

Approved: 11/8/07
Clerk: 3/18/08

**MINUTES OF THE REGULAR MEETING
BOARD OF ZONING APPEALS
October 11, 2007 7:30 P.M.
CITY COUNCIL CHAMBERS, 10TH FLOOR CITY HALL**

I. ROLL CALL

The meeting was called to order by Chairman Burgess at 7:30 p.m. Chairman Burgess read the BZA introduction. Roll call was taken.

Present:

B. Burgess F. Lain A. Frederick G. Hilts M. Mayberry E. Horne

G. Swix B. McGrain

Absent: None

Staff: J. Hodges

A. A quorum of at least five members was present, allowing voting action to be taken at the meeting.

II APPROVAL OF AGENDA

A. Frederick moved, seconded by E. Horne to approve the agenda as printed.

On a voice vote, the motion carried 8-0.

III. HEARINGS/ACTION

A. BZA-3915.07, 720 N. Seymour Street

This is a variance request by Diane Sanborn to erect a ground sign at 720 N. Seymour St. that would be 13.1 square feet in area, 4.75 feet in height and have a setback of 2 feet from the front property line. The property at 720 N. Seymour St. has a lot area of 10,890 square feet. Section 1442.12(h)(2) of the Sign Code prohibits ground signs on parcels in the "DM-4" Residential zoning district that contain less than 12,000 square feet of lot area. A variance of 1,110 square feet to the lot area requirement to permit a ground sign at 720 N. Seymour Street is therefore, being requested. Staff recommended denial of the request on a finding that the variance would be inconsistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application.

Mr. McGrain asked if there are any signage options available to the applicant.

Mr. Hodges said that they are permitted to have a 1 square foot wall sign.

Mr. Swix said that there are a lot of signs in residential areas. He asked if they are all illegal.

Mr. Hodges said that they are illegal.

Diane Sanborn, 720 N. Seymour, spoke in support of her request. She said that she also owns the property at 714 N. Seymour so when the two properties are combined, she is well over the 12,000 square feet requirements. Ms. Sanborn said that the house at 720 N. Seymour was a doctor's office for many years. She stated that a 1 square foot sign is virtually unreadable. She said that her neighbor's are supportive of her variance request.

Mr. Frederick asked Ms. Sanborn what makes her property unique over all other home based occupations.

Ms. Sanborn said that her business (bed and breakfast) draws people from out of town and even out of the state and a sign is needed for identification purposes.

Mr. Lain asked if Ms. Sanborn could split off some of the property at 714 N. Seymour and add it to the property at 720 N. Seymour to provide the additional square footage necessary to achieve the 12,000 square feet that is required for a sign.

Mr. Hodges said that what Mr. Lain suggested may be a possibility but the sign would still have to meet setback requirements and it doesn't look like that is possible.

Mr. McGrain said that this is a destination type business and it is the type of business that is being encouraged in Ms. Sanborn's neighborhood.

Mr. Burgess asked if anyone else wished to address the Board. Seeing none, the Board moved into the Committee of the Whole.

Mr. Frederick said that this is a nice business, however, it is not unique from any other home based business and therefore, he cannot support the business.

Mr. Hilts said that anyone going to the home based business knows where they are going and they will be looking for the address. He also said that if the sign is on the inside of the window, it is considered art and it is not regulated by the city.

Mr. Mayberry said that Ms. Sanborn could ask for a variance to make the one square foot wall sign larger.

Mr. Hodges said that the wall sign variance would probably be recommended for denial as well based upon the same rationale that was used to recommend denial of the ground sign variance.

Mr. Lain stated that he cannot support the variance. He said that a home occupation sign for a day care business was required to be removed in his neighborhood last year. Mr. Lain said that if the variance is granted, it will set a negative precedent where signs in residential neighborhoods are concerned.

Mr. McGrain said that he believes that this situation is unique because it is a destination business that draws people from out-of-town and therefore, he can support the variance request.

A. Frederick moved to deny BZA-3915.07, a variance of 1,110 square feet to the lot area requirement to permit a ground sign at 720 N. Seymour Street, on a finding that the variance would be inconsistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06

(e), as detailed in the staff report for this application. Seconded by G. Hilts.

VOTE	YEA	NAY
Mayberry	X	
Lain	X	
Hilts	X	
Burgess	X	
McGrain		X
Swix	X	
Horne	X	
Frederick	X	

Motion carried, 7-1, BZA-3915.07, was denied.

B. BZA-3916.07, 209 N. Walnut Street

This is a variance request by Samina Shahabuddin to erect a ground sign at 209 N. Walnut Street that would have a setback of .75 feet from the front property line. Section 1442.12(h)(3)(2) of the Sign Code requires a setback of 15 feet for signs in the "D-1" Professional Office district, which is the designation of the property at 209 N. Walnut Street.

A variance of 14.25 feet to the setback requirement for a ground sign is therefore, being requested. Staff recommended approval of a variance of 8 feet to the setback requirement on a finding that the modified variance would be consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application.

Mr. McGrain asked about the size of the sign.

There was discussion about the proposed dimensions of the sign, possible reductions in size and the location of the sign on the property.

Samina Shahabudden, 209 N. Walnut Street, spoke in support of her request. She said that there is a large crab apple tree on the property and if the sign were to be moved back any further than the .75 feet that she is requesting, it would be obscured by the tree.

Mr. Frederick stated that the sign could be moved away from the tree (closer to the front door).

Mr. Burgess asked if anyone else wished to address the Board. Seeing none, the Board moved into the Committee of the Whole.

Mr. Frederick stated that the Planning Board has already recommended approval of the Special Land Use permit for the church. He said that this site is zoned office, is surrounding by other office/church uses and therefore, the sign will fit in with the area in which it is located.

Mr. Lain said that he can support the variance. He stated that the rationale for approving the variance was described in the staff report.

F. Lain moved to approve BZA-3916.07, a variance of 8 feet to the setback requirement to permit a 6 foot high, 21 square foot ground sign at 209 N. Walnut Street, on a finding that the variance would be consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application. Seconded by G. Swix.

VOTE	YEA	NAY
Mayberry	X	
Lain	X	
Hilts	X	
Swix	X	
McGrain	X	
Burgess	X	
Horne	X	
Frederick	X	

Motion carried, 8-0, BZA-3916.07, was approved.

C. BZA-3912.07, 812 Prospect Street

This is a variance request by Jeffrey Hicks. The applicant is requesting a variance to permit a duplex at 812 Prospect Street that would have one 1-bedroom unit and one 2-bedroom unit. Section 1250.06(b) of the Zoning Ordinance requires a minimum lot size of 6,000 square feet for a duplex with this number of bedrooms. The property at 812 Prospect Street contains 5,445 square feet. A variance of 555 square feet to the lot size requirement is therefore, being requested. Staff recommended denial of the request on a finding that the variance would be inconsistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application.

Mr. Burgess stated that the applicant has listed several homes in the vicinity of 812 Prospect that have 2 units. He asked if they are illegal.

Mr. Hodges stated that the city has no evidence that they are not grandfathered in.

Jeff Hicks, 412 N. Walnut Street, spoke in support of the request. He said that he is representing the home owner. Mr. Hicks stated that this issue was not self-created. He said that there have been separate utility meters on the property for 7½ years. There are separate doors, separate sidewalks, etc.. He said that the property is exactly the way it was when Mr. Soulliere purchased it in March of 2007 through a foreclosure. Mr. Hicks stated that, according to the Michigan Court of Appeals rulings on variances, the subject property does not have to be unique, in and of itself, to every other property in the zoning district. He said that it need only be unique such that it is not like every other property in the vicinity. In

this case, it is not like every other property in the vicinity as other property owners in the area enjoy the ability to use their properties as duplexes. Mr. Hicks said that the intent of the "C" Residential district is to permit a 2-family dwelling, for construction or for the conversion of an existing home to a 2-family dwelling. He said that with the increasing rate of foreclosures in this area, we should be applauding Mr. Soulliere for bringing this property back on the tax rolls, putting it into good use and generating income for the City of Lansing. He said that they are only seeking to do what is permitted by right in the "C" Residential zoning district.

Mr. Frederick asked if Mr. Hicks was saying that, based upon the Court of Appeals rulings, every one of the lots in the Prospect neighborhood are unique.

Mr. Hicks said that the Court of Appeals has opined that if the characteristics of one property are also shared by others in the neighborhood, it does not render the first property not unique. In other words, the property does not need to be "one-of-a-kind".

Mr. Frederick said that Mr. Hicks argument renders the ordinance useless and invalid because any other property in the area could make the same argument for a duplex, regardless of the lot size.

Mr. Hicks stated that by zoning this area "C" Residential, knowing that the lot sizes would not allow for duplexes, the city has essentially precluded the use of the properties in the area for duplexes.

Mr. Frederick stated that the intent of a zoning ordinance is to permit certain uses in some area and prohibit them in others.

Mr. Hicks stated that by zoning the area "C" Residential, the city was saying that they wanted duplexes. However, he said that the ordinance ignores the lot sizes because the properties in the area cannot meet the lot size requirements. He said that this particular lot would be the least nonconforming duplex in the area.

Mr. Frederick stated that Mr. Hicks is suggesting that the fact that this property was in foreclosure is evidence that it is not viable for anything other than a duplex.

Mr. Hicks said that there are multiple properties in the area that are red-tagged, in foreclosure, etc. because the highest and best use of the properties in this area is not single family.

Mr. Hilts stated that if what Mr. Hicks states is correct, then it would be up to the City Council to address the lot area requirements of the "C" Residential district. He said that this exceeds the authority of the BZA.

Mr. Hicks stated that he agrees that the BZA cannot grant a variance based solely on the fact that the "C" Residential district is confiscatory for the simple fact that people cannot use their property as it is zoned. However, he said that they have made the argument to show what the practical effect is of the zoning in this area.

Cherryl Valleau, 226 S. Eighth Street, spoke in opposition to the variance. She said that she is the Chairperson of the Green Oaks Target Area Organization. She said that the goal of the plan is to reduce density. She said that this area was rezoned from "DM-3" to "C" for the sole purpose of reducing density in the area.

Steven Cospser, 816 Prospect Street, spoke in opposition to the variance. He said that he lives right next door to the property and there is a shared drive that would serve both his house and the proposed duplex. He said that this will place an added burden on the driveway. He also said that over half of the back yard has been converted to parking.

Mr. Lain asked Mr. Cospser if the house at 812 Prospect had been used as a duplex over the past 14 years that he has lived next door.

Mr. Cospser said that the house has not been used for 2-units. He also said that he has been in the house and there was an open stairway to the second floor.

Steve Soulliere, 812 Prosepect Street, spoke in support of the request. He said that it is not true that Mr. Cospser owns 90 percent of the shared driveway. He stated that the property lines goes down the center of the driveway. Mr. Soulliere said that he has never blocked Mr. Cospser driveway and does not intend to do so.

Mr. Hicks said that "C" Residential is not the lowest density zoning district and the intent of the "C" district is to permit duplexes.

Mr. Burgess asked if anyone else wished to address the Board. Seeing none, the Board moved into the Committee of the Whole.

Mr. Frederick stated that the master plan aside, he is not convinced that there is a practical difficulty in the case and he is not convinced that the hardship is not self-created. He said that the owner should have checked with the city to determine if a duplex was permitted at this location before he purchased the property. Mr. Frederick also said that he is not convinced that the property went into foreclosure simply because it could not generate enough income as a single family dwelling. He stated that he cannot support the variance.

Mr. Hilts stated that he agrees with Mr. Frederick in that there is no practical difficulty or unnecessary hardship that would warrant a variance.

Mr. Lain agreed with Mr. Frederick and Mr. Hilts that no practical difficulty or unnecessary hardship had been demonstrated.

F. Lain moved to deny BZA-3912.07, a variance of 555 square feet to the lot area requirement to permit a duplex at 812 Prospect Street, on a finding that the variance would be inconsistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application. Seconded by A. Frederick.

VOTE	YEA	NAY
Mayberry	X	
Lain	X	
Hilts	X	
Burgess	X	
McGrain	X	
Swix	X	

VOTE	YEA	NAY
Horne	X	
Frederick	X	

Motion carried, 8-0, BZA-3912.07, was denied.

VI. OLD BUSINESS

- A. Rules of Procedure - No action
- B. BZA-3817.04, 1014 S. Pennsylvania Avenue - No action

VII. PUBLIC COMMENT

Cherryl Valleau, 226 S. Eighth Street, stated that the city is looking at a new ordinance that may eliminate this type of situation in the future.

VIII. APPROVAL OF MINUTES

A. Minutes of Regular Meeting held September 13, 2007

A. Frederick moved, seconded by M. Mayberry to approve the minutes of September 13, 2007, as printed.

On a voice vote, the motion carried unanimously (8-0).

IX. NEW BUSINESS - None

X. ADJOURNMENT AT 9:05 p.m.

Respectfully submitted,

Susan Stachowiak, Zoning Administrator