have a look. It's in the packet there.

Ms. Salley said we don't have that.

Mr. Bagwell distributed a rendering to the Board members. He said that's the front of the house on California Boulevard, probably two blocks from this light.

Mr. Gaylord said okay. So this is on California.

Mr. Bagwell said yes. That was at 507.

Mr. Gaylord said all right. So if there's no objection, we would enter into evidence as Exhibit Three to the application, a photograph of the residence located at 507 California Avenue.

Mr. Bagwell said any of these houses sell in the 130s.

Mr. Gaylord said all right. Anything else.

Mr. Bagwell said no, sir. Thank you.

Mr. Gaylord said okay. Mr. Livingston, is there anything-

A lady from the audience said I have a question. You're accepting photos and videos and all that of old stuff. I have current, today. So is that going to be acceptable as evidence.

Mr. Gaylord said yes, ma'am, we've accepted the evidence that we've accepted, and the opportunity to present evidence in opposition to the application has passed. Now, there will be an opportunity a little bit later on to make any comment for public comment, and make any statement that you care to make regarding the application.

The lady said okay, so when you say evidence, I thought like Mr. Waddell here. He has something on paper.

Mr. Gaylord said correct.

The lady said so I didn't realize that he was going to show you old pictures and old sites and use that as evidence.

Mr. Gaylord said well yes ma'am. And then if people would like to make a comment later, that will be also available to you.

The lady said okay.

Mr. Gaylord said okay. Mr. Livingston.

Mr. Livingston said I'll answer any questions the Board may have. I did want to make one comment about the 40 foot lot. Lot of Record means that it's an existing lot. It's an existing lot before the zoning

ordinance. So even though the zoning ordinance says, and we stated in the report, even though the zoning ordinance says 50 feet is the minimum required lot, a Lot of Record is a lot that was created before zoning laws, which allows that certain privileges, even though the zoning ordinance says that it's 50 feet. It's a Lot of Record, means that you can build on the lot, but it has to meet these requirements.

Mr. Gaylord said correct. And would it be, just for education purposes, Mr. Livingston, would it be fair to say that if the lot were 50 feet in width, we likely wouldn't be dealing with the variance request for reduction of the side setback by 10 feet.

Mr. Livingston said yes, that's possible, and that's also included in the report. That's correct.

Mr. Teague said I have two questions, one the grading and drain concern. Will that be covered by the City in the development of the lot.

Mr. Livingston said yes. Mr. Jay Squires, Stormwater Manager and it's also included as part of the conditions of approval. So before the contractor can build on this house, he has to meet with Jay Squires and Buddy Bush and discuss the storm water issues. We can also identify case files of the issues and concerns with the storm water issues. And make him aware of it, so that he knows that this issue is going to come up.

Mr. Teague said my other concern about... I took it that there was a concern that maybe you wouldn't have as good a clearance to see when using the road. But this structure would not affect the front setback. Correct.

Mr. Livingston said so, what you're asking about is the sight triangle.

Mr. Teague said okay.

Mr. Livingston said so, if someone's coming down the opposite side of the street to the stop sign. As long as that house is not within the sight triangle, then you are okay as far as construction. So, when we take a look at this corridor, we took a look to make sure that there are no issues with the sight triangle. Most City streets, as long as you're 10 feet away from that curb, then you're allowed to build within that area. This property, this construction has to meet the 15 feet front building lot setback.

Mr. Gaylord said okay.

Mr. Livingston said so, it's already five feet over the required setback.

Public Comments / Questions:

Ms. Poliakoff motioned to open public commentary and was seconded by Mr. Teague. The motion carried by a vote of 5-0.

Ms. Waddell said I just want to make a comment about the houses he built already in the neighborhood. California Avenue is on this side of the building and on that particular street, all those lots are pretty much level. The lot that's in question right now, is at a summit that's real slanted. That level coming up the hill is real slanted. So, my point is, it's going to be an issue with the flooding. I mean, the water issues, water coming off the lot. Plus also, they have the driveway coming off of Massachusetts Avenue. Just like I say, coming down the street, it may have a problem seeing cars coming from that area. I live at 106 Tennessee Avenue, directly adjacent to the site. And so, I'm 56 years old. And in this particular neighborhood, there are no houses that small. Other than it was that he might've built further up the road from me. And the

houses I have seen built in that neighborhood are some nice looking houses. But at the same time, those houses are further up the road. And I do not know the size of the lots, but the houses are bigger than the house on this particular lot. Because, you mentioned that the size is still 4500, even though it needs to be built before the zone setback requirements were established to help prevent neighbors being upon each other. And even if you reduce the setback, push the house closer to road, I still say would still be on that site, owner property values in that neighborhood... I don't know what size the house. I'm not trying to guess the size of the house you're going to try to put on. I'm looking at... There's no house you can put on that lot that would, to me, make that neighborhood look any better. That particular lot has been an open lot since I've been here. The neighbor that's adjacent on that side, Mr. Black, he always thought that was his property. I wasn't aware that those two lots even existed. But most of the houses in my neighborhood are bigger than that particular lot. I don't see just allowing somebody just to put a house there, just because its open land and they bought the property at tax sale. I've talked to other people in that neighborhood and they are against any houses going up. Even though this is a Lot of Record. At the same time, they're setback requirements still need to be enforced, I would think. Any type of future building to be put on any lot. To me, really, to own a piece of that pie, that's more than 25%. And I'm saying to myself, that's a bit too much. Making allowance for somebody just to come in and deal on vacant land. But at the same time, people in the neighborhood are against it. I'm pretty sure my neighbors will come up here and they will support what I'm saying, too. So, I put my vote against it.

Mr. Gaylord said all right, Ma'am.

Ms. Wright said good afternoon. My name is Mildred Wright and I reside at 106 Tennessee Avenue, which is the house right beside where he's trying to build. And it's a hill. And the neighborhood was predominantly of African-American inclement. I am 62 years old. The house was built brand new prior to me coming to live there. The neighborhood has been taken over by the airport. Which I still don't understand how that happened. But it happened. And the families that own these properties worked hard. And the children are coming back and they're trying to make them their forever home. So, now we have builders that are coming in and trying to just put up anything. And we're not happy about it. For instance, this is one of the houses that he built. I had the pleasure of speaking to some of his little contractors that came out to look for the markings, is what he said. This is a big house. So can I show it to you. Because this is current. Ms. Wright showed the Board a picture from her cell phone.

Mr. Gaylord said we couldn't accept it and have it set in evidence.

Ms. Wright said I still just want you to see that that's a big house. That's on two lots. And as Mr. Waddell said, the houses that they built, they been on level land. They knocked down houses and built something else. A single family home. Same size, same lot. This particular house is on Massachusetts... California. And it's right down the street around the corner. I believe he did buy it. He did build it. It's 756. Okay. So what our problem is we just don't feel that it's right. That we're being taken over by contractors. Just like they said, to make a dollar. Our families worked hard for these properties. We maintain them and no one lives on top of each other. And what's going to happen is that, they don't explain to me, this house he's going to build, is going to be six feet from my neighbor's. These are senior citizens. They don't understand. And I just feel that they're being taken advantage of. And that's not right. The airport is at the end of the street. I took pictures, I really should have come up when you said evidence, but I thought you meant like paper evidence. The airport is right at the end. Planes are flying all the time over the properties. And we accepted it and we have to live with that. My girlfriend's house we're about the same age. We went to school together. Her mom just deceased. And the airport is right there. There's only a fence separating the airport and the residence. So, the airport has come in and taken over. Now you want us to allow contractors to come in and build on top of us. We deserve to have a nice quiet neighborhood. Which is what Branyon Heights is. It's a hidden gem. And it was built predominantly by African Americans that worked hard, that were entrepreneurs. And they put their heart and soul into these

properties. And it is not fair that someone is being allowed to come in and just put a house right on top of someone else's property. Regardless if it's a City lot. He probably bought it at a tax sale. But we've all been there all of our lives and nothing's ever been built there. So why would we think all of a sudden, I wake up and there's gentlemen out there, digging near my tree, telling me he's looking for something to show that this is the property line. And that little square... That triangle here, there is a huge tree. Where's the tree. What are they going to do with that. It's a huge tree. The gentleman told me that he is not planning to cut the tree down. So, how is all that going to happen. There's a tree there. There's two. So, what is he going to do with the trees. How's all that going to fit in there when there's trees there. I just asking that we get given the same consideration, same respect that anyone else would be getting. Just because we are a mixed neighborhood now, which I welcome. We still deserve to not live on top of each other. Now, this lot has never ever been built on. And there's a reason why. It's on a slope. It's on a hill. I just don't understand why he can't look around and find a nice buildable lot. There's houses over there that probably should be torn down and rebuilt. So why can't you do that. You want to help us to unify the neighborhood. Why not do that. Why try to stick your house right on top of us. My house, 106 Tennessee, is right beside. And where they have the line is right at my fence. So, is this house going to be connected to my fence. I just am frustrated that this gentleman doesn't have enough respect for this neighborhood. And I walked him down and I did a video and I wish I had realized that this could be submitted as evidence. Because I did a walk and explained to you what this property really looks like and how close this house that they want to build is going to be to my neighbor's house. So, I'm just somewhat frustrated. But again, thank you for giving me the opportunity to speak to you. And I hope that you take all of this into consideration when you make the decision. Thank you again.

Mr. Gaylord said yes.

Mr. Strouble said hi, my name is Terrence Strouble. Am I allowed to ask questions.

Mr. Gaylord said well, it's now more a matter of public comment. We as a Board don't typically respond to questions. It's a matter of you providing us with information that we can consider as we deliberate. Are there any other members of the public care to make any comment with regard to this application.

Ms. Poliakoff said do you know you can make comments now.

Mr. Strouble said is that correct.

Mr. Gaylord said yeah. I'm sorry. Yes. If there's something you want to say, now is the time to be heard.

Mr. Strouble said I have a question.

Mr. Gaylord said okay. But no. I mean, you could ask it rhetorically, I suppose.

Mr. Strouble said it's dealing with the setbacks.

Mr. Gaylord said okay. Well, I'll tell you what. I want to make sure that you're heard. So, we might not necessarily immediately respond. Please, say what is you want to say. If it's in a form of a question, that's fine. And there may be some other means of us having a response to it later. Well, let's make sure you're heard.

Mr. Strouble said okay. My name is Terrence Strouble. I own the property across on the other corner of East Bryan and Massachusetts. I want to know what was the setbacks on the power line in the ordinance.

Mr. Gaylord said so, you have a question of what setback is with regard to the power line.

Mr. Strouble said the power transmission line or power line. I don't know which one, that's it.

Mr. Gaylord said okay. Thank you, Mr. Strouble. And I appreciate you working with us here. All right. Any other members of the public care to make any statement.

Mr. John Bagwell said can I make a comment.

Mr. Gaylord said Well, if you come forward and state your name, so we make sure it's clearly on our-

Mr. Bagwell said they requested to put a larger house on there, but I can only get a two bedroom type house. They want to allow me to put a larger house. The fact that I can't build on it the way it is. They are allowed to build a bigger house, not a small one.

Mr. Gaylord said right.

Ms. Wright said okay. So if he wants to build a bigger house; that means our house will be hidden. And the house that he's building beside... Like, this doesn't make sense. That's a small lot to think that he's trying to build a larger house. Because, that house that I showed you, that's the house. His people told me that that is the house. He's building that same house beside us. Those people, they won't have a backyard. Because, the house that he's built is on two lots. That's what he's not sharing with us. That house that he built, that I showed you, the large house. It's like two lots. Not that little thing. Okay. Thank you.

Mr. Gaylord said okay, Thanks, Ms. Wright. Any other members of the public care to make comments regarding this application. Seeing none, is there a motion and a second to close public comment and open deliberations.

Ms. Salley motioned to close public commentary and was seconded by Mr. Teague. The motion passed by a vote of 5-0.

Board Deliberations:

Ms. Salley said I do have a comment. I am very familiar with the area. I used to live close to it. Matter of fact, right up the street. I did go by, because I wanted to see exactly after getting this on my email, the sites that he was talking about building on. It is so narrow. I don't like comfortability. I don't know how that neighbor who he's going to build next to will enjoy it. And I do know that in the past we have approved where you can allow variances for patios, backyards and like, about the visual. If they decided to build up and plant bushes; that can be a deterrence to trying to get out. From my standpoint, I would not allow it to happen. Not that people would not want nicer homes. But the homes they're in are obviously homes that got history. You already got the history. And I believe that it should not be done. And I'm saying that because, as a person... And I have young men who may want to live in the City, in that area, but will like to have them freedom to be able to move around and outside of their home without the neighbor listening or disturbing the neighbor. There are areas here in the City that have close on residential connection. And that is wonderful. But when you talk about something that's been there, I do not feel that it needs to be disturbed in that matter. I'm not saying don't build, but you can't build on something that small. I know I don't approve of it.

Mr. Badger said well, I agree with you. I drove out and looked at it and it is a small lot and that big tree there. I'm looking at the picture, you can see that whoever lives next to it, apparently considers that their tree, because they put bricks and things around it. I would have thought they were there pretty often. It is a small area, there's no doubt about it. If it's a small house properly done, that's what we're all looking for.

Ms. Poliakoff said I appreciate everybody coming out. I understand your concerns. And I would probably share the same concerns. But if I'm understanding this correctly, the owner can build there, period. If he builds a smaller house, is that correct. So there's going to be a house going up there, most probably, I'm assuming. So, I would probably go with the recommendation of our Planning Department with the conditions set forward. That's my opinion.

Mr. Teague said well, I'm a little torn on it. The issues that have been set forth by the folks in the neighborhood. I mean, if it has a five foot setback, if you're beside someone and you can't, unfortunately, can't get around that. If any of the other lots, if someone builds, they can build within five foot of the property line. And so, it's almost like some of the concerns are to keep the area from building up in maybe a growing area. I don't know. I don't live in that area to know if it's been growing recently or not. I also could see it, for the City to encourage folks to build houses, to grow the taxable base. But I also see the concerns of the folks in the neighborhood that have lived there for years and years. And this is a small lot. I think the concern with the grading and drainage will be taken care of by the City and someone that's employed with the City will see to that. Those are just my thoughts.

Mr. Gaylord said thanks, Mr. Teague. Well, first I want to thank you all for coming out and making sure that you're heard this evening. Certainly that's what we're here to do is to make sure that all the voices are heard and that we have as much information as we possibly can to make as an informed decision as we can. So thank you for doing that. Ms. Wright, thank you. Apologize for confusion about process that I feel like you probably adequately were able to verbally describe what you've may have put in videos. So, I don't want you to feel like you may have missed anything. I think your statements were impactful. As with Mr. Teague, I find myself conflicted in that we like to try to promote it to productive use of property. And as I noted earlier, we have a lot that was developed at a certain time. And at the time that the subdivision was made, there was a presumably, by somebody, there was a concept of what it would look like. And then subsequent to that, someone else developed a zoning code that really wasn't, probably, specific to that piece of property, but just described areas generally and left a piece of property like this, that becomes an outlier. It's probably a big part of the reason why it's been so long where there's never been much productive use of this property, that at least there's never been anything built upon. Maybe it's been productive to somebody. Playing in the yard, if you will. It occurs to me that one of the findings we'd have to make is that, subsequent to the granting of this application, that the application and implementation of this development would be consistent with the scheme. That's the exact terminology, the scheme of the neighborhood. Looking at the photograph we have at present, I did question whether that would be the case. While I acknowledge and believe that it's consistent with what was probably intended at one point, it seems that a lot of structures have been built on double lots, or even in some cases, triple lots. Although it appears that there are smaller structures too, but even those are largely built on double lots. It would seem, from what I can tell, the house next door may encroach, maybe owned collectively. And then the house behind this, which I understand is Ms. Wright's house, would be the two parcels that are most similar and seem to be roughly similarly sized lots. I would point out that even if this were constructed, no matter how or constructed there would still be a 20 foot setback applicable to that back boundary line. If that might give Ms. Wright any solace. Probably not. My suspicion. She had expressed reservation about something being built all the way to her fence. Certainly, the setback line would prevent that. Those are my thoughts, meandering as they might be. Anybody else have anything that they might want to add.

Mr. Teague said it certainly can't go beyond 64 square feet. The house. That's too small an area.

Mr. Gaylord said under Subsection D, it says, "the authorization of a variance there will not be a substantial detriment to the adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance." Does anybody have any concerns in that section to grant [inaudible].

Mr. Teague said I don't have an opinion on that, really.

Mr. Gaylord said and I think so we can keep the public informed, there are five findings that our Board must find exist in order to grant any variance application. Mr. Livingston pointed these out, but in that it's a relevant point, I'll just clarify. First is that "there are extraordinary and exceptional conditions pertaining to the particular piece of property." Second is that "these conditions do not generally apply to other properties in the vicinity." Third, "because of these conditions, the application of the ordinance in the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property." Fourth, "the authorization of a variance will not be of substantial detriment to the adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance." Finally, "in granting a variance, the Board may attach to it such conditions regarding the location, character or other features of the proposed building structure or use as the Board may consider advisable to protect established property values and the surrounding area, or to promote the public health safety, or general welfare." As Mr. Teague had pointed out the question would be requirement, yet the authorization of a variance will not be of substantial detriment to the adjacent property or to the public good and the character at the district will not be harmed by the granting of the variance. On one hand, I would think that if a lot may be buildable, a lot of the concerns are just generally the development of that lot and not as much on whether the structure placed there is 10 feet wider. On the other hand, it would seem that a home that is 10 feet wider probably fits a little bit better with what we see in the neighborhood as opposed to 10 feet more narrow.

Mr. Teague said yeah. I agree with that. Necessarily, I kind of agree that a house should go on the lot. I think the City has presented sufficient findings. It's either you get a tiny house or you get a normal sized house. That's kind of the predicament that I see.

Ms. Salley explained to the Board she felt negative about it, and felt they needed more information. I know that's what we're here for.

Ms. Salley said would you like to carry this over to another time.

Mr. Gaylord said well, if there is a motion and a second to table the application to further deliberation, that's your motion.

Ms. Salley said that would be my motion, to table it to another time, to give us some more insight to look into the actual request as far as what is out there on our zoning ordinance and what happens because it was an older lot.

Mr. Gaylord said Miss Salley respectfully asked, would it be fair to clarify the motion that would be to table this to our March meeting.

Ms. Salley said yes.

A motion was made by Ms. Salley to table the application until the March meeting. The motion was seconded by Mr. Badger and failed with a vote of 2-3, with Ms. Poliakoff, Mr. Teague, and Mr. Gaylord in opposition.

Mr. Gaylord said are there any other motions that can be made. I'm a bit concerned that... I don't know that anything changes on our decision then as opposed to now, we got to make tough decisions. Personally I feel we need to make the decision.

Ms. Salley said okay.

Mr. Teague said yeah, that's my position too. I felt like if we can table it, but the same folks that live in the community are still not going to want the house and the parameters that we're dealing with are going to be the same. That's why I think we should just go ahead and make a vote now.

Ms. Salley said I agree.

Mr. Badger asked what we are going to say it's got to be no bigger than this 1,064. Is that our decision.

Mr. Gaylord said I'm sorry Mr. Badger, I didn't catch that.

Mr. Badger said at the top of the second page it says the proposed structure is 1,064 square feet.

Mr. Gaylord said yeah. That requirement would continue.

Ms. Poliakoff said but you're right. That gives us the square footage is what you're saying right. That's the square footage of that, according to them.

Mr. Badger said yeah. That takes up about 25% of the place.

Mr. Gaylord said well, is there any motion to accept or dispute the findings of the City with regard to the conditions that must be satisfied for the granting of a variance request. (silence) Let's put it like this. Is there any motion to accept the City's findings, that there are extraordinary and exceptional conditions pertaining to the particular piece of property.

Ms. Salley motioned for approval to accept the City's finding #1 and was seconded by Mr. Teague. The motion carried with a vote of 4-1, with Mr. Badger in opposition.

Mr. Gaylord said is there a motion to accept the City's findings with regard to the question of whether these conditions do not generally apply to other properties in the vicinity.

Mr. Teague motioned for approval of City finding #2 and was seconded by Ms. Poliakoff. The motion carried with a vote of 5-0.

Mr. Gaylord said is there a motion for the adoption of the City findings regarding the question of, because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict utilization of the property.

Mr. Teague motioned for approval of City Condition # 3 and was seconded by Mr. Badger. The motion carried with a vote of 4-1, with Mr. Gaylord opposed.

Mr. Gaylord said is there a motion with regard to the question of whether to adopt the City's findings with regard to the question of whether an authorization of the variance will not be of substantial detriment to the adjacent property or to the public good and the character of the district will not be harmed by the granting of the variance. Is there a motion to that.

Mr. Teague said I'm going to move to accept the City's recommendation, but for the sole reason that if we don't, something worse is going to go on the property. That's the only reason I'm moving to accept the City's recommendation.

Ms. Poliakoff said I have to agree with that. I think that's where we are. We just don't have much choice as far as I see. That's my opinion.

Mr. Teague motioned for approval of City Condition # 4 and was seconded by Ms. Poliakoff. The motion carried with a vote of 4-1, with Ms. Salley opposed.

Mr. Gaylord said is there a motion with regard to the granting of the variance to the City's conditions to be applied to any approval.

Ms. Poliakoff motioned for approval of the variance, subject to conditions 1-8 as outlined in the staff report, and was seconded by Mr. Teague. The motion passed by a vote of 3-2, with Ms. Salley and Mr. Badger in opposition.

VAR 21-02-02 – 348 Preston Street – Variance to district standards – The Owner is seeking permission to convert use of a portion of the property to self-storage in the DT-4 zone district while maintaining current use as a community center. (TMS # 7-11-08-150.00). Mark Everett, Owner.

Mr. Livingston said am I under oath.

Mr. Gaylord said yes, sir. You're still under oath from earlier.

Mr. Livingston said Mr. Chairman members of the Board of Zoning Appeals. This item came before staff as a variance request to district standards of 348 Preston Street. The owner is seeking permission to convert the use of a portion of the property into self-storage in the DT-4 zone district. Pastor Mark Everett is the owner. The City has received a request for the use of the property to be converted to self-storage. A portion of the property to be converted to self-storage is approximately 33,000 square feet. It's currently operates as a church and residential offices, which are allowed. The use of storage facilities is not allowed. In a concurrent staff report, we consulted with Stantec consultant, Greg Lewis. We have determined that the... Stantec consulting assist us with the downtown code. They actually wrote the downtown code and advises that staff that a text amendments would be required to change the table. Stantec consulting has prepared a draft text amendment for the planning commission review and consideration. City attorney Bob Kohler has also indicated that item should appear before the City's department of planning commission Boards and a regular occurrence of the Design Review Board. So it will appear before both Boards. The Protects amendment has to go before City council for two readings. At this time there's no action that will be taken by the Board of Zoning Appeals. This item will go before the planning commission on February 18th at 5:30 PM [inaudible]. I will answer any questions the Board may have.

Board Questions:

Ms. Poliakoff said it will be interesting to see what they are going to do.

Mr. Gaylord said Mr. Livingston, this variance request, is the variance itself been withdrawn with understanding that there's a separate process that would need to be followed.

Mr. Livingston said a various approval of this type would create a non-conformed use, which according to Stantec consulting and the City attorney not be allowed. We've provided you with a copy of the use table that shows that storage is not allowed in the DT district. So we have to take a text amendment, which was provided to us to the planning commission in order to get that approved so storage facilities can be allowed in that district. So that will not just apply to this one property, it will apply to district-wide to afford this.

Ms. Poliakoff said that's what I mean. I'm kind of interested to see what they all approve, because they have to approve that right.

Mr. Livingston said the planning commission does. We're hoping the Design Review Board concurs and once they approve it will be interesting to see if City council approves. So City council has the final say.

Ms. Poliakoff said a lot of storage units will be popping up everywhere. It will be interesting.

Mr. Everett of Northside Church, 348 Preston Street, was sworn.

Mr. Everett said okay. Well good evening to the chairman and members of the council. It's good to be here today. From what I just heard, I think he said tonight, I don't think there's anything to present and that my application has to go before the Design Review Board on February 18th. They'll make a decision and then potentially they'll need to get another decision made by the City council.

Mr. Gaylord said correct.

Mr. Everett said is that it.

Mr. Gaylord said yeah. So the planning commission Design Review Board and then City council, because ultimately your request is more of a legislative nature, which is solely within the purview of City council. We hear the requests of whether it, as you heard the discussion of earliest evening, whether set back requirements should be reduced or whether as an example, if you'll note on this we have the ability to grant a special exception. If there was an SE on here that we'd be able to hear the matter, but otherwise it needs to be changed somewhere else.

Mr. Everett said okay. So there is no benefit of me pleading my case tonight. Okay.

Mr. Gaylord said correct. Yes. With that said, is there a motion to open public comment.

Mr. Teague motioned to open public commentary and was seconded by Mr. Badger. The motion passed by a vote of 5-0.

Mr. Teague motioned to close public commentary and was seconded by Ms. Poliakoff. The motion passed by a vote of 5-0.

Mr. Badger motioned that the variance request be forwarded to the Planning Commission and Design Review Board for consideration, as recommended by the City Consultant and City Attorney, and was seconded by Mr. Teague. The motion passed by a vote of 5-0.

Staff Announcements:

Mr. Livingston said first, I'd like to make the announcement that Emily Thomas has joined our staff. Emily is a Planner on the City staff and comes to us from university with a Sustainability Degree. Emily has worked on GIS systems and other systems as well. So she will be assisting us with that. So we're taking her through the training process of working with all the Boards, including this Board so she is aware of what the requirements are. So this was a tough first case for her.

Ms. Poliakoff said you did a great job.

Mr. Livingston said it was a tough first case for her. I did want to add that the neighborhood's concerns will not fall on deaf ears. We will be reaching out to the Storm Water Manager, Jay Spires, and make him aware of the concerns of the neighborhood regarding the slope and that street. We'll also make Buddy Bush, the Building Official, aware so that he can keep an eye on the project and ensure that it is done

correctly. Then I gave my cards out to the residents and the neighbors, although some are still upset with me, so that we can include their comments in the Comprehensive Plan.

Ms. Poliakoff said that's a good idea.

Mr. Livingston said that's where staff gets a lot of its direction.

Ms. Poliakoff said that's a really good idea.

Mr. Livingston said a majority of the Comprehensive Plan at this point states that this area should continue to be developed. If there is an interest in doing something different, sidewalks, more curbing, storm drain, all of that can be included in the Comprehensive Plan for future comments. And that they can also be prepared for any future variances. There will be more based on all of the lots that you see out there. There will be more variances out there. So they need to be prepared for future variances.

Ms. Poliakoff said maybe get proactive on the sidewalk things and that would help even for some of that potentially. It's just a suggestion.

Mr. Livingston said we're going to reach out to the neighborhood to ask them to make comments for the Comprehensive Plan, recommendations, we have a couple of issues out there that we probably need to get on the record, so we will do that as well. I think Julie has a couple of announcements. There's one Board member vacancy. I'm trying to work on getting that filled with Connie Kellner, Clerk to Mayor and Council. Then I believe there are some new training opportunities for Board membership regarding Continued Education.

There being no other business, the meeting concluded at 7:30 P.M.


Ryan Gaylord, Chair

Minutes edited by Julie Roland and Logan Witter