

ZONING BOARD OF APPEALS
TUESDAY, AUGUST 20, 2013 @ 7:00 P.M.

CALL TO ORDER: 7:12 p.m.

COMMISSIONERS: Chairperson Laurie Slade
Mr. Sam Anderson, Jr.
Mr. Carlos Bueno
Ms. Patricia Hollis
Ms. Debra Monroe
Mr. Ahmad Taylor (Excused)
Mr. Lee Todd

CHAIRPERSON SLADE: I will call the meeting to order. Roll call, please.

MR. SABO: Bueno?
MR. BUENO: Here.

MR. SABO: Todd?
MR. TODD: Here.

MR. SABO: Monroe?
MS. MONROE: Here.

MR. SABO: Hollis?
MS. HOLLIS: Present.

MR. SABO: Anderson?
MR. ANDERSON: Here.

MR. SABO: Slade?
MS. SLADE: Present.

EXCUSED: Taylor.
ABSENT: None.

ALSO PRESENT: Mr. James Sabo, Professional Planner
Mr. Gordon Bowdell

COMMUNICATIONS: None.

ADOPTION OF MINUTES: March 26, 2013.

The bar is a neighborhood bar which opened at 11:30 a.m. and closed around 7 & 8 p.m. Absent an occupancy permit, the bar cannot be used nor can the property be utilized for any use because of the zoning. According to the planning department, any rezoning would constitute "spot zoning" and therefore that is extremely unlikely.

Without an occupancy permit, the property is rendered useless and has no value. There is nothing to utilize it for parking."

Staff Findings:

1. The property is currently zoned P-1, Parking District.
 - a. The only permitted uses in this district are parking areas and parking lots.
2. The use of the property as a neighborhood bar, meets the Zoning Ordinance definition of a restaurant.
3. Section 6.502(B) of the ordinance states that a non-conforming use may not be re-established after discontinuance for 12 months.
 - a. The Restaurant (bar) has been closed for over 12 months reverting the use to the zoning classification P-1, Parking District.

Authorization:

Section 6.408 Use Variance

Authority. The Zoning Board of Appeals may grant a use variance to authorize a land use which is not otherwise permitted by this ordinance in the district where the property is located, upon the concurring vote of two-thirds (2/3) of the members of the Zoning Board of Appeals.

Unnecessary Hardship. A use variance shall not be granted unless the Zoning Board of Appeals finds, on the basis of substantial evidence presented by the applicant, that there is an unnecessary hardship in the way of carrying out the strict letter of this ordinance. In determining that an unnecessary hardship exists, the Zoning Board of Appeals must find that:

1. The property in question cannot be reasonably used or cannot yield a reasonable return on a prudent investment if

the property would be used only for a purpose allowed in the zoning district.

Meets this standard. The only permitted use allowed in the district is a parking lot. The site already contains an existing restaurant building. The building would have to be demolished to meet the provisions of the P-1 zoning district.

2. The plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions.

Meets this standard. The site appears to be developed prior to a zoning change which was to encourage development to industrial and Parking.

3. The use to be authorized by the variance will not alter the essential character of the area and locality.

Meets this standard. No new buildings will be constructed at the site. The building was the site of a former bar. The applicant is just seeking to continue the non-conforming use.

4. The problem is not self-created.

Meets this standard. The site was constructed and operated as a bar. Prior to 2009, the bar became a non-conforming use due to the P-1 zoning classification. Due to a death and ownership change the bar was unable to stay open which caused the property to lose its "grandfathered" use.

5. The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.

May meet this standard.

6. There is compliance with the standards set forth in Section 6.401(B).

Meets this standard. The proposed use does not appear to impair the supply of light, air or congestion.

7. There is compliance with any applicable standards for discretionary decisions as contained in Section 6.303.

Not applicable.

Recommendation: To **approve** the variance request (ZBA-13-06) for Section 2.203 Permitted Uses by District, as it appears the

applicant has met the criteria for unnecessary hardship as described in Section 6.408(c) of the Zoning Ordinance.

Petitioner, Marie Stanley, 229 Clayborne, commented the community is in support of the property being re-opened and ready to sample the Saylor Burgers again.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING OPEN.

None.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING CLOSED.

Comm. Hollis inquired of the adjacent lot being landscaped. Petitioner indicated she owns and will maintain the lot and the bar is in good condition. Petitioner had not considered parking on that lot.

Comm. Hollis inquired of the hours of operation. Petitioner indicated 11:30 - 12:00 except on Sundays.

Comm. Anderson suggested a new façade for curb appeal for new business. Petitioner indicated she has plans for improvements and more landscaping.

Comm. Monroe commended the petitioner for maintaining her property in the community.

Comm. Bueno inquired why this process is not being presented before the Planning Commission. Mr. Bowdell explained the first step would be use variance approval, and if approved, it would be handled administratively.

Chairperson Slade inquired when the Zoning changed. Mr. Bowdell indicated prior to September 2009.

COMM. HOLLIS MADE A MOTION TO APPROVE THE VARIANCE REQUEST ZBA-13-06) FOR SECTION 2.203 PERMITTED USES BY DISTRICT, AS IT APPEARS THE APPLICANT HAS MET THE CRITERIA FOR UNNECESSARY HARDSHIP AS DESCRIBED IN SECTION 6.408(c) OF THE ZONING ORDINANCE AND COMM. ANDERSON SUPPORTED.

CHAIRPERSON SLADE: Roll call, please.

3. A park or Recreation Facility is a principal permitted use in the R-2 zoning classification.
4. The property meets the definition of a double frontage lot and front yards shall be provided as required.

Authorization:

Section 6.407 Dimensional Variance

Authority. The Zoning Board of Appeals may grant a dimensional (non-use) variance to provide relief from a specific standard in this Ordinance relating to an area, a dimension or a construction requirement, or limitation, upon the concurring vote of a majority of the members of the Zoning Board of Appeal.

Practical Difficulty. A non-use variance shall not be granted unless the Zoning Board of Appeals finds that there is a practical difficulty in the way of carrying out the strict letter of this ordinance. In determining whether a practical difficulty exist, the Zoning Board of Appeals must find that:

1. Compliance with the strict letter of the restrictions governing area, setback, frontage, height, bulk, lot coverage, density or other dimensional or construction standard will unreasonably prevent the owner from using the property for a permitted purpose or will render conformity with such restrictions unnecessarily burdensome.

May meet the standard. The height restriction of the fence may prevent the owner from utilizing the property as a permitted use due to the safety of its patrons.

2. A grant of the variance will do substantial justice to the applicant as well as to other property owners in the district, and a lesser variance will not give substantial relief to the applicant as well as be more consistent with justice to other property owners in the zoning district.

Meets the standard. The fence variance appears to provide substantial justice to both the applicant and the adjacent property owners. The variance would create a safer environment to the patrons using the field as well as the drivers on Saginaw Street.

3. The plight of the applicant is due to the unique circumstances of the property.

Meets the standard. The property is considered a double frontage lot. The site would be allowed a 6 foot fence if it was not a double frontage lot. Because of this double frontage, the zoning ordinance requires the fence height to be reduced to four feet.

4. The problem is not self-created.

May meet this standard. The problem is self-created from the standpoint that the applicant is seeking to construct a six foot fence. However, the property having a double frontage on both Stockwell and Saginaw is not self-created.

5. The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.

Meets this standard. The variance would provide a safer environment for the applicant and uses of the athletic field and would provide safer driving conditions on Saginaw Street.

6. There is compliance with the standards set forth in Section 6.401(B).

Meets this standard.

7. There is compliance with the standards for discretionary decisions as contained in Section 6.303.

Not applicable.

Recommendation: To approve the variance request (ZBA-13-07) for Section 4.103(A)(1)(a), height requirements for fences in a residential district, as it appears to meet the criteria for practical difficulty described in Section 6.407(B) of the Zoning Ordinance.

Petitioner, Ron Borgesser, CEO Oakland Services, encourage the board to the grant the proposal, so the process can move forward.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING OPEN.

None.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING CLOSED.

Comm. Todd inquired of the fencing material and the setback location. Petitioner indicated cyclone slats with openings and Mr. Bowdell indicated the setback is directly on the property line, one foot from sidewalk.

Comm. Todd commented concerning the fencing to match the existing fencing. Petitioner agreed.

COMM. HOLLIS MADE A MOTION TO APPROVE THE VARIANCE REQUEST (ZBA-13-07) FOR SECTION 4.103(A)(1)(a), HEIGHT REQUIREMENTS FOR FENCES IN A RESIDENTIAL DISTRICT, AS IT APPEARS TO MEET THE CRITERIA FOR PRACTICAL DIFFICULTY DESCRIBED IN SECTION 6.407(B) OF THE ZONING ORDINANCE AND COMM. BUENO SUPPORTED TO INCLUDE MATCHING EXISTING FENCE AND SITE PLAN CONDITIONS.

CHAIRPERSON SLADE: Roll call, please.

VOTE: AYES: Hollis, Bueno, Monroe, Anderson, Slade.
 NAYS: None.
 ABSTAIN: Todd.

Vote 5-0-1 for approval of the Dimensional Use Variance (ZBA 13-07)

PUBLIC COMMENT: None.

MISCELLANEOUS: None.

ADJOURNMENT: 7:40 p.m.