

Zoning Board of Adjustment Report
Meeting Date: 2/28/06
Report By: Lisa Rhiney

The Zoning Board of Adjustment consists of 5 board members and two supernumerary members who are called upon if one of the 5 board members can't attend the meeting. The board members in attendance on 2/28/06 were Dan Gibson (chair), Joe Romanek (Vice-Chair), John Sheffield, John Crummie and James West. There were approximately 50 other individuals in the room for this meeting.

As with the last meeting, Dan Gibson called the meeting to order and explained to those in attendance how the meeting would proceed. The following are the petitions that were brought before the board on 2/28/06:

The petitioner (Monticello Construction) requests a variance from setback requirements for an existing single family home. This petitioner came before the board at the last meeting. The board voted 3-2 against this variance the last time, but for some reason the board has agreed to rehear this request. Apparently, a petitioner can ask the board to rehear a request. As long as 3 of the board members approve, the petitioner can go before the board even though his petition had been denied at a previous meeting.

Issues: The home in question is new construction. Apparently the builder failed to adhere to zoning regulations and built the home within the setback zone. Both the garage and the front porch encroach upon the setback area. The builder only realized that he built the house in the wrong spot after it was complete. Because of this, mortgage companies will not lend money on the home until the builder receives a variance from the city. The house is currently off the market until this matter is resolved. The builder apologized for not coming to the last meeting himself. He explained how the error was made. He noted that the greatest encroachment was 12.5 feet into the 35 foot setback area. The board asked what it would take to bring the house into compliance. The builder said that the house would have to be torn down. The builder brought a petition from the neighbors which said that they support the home staying where it is. The builders lawyer spoke and said that the error was inadvertent and that tearing the house down would put an undue burden on the petitioner.

Opposition from the floor: None

Vote: 2 to 3 against. I assumed, incorrectly I might add, that because the board agreed to rehear this request that it was going to get approved this time. I was shocked when they voted against it again. Now the petitioner will have 15 days to file an appeal with the circuit court.

The petitioner requests a variance from setback requirements to add an addition to a home in North Hampton. The petitioner has 4 small children and they need more living space. They have discovered that it is less expensive to add on to their existing home than to buy a new home.

Issues: The board had questions about drainage on the property. A city employee showed them a map which indicated the addition would not impact a drainage easement. The addition also will not impact restrictive covenants in the neighborhood.

Opposition from the floor: None

Vote: 5 to 0 in favor.

The petitioner requests a variance from the residential occupancy restrictions to allow an extension of the deadline to register a property in the historic district. This will allow the petitioner to continue to house 3 unrelated individuals in the home. The new zoning ordinance limits it to 2 unrelated individuals. The property owners were given 6 months to file the paperwork to be grandfathered in under the old rules.

Issues: The petitioner claims she was unaware of the deadline because a notice went to a previous owner of the property and the certified letter was not signed for until after the deadline to file the appropriate paperwork. However, it was determined that the petitioner's son was one of the renters in the house and that he did receive a notice but failed to understand its importance and therefore did not forward it on to his parents. Also, the board noted that the deadline was advertised in the paper several times.

Opposition from the floor: An individual representing the neighborhood said that this was a non-student, family neighborhood and they opposed the exception. This person also noted that there were significant parking problems in this cul-de-sac due to the renters parking several cars in the street. This problem impacts city services such as trash pick up.

Vote: 0 to 5 against. This vote was consistent with the vote on a similar case in January. Both were denied.

The petitioner requests a setback variance to build an accessory structure in the Heritage Hills neighborhood in order to store some equipment for a lawn care business. This building was going to be a large metal structure. The setback requirements are that the building would have to be 9 feet from the lot line because it is a corner lot.

Issues: The size of the building was an issue. It will be large enough to hold two trailers and would include some work space so that the home owner could work on his lawn care equipment. Also, the style of the building was a problem. The homes in this neighborhood are brick and this building is a metal butler building.

Opposition from the floor: There was a lot of opposition. The adjoining neighbor was against it because the building would be very close to their home. The neighbors were particularly concerned over the commercial look of this storage building. It was too big and did not fit in with the style of the neighborhood. The neighbors were concerned that the petitioner would be working on his equipment at all hours and because the building was going to be so close to the adjoining neighbor, the noise and lighting would be a problem.

Vote: 1 to 4 against. I have to note that the petitioner can still build this building... he simply has to move it 9 feet off the property line. If he does there is nothing the neighbors can do to stop it. I would bet that this is exactly what he will do.

The petitioner requests a variance from lot area standards. R-3 lots need 7,500 square feet per lot. This single lot was going to be split into two smaller lots. The new lots were

going to be just a little bit short of the 7,500 square foot standards due to some curb improvements.

Issues: Apparently the lots were very close to meeting the standards – the only thing that was holding them back was some curb improvements the builder was going to make. If he didn't make these improvements, there would not be a problem. There would be one single family home on each lot. The board did not appear to have any problems with this request.

Opposition from the floor: There was a person who was opposed to this plan.

Apparently there are parking problems in this area. The individual thought that putting two small homes on two small lots would increase the parking problems. Also, it appeared that there would not be any room for sidewalks on these two lots. The person said that they are having problems with rental properties already.

Vote: 5 to 0 in favor.

The petitioner (Jack Kubisen) requests a special exception related to parking requirements to build an apartment building on University Boulevard. The proposed location was in the building that is across from the Security Bank Bldg and next to DePalma's restaurant. The entrance to these 5 apartments will be from the rear of the building – in the AmSouth parking lot. The petitioner owns the building. The front street level portion of the building will remain for business use.

Issues: The problem is parking. The petitioner currently rents 6 parking spaces for his building. The apartment building will require a minimum of 9 parking spaces. Joe Robinson said that the petitioner could lease parking for 5 years from the city in the parking structure across the street somewhere. However, the city lawyer pointed out that this was a month to month lease and that Joe Robinson could not commit these spaces for 5 years. The board said that if parking spaces become unavailable in the future, the petitioner would have to come back to the board again to ask for a new variance.

Opposition from the floor: None

Vote: 5 to 0 in favor.

The petitioner requests a special exception to operate a Day Care facility in an area zoned BGO. The exception relates to parking.

Issue: The building has been used as a day care center before. The new owner wants to use it for this same purpose. The problem is that the facility size requires 39 parking spaces but there are only 27 available. There will be 8 full time employees and 7 part time employees. Customers do not park their cars in the lot for more than 15-20 minutes. There will be a drop off and pick up lane in order to facilitate the speed in which care will move in and out of the parking lot. The board asked questions about the business hours, security and playground space. The petitioner has all of the appropriate DHR approvals. The board noted that approval will be subject to the approval of the site plan.

Opposition from the floor: None

Vote: 5 to 0 in favor

The petitioner requests a special exception to operate a personal service shop (nail salon) in her building. There will be a woman renting a single room in the petitioner's building to do nails/manicures on a one to one basis.

Issue: The issue is the parking lot for this business. The board notes that any approval of this petition is subject to the petitioner agreeing to improve the parking lot based on zoning and usage requirements. The petitioner would have to pave and stripe the parking area and would have to put in curbs and gutters. The parking area is currently made from gravel. The petitioner said that she could not afford to do this. The board asked her if that meant she was withdrawing her request. She would not withdraw her request.

Opposition from the floor: None

Vote: 1 to 4 against. If the board had approved this she would have had to make the parking lot improvements. I believe they would have approved it if she had agreed to these improvements. Since she didn't, the majority of the board voted against the request.

The petitioner (Duk Park) requests a special exception to continue to use 2 modular buildings on University Blvd. The petitioner was given a 6 month exception at a previous board meeting, but that deadline passed. The city approved a house to be moved onto the property, but that home was still on a trailer and had not yet replaced the modular buildings as the permanent office space.

Issues: The petitioner claimed that rain had slowed foundation and construction work and therefore requests another 3 month extension. The chairman of the board noted that the only reason the petitioner was before the board again was because the city had threatened him with legal action if he did not remove the modular buildings. The chairman reminded the petitioner that this exception has dragged on for 3 years. The petitioner continually comes before the board with excuses about why he has not built the permanent structure. The city lawyer recommended at this point that they start legal proceedings so that if the board approves the 3 month extension on the modular buildings, the city can go ahead and sue the petitioner if the buildings are not gone by the end of the 3 month period. The board made it clear to the petitioner that there would be no more letters asking him to remove the modular buildings. Any future action would go straight through the legal system.

Opposition from the floor: None

Vote: 3 to 2 against. Recall that there must be 4 yes votes to approve. Therefore, the petitioner must immediately remove the modular buildings.

The petitioner requests a special exception to operate a home occupation business (Neuro-feedback) for ADHD students out of his home. The petitioner currently sees students in their school environment. However, when school is out or on holidays when school is closed he needs a place to continue to work with the children. He sees one student at a time for approximately 30 minutes. He would work until 5 pm at the latest from Monday through Friday. There would be no appointments on the weekends.

Issues: The board asked about neighborhood support. The petitioner said that his neighbors were supportive. There were questions about student safety. A parent would always be with the student. He will be in compliance with all home occupation rules. There would be no signs and no internal or external modifications to the home.

Opposition from the floor: None

Vote: 5 to 0 in favor.

The petitioner, James Sledge, request a variance from the setback rules to add an attached carport. He is going to tear down a detached single car garage and replace it with an attached carport. The carport will be very close to the property line which backs up to a parking lot for some apartments at the back side of his property. A masonry fence will replace a wooden fence that separates his property from the apartment building parking area.

Issues: The board asked about the site plan. The petitioner said that the site plan had been approved by the Historic Commission subject to this variance being approved.

Opposition from the floor: None

Vote: 5 to 0 in favor.

The petitioner requests a special exception to use a modular building being provided to him by FEMA and to place it on a piece of property within the city limits. The petitioner is an evacuee from New Orleans. The modular building would be on a vacant piece of property owned by a friend of his.

Issues: The board asked the petitioner how long he would need this exception to be in place. The petitioner did not know, he did not have the trailer but it was in route. The board indicated that they normally approve these types of variances for 1 year. If after this one year time frame he would have to come back and get an extension if he needed more time. The board said that if the requests was approved, the period of one year would start today (2/28/06) and would last for one year.

Opposition from the floor: None

Vote: 5 to 0 in favor.