

**ZONING BOARD OF APPEALS
MEETING MINUTES
SEPTEMBER 26, 2007
COUNCIL CHAMBERS
7:30 P.M.**

I. CALL TO ORDER

The meeting was called to order at 7:30 p.m.

II. ROLL CALL

Present: H. Vick, J. Bailey, J. Tillman, G. Udoji, R. Andrews

Staff: N. Voght, City Planner, N. Schuette, Exec. Secy.

III. APPROVAL OF MINUTES – AUGUST 8, 2007

Commissioner Tillman moved to approve the minutes of August 8, 2007 (Support: J. Bailey) and the motion carried unanimously.

IV. PURPOSE OF MEETING

The purpose of the meeting was stated by Chairperson Vick. There are two requests for variances and Ms. Vick stated how the meeting will be conducted.

V. OLD BUSINESS

None

VI. NEW BUSINESS

1. 301 S. Hamilton

N. Voght presented the staff report stating that the applicant is requesting a variance to allow a 17.5 s.f. pylon ground sign, where the Zoning Ordinance limits maximum signage to 6 s.f.

The applicant had maintained a 15 s.f. pylon sign at the southeast corner of South Hamilton/Catherine Streets since approximately 1984. A sign permit was granted at that time to erect the sign, although signage regulations since at least 1975 limited signage in the R-2

district to a maximum of 6 s.f in area, and 8 ft. in height. The sign was destroyed in an automobile accident and the owner is seeking to replace the sign, although slightly larger. The intent of residential signage restrictions is to maintain the residential character of the R-2, One and Two-Family zoning district. Non-residential uses, such as the church, may have any two of the allowed signs, a maximum of six s.f.

Voght reviewed the standards for variance with comments as noted below:

Section 122-879 provides findings that must be made by the Zoning Board of Appeals when a sign variance is requested. Note that these are different standards than those required for a typical dimensional variance.

Sec. 122-879. Appeal.

An appeal from the decision of the building inspector shall be heard by the zoning board of appeals.

(1) Variance. A variance may be allowed by the board only in cases involving practical difficulties or unnecessary hardships when the evidence in the official record of the appeal supports all of the following affirmative findings that:

- a. The alleged hardship or practical difficulties, or both, are peculiar to the property of the person requesting the variance, and result from conditions which do not exist generally throughout the city.*
- b. Allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this article, individual hardships that will be suffered by a failure of the board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.*

Staff analysis of the proposed variance in relation to these standards follows:

a. The alleged hardship or practical difficulties, or both, are peculiar to the property of the person requesting the variance, and result from conditions which do not exist generally throughout the city.

The subject site occupies 2/3rds of a city block, and includes a large parking lot. The church fronts on a major thoroughfare, South Hamilton Avenue. Even at the posted speed of South Hamilton, a sign 6 s.f. in size would be difficult to read. This presents a practical difficulty regarding adequate signage for South Hamilton traffic.

Staff notes the existing wall sign, which is approximately 18 inches high and 15 ft. long, faces South Hamilton, but may not be at an effective angle to advertise the church to drivers.

b. Allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this article, individual hardships that will be suffered by a failure of the board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.

Allowing the variance will result in substantial justice, considering a 6 s.f. corner sign would be relatively ineffective for viewing ability from passing vehicles on South Hamilton, a major thoroughfare. The proposed sign will be located facing the street, and not the adjacent neighborhood to the north, and is not too large and commercial in nature.

Commissioner Andrews asked if different standards were being applied than a previous applicant also in a residential area and Voght responded the difference is more to do with location since S. Hamilton is more of a major thruway. Voght added that the board should ensure that the sign is placed on the northwest corner of the lot toward south moving traffic for better visibility.

Commissioner Bailey moved to open the public portion of the hearing (Support: J. Tillman) and the motion carried unanimously.

Judy Morey, 1205 Whittier – stated that she is concerned about the proliferation of digital signs and was not favor of such a sign if that is what is being considered.

Doug Clare, Westland – installation contractor of the sign. He stated it will be located in the same location angled at 45 degrees to the west from a north facing direction as requested by staff. The sign will be an interior illuminated sign with changeable track message. Commissioner Bailey asked if this is the standard sign used for many churches to which Mr. Clare responded in the affirmative.

Al Robinson, member of the church and Chairman of the Board of Trustees – asked for approval of the variance request.

Ms. Williams, member – addressed the concern of a previous speaker that this will not be a digital sign.

Willie Witherspoon, member – is supportive of this request. He added that the sign would include the name of the pastor.

Commissioner Bailey moved to close the public portion of the hearing (Support: J. Tillman) and the motion carried unanimously.

Commissioner Andrews was concerned about sign because it is her opinion that the standard being applied was not consistent with what the ZBA required of a previous applicant on Adams Street with regard to material, lettering, etc.

After further discussion by board members, it was agreed that another condition should be added that it would not be an LED, scrolling, rolling type sign.

Commissioner Udoji moved to approve a sign variance to allow a 5 ft. x 3.5 ft. pylon sign, 6 ft in height, as shown in the presented diagram, in the R-2 zoning district at 301 S. Hamilton, based on the following findings and conditions:

Findings:

- 1) The property is zoned R-2, One and Two-Family Residential.
- 2) The church is located on South Hamilton Avenue, a major thoroughfare in the City.
- 3) The maximum signage allowed by Zoning Ordinance for the R-2 zoning district presents a practical difficulty in allowing a sign that is visible from South Hamilton traffic.
- 4) The proposed sign will face northwest, towards the major street, rather than towards the adjacent single-family residential neighborhood.
- 5) The former sign at the proposed location was substantially similar in size and design, and was previously permitted in 1984.

Conditions:

- 1) The proposed sign shall be located outside the corner visibility triangle.
- 2) Maximum size of the signage area shall be 17.5 s.f.
- 3) The proposed sign shall be angled at least 45 degrees to the west from a north-facing direction, or more, to ensure the sign is faced towards the major thoroughfare.
- 4) That the sign would not be an LED, scrolling, rolling type sign.

The motion was supported by J. Tillman and a roll call vote was taken with a vote of 4:1. in favor. Commissioner Andrews voted against the motion.

2. 1512-1514 Washtenaw County

N. Voght, City Planner, stated that this is a request for variance approval to allow a single business tenant to occupy 4,680 s.f. of floor area in a building in the B-1, Neighborhood Business Zoning District.

The applicant acquired a 4,680 s.f. commercial building at 1512-1514 Washtenaw. Two tenants previously occupied the building, with both floor areas 3,000 s.f. or less. The owner intends to open a retail consignment shop at the location and would like to occupy the entire building floor area. Section 122-351, description and purpose of the B-1 zoning district, states the following:

The Neighborhood Business District is intended to provide for the convenience shopping of persons living in nearby neighborhood residential areas and for general uses and activities of a retail and personal service character. Only those uses which are necessary to satisfy the local needs, and which occur so frequently as to require commercial facilities in proximity to residential areas, should be permitted. In addition, low-intensity business and professional offices may be allowed. Each use within this district shall be no larger than 3,000 square feet for a single business occupant development and no larger than a total of 5,000 square feet for a multi-tenant business development. The Planning Commission shall be authorized to allow an additional 1,000 square feet of building size for projects consistent with the character and intent of Section 122-351.

While the previous divided use complied with the 5,000 s.f. maximum floor area requirement, the request to have one business occupy more than 3,000 s.f., and up to 4,000 s.f., requires

Planning Commission approval of an additional 1,000 s.f., and a variance from the Zoning Board of Appeals to use the remaining 680 s.f., for a total of 4,680 s.f.

The applicant applied to the Planning Commission to request an additional 1,000 s.f. of floor area for the proposed use, which was reviewed during the August 15 and September 19 meetings. The Planning Commission approved the request for an additional 1,000 s.f. of floor area, for a total of 4,000 s.f., after City Council amended the Zoning Code to allow antique, consignment and resale stores in the B-1 district. Therefore, the variance request is to allow the single business to occupy the remaining 680 s.f.

Voght reviewed the standards for variance that applies to this issue with his comments as follows:

A variance from the literal enforcement of this Ordinance may be granted by the Zoning Board of Appeals only if all of the following standards are met.

- (a) Literal enforcement of this chapter will pose practical difficulties to the applicant because of special conditions or circumstances which are unique to the specific property such as: exceptional shallowness or shape of the property, exceptional topographic conditions, extraordinary situation of a building or structure, use or development of an adjacent property, or difficulties relating to construction or structural changes on the site. Mere inconvenience or a desire to attain higher financial return shall not itself be deemed sufficient to warrant a variance.**

When the building was divided into two tenant spaces in 2003, the larger space occupied by Design & Copy 101 did not meet code in terms of separate electrical service and bathrooms. The current owner acquired the space with the intent of using the entire 4,680 s.f. of floor area. Significant code upgrades would be required if the building were to be used as two tenant spaces, including separate electrical service and barrier-free bathrooms. In addition, the viability and marketability of a tenant space approximately 700 s.f. in size is questionable. These are practical difficulties related to the construction of the building. This standard is met.

- (b) Such a variance is necessary for the preservation and enjoyment of a substantial property right enjoyed by other property owners in the same district under the terms of this chapter. Granting of the variance shall not confer upon the applicant any special privilege that is denied by this chapter to other land, structures, or buildings in the same district.**

The properties and business spaces in this immediately surrounding area vary in size from 1,600 to 6,600 s.f. in size. Allowing use of this building with 4,680 s.f. of floor area will not grant a special privilege to the applicant. This standard is met.

- (c) The alleged practical difficulties on which the variance request is based have not been created by any person presently having an interest in the property.**

The practical difficulty of making two separate tenant spaces to code was not created by the applicant; however, the property was acquired in this condition. In other words, these floor area and building code difficulties may be construed to be self-created as they existed at the time the building was acquired. This standard is not met.

- (d) The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.**

The requested variance would allow a single-business tenant to occupy 4,680 s.f. of floor area, instead of 4,000 s.f. Granting the variance to allow the difference will not be detrimental to the public welfare or property in the neighborhood. This standard is met.

- (e) The allowance of the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Ordinance, the individual hardships that will be suffered by a failure of the Board to grant the variance, and the rights of others whose property would be affected by the allowance of the variance.**

Allowing the variance will result in substantial justice in balancing individual hardships of significant code upgrades required for two separate tenant spaces with the intended public benefits of the zoning restriction on reduced floor area for businesses in the B-1 district. This standard is met.

- (f) A variance granted shall be the minimum variance that will make possible a reasonable use of the land, buildings or structure.**

The requested variance is the minimum required, since the Planning Commission approved an additional 1,000 s.f. for the business. This standard is met.

Staff added that the proposed variance request substantially complies with all but one of the required standards. The building code requirements and viability of any remaining 700 s.f. tenant space are practical difficulties related to the construction of the building. On the other hand, although the owner did not create the zoning restriction limiting floor area or the problem created to required building code changes for two separate tenant spaces, notice of these issues should have been revealed by proper due diligence prior to acquisition of the property. It was staff's recommendation to hold a public hearing to solicit neighborhood input prior to making a decision to approve or deny the variance.

Board members had a number of questions of staff regarding previous owners and the use of the building.

Commissioner Bailey moved to open the public portion of the hearing (Support: R. Andrews) and the motion carried unanimously.

Chundra Johnson, owner of 1512-1514 Washtenaw – stated that some of the practical difficulties that Mr. Voght referred to is that part of the building was never compliant with city

codes when it was divided. It would require separate electrical service and another bathroom facility. There is also a large furnace on the remaining portion of the building (680 s.f.) These were some of the issues that came up when she was deciding how to divide the space.

Some questions were asked by board members about placement of the wall to which Ms. Johnson responded in detail using the schematic that was provided. Commissioner Bailey added that the wall that is marked on the schematic at 4,000 s.f. is not an existing wall. If it were put up at the 4,000 s.f. mark, there would be very little space between the two walls in this new suite. Currently, there is a wall at 3,000 s.f. Commissioner Bailey asked the applicant if it is her opinion that her business could use up the whole space and Ms. Johnson responded in the affirmative. She has been open for three weeks and has had a tremendous response from the community in the number of consignments she has received.

Chairperson Vick asked about the 870 s.f. space and Ms. Johnson responded that one is a bathroom and is part of the 3,000 s.f. that they are currently using since it is required that they have two bathrooms in the current space.

N. Voght asked if the one furnace can serve both suites if separated and Ms. Johnson responded that she was unsure. Mr. Voght added that according to Mr. Boulard, Building Supervisor, regarding HVAC, it is possible for two suites to share it but if two different types of businesses are involved (i.e. nail salon and office) it is possible that any fumes from the nail salon going into the office would be incompatible. Therefore, it would depend on the uses.

Judy Morey, 1205 Whittier – not supportive of this request. It is her opinion that it is incumbent on the applicant to have known zoning prior to purchase.

Yvonne Abdo, 2028 Collegewood – is against this request for a variety of reasons. She stated that in January, 2000, there was a request to open a second hand shop in that same building which was denied because of the impact on the neighborhood and special use permit. The zoning was specified on that property and what is allowed is quite clear. The text amendment was applied for to consider changing it to B-2 which would change it for the entire city. It is the contention of Ms. Abdo that all residents in adjoining areas were not properly notified.

Commissioner Bailey moved to close the public portion of the hearing (Support: J. Tillman) and the motion carried unanimously.

Chairperson Vick stated that this did come before Zoning Board of Appeals in January, 2000. At that time, B1 zoning excluded antique stores, consignments and thrift shops. That has since been changed by the Planning Commission to include them so they do not need a variance to operate. The only variance before this board at this meeting is in regard to spatial requirements, which is a totally different issue. She questioned staff about the comment of Ms. Abdo in regard to noticing. Voght responded that we gave more notice than we usually do in this case, by including the planning commission review of the additional 1,000 s.f., as well as the ZBA meeting. This was a special meeting requested by the applicant. We gave the applicant the option of going back to Planning Commission first, have them rule on the 1000 s.f. then time it for ZBA shortly thereafter. That is what the applicant chose to do. She paid the fee, she got a special meeting which was noticed and in fact, Voght also included the

Planning Commission action, which did not require public hearing or any notice at all. He added that as a courtesy to the neighborhood.

Commissioner Andrews stated that this is a B1 area and it is her opinion that we should adhere to zoning and not make an exception. The applicant does not have to have the whole space to be successful. She has been granted the extra 1000 s.f. by the Planning Commission. Mere inconvenience or financial concern should not be considered – this was self created by the applicant by expanding that far and saying that the second space would not marketable.

Commissioner Udoji agreed with Commissioner Andrews adding that he does not feel that due diligence was pursued by the applicant. This was strictly a business decision that was made when the property was purchased.

Chairperson Vick disagreed with Udoji on his statement of due diligence although she does agree that the applicant could have checked the zoning. The applicant bought a building with two uses and it is Ms. Vick's opinion that the City was the one who did not exercise due diligence when they allowed the tenant to break away in 2003 and never went back and checked it. It is easy to understand that when you purchase a building with two uses, it is allowed. Commissioner Andrews responded that the opposite is true in that the applicant expected to use the whole building for one business. Commissioner Tillman questioned as to what can conceivably be done with 680 s.f. Commissioner Andrews stated that this was caused by actions of the applicant seeking to expand the space and the Zoning Board applying the standards. She does not have to reduce it to 680 s.f. and could make a different choice to make it marketable. Commissioner Bailey added that while the applicant chose to avail herself of the process and the ordinance does allow for the Planning Commission to give an applicant another 1,000 s.f. which they did, everyone has done what they are allowed to do. He does not have any problem with the building being used as it has in the past as one tenant rather than two.

Chairperson Vick stated that she agrees with Commissioner Andrews on the point of being a financial issue and that we should apply the standards equally to everyone.

After further discussion, Commissioner Vick moved to deny the request for variance to allow a single business tenant to occupy 4,680 s.f. of floor area in the B-1, Neighborhood Business District based on the following:

- 1) The applicant does not meet standard (a) which is the fact that the only difficulty is that it is an inconvenience or desire to attain a higher financial and does not seem to be deemed sufficient to warrant a variance.
- 2) While the practical difficulty of making two separate tenant spaces to code was not created by the applicant, the property was acquired in this condition. These floor area and building code difficulties may be construed to be self-created as they existed at the time the building was acquired.

The motion was supported by Commissioner Udoji and a roll call vote was taken with a vote of 3:2 to deny the variance. Commissioners Bailey and Tillman voted against the motion and the motion carried.

VII. ADJOURNMENT

Since there was no further business, Commissioner Bailey moved to adjourn the meeting (Support: J. Tillman) and the motion carried unanimously. The meeting adjourned at 9:10 p.m.