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BOARD OF ZONING APPEALS CITY OF JOHNSON CITY, TENNESSEE

Minutes of the Meeting of
July 1, 2014

The Board of Zoning Appeals held its meeting on July 1st at 6:00 p.m. in the City Commission Chambers of the Municipal and Safety Building.

Members Present

Robert Thomas, Vice Chairman
Dwight Harrell
Jenny Lockmiller
Jamie Povlich

Staff Present

Steve Neilson, Development Coordinator
Jim Epps, Staff Attorney

The meeting was called to order at 6:00 p.m.

Minutes

The Minutes of the June 3rd meeting were considered for approval.

MOTION: Povlich

To approve the minutes of the June 3rd with an amendment to remove Dwight Harrell from being in attendance.

SECOND: Lockmiller

VOTE: Approved 4 - 0

Case Number 784-1

Mr. Neilson stated that was a request for a variance to Section 11.2.2 of the Zoning Ordinance. The applicant is the Evolve Development Group. The petitioner states that in order to limit the building footprint in the 100-year floodplain, they needed to pull the buildings back from State of Franklin Road. Also, because the property is surrounded on four sides by streets, it was difficult to meet the requirement of not having parking between the building and the street. Mr. Neilson indicated that the petitioner was proposing to soften the impact of the parking along State of Franklin Road with a 15-foot wide, three-foot tall landscape berm. This was similar to a request received in December by Monarch Development .

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Mr. Neilson stated that this property does lie within the 100-year floodplain and is located in the Brush Creek watershed which empties into the Downtown. He indicated that over the years, the city has experienced severe flooding in the Downtown and in order to mitigate the flooding the city has been buying property in an effort to open up the stream.

Mr. Neilson indicated that the current property had large open parking/loading areas on all four sides with wide curbcuts and no landscaping. The proposed site plan included landscaping along the streets and in the interior which would have a positive impact on the area.

Mr. Neilson then read 13-7-207 and expanded each section of the provision and how it related to this request.

Mr. Neilson stated that due to the property being impacted by the floodplain and being surrounded on all four sides by streets, staff found that a special circumstance or condition existed relating to this property. Also, forcing the buildings into the floodplain did not advance any public good and was contrary to the city's stormwater plan.

Mr. Neilson presented Staff's Findings of facts:

1. Due to the impact of the 100-yr floodplain and the property being surrounded on four sides by streets, special circumstances or conditions do exist that do not apply generally in the district.
2. The petitioners are not requesting a use which is not currently allowed in the district nor are they requesting a variance to the density standards.
3. The impact of the 100-yr floodplain and the property being surrounded on four sides by streets does create practical difficulties or undue hardship upon the owner developing the property and does create a deprivation of beneficial use of the property.
4. The proposed variance is the minimum necessary for the reasonable use of the land.
5. The granting of this variance is in harmony with the general intent of this Code and will not have a detrimental impact to the neighborhood or the public good and is not in conflict with the city's comprehensive plan. Forcing the buildings into the floodplain does not advance any public good and is contrary to the city's storm water efforts.
6. The petitioner is not requesting a variance to any of the landscape requirements.

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Mr. Neilson stated that based on these findings of Fact, staff found that a special circumstance or condition did exist on the property and that this request met the requirements for a variance. He then recommended the adoption of the proposed findings of facts be included in the minutes and conditioned upon the placement of a 15-foot wide, three-foot tall landscape berm along State of Franklin Road and upon the properties being joined together.

Mr. Tom McKee, representing the developer spoke in favor of the request. He presented a case (Glankler v. Memphis) which Ms. Lee early presented the Board. He stated that this was a case that dealt with a similar situation in Memphis where a single-family area received a variance to allow a multi-family use. In this case, the courts affirmed the judgment that the Board had the authority to grant a variance in this situation. He stated that the facts were quite similar to what is before them. He then stated that a case that Ms. Ketchie would cite a case was variance request that related to the height of a building and had nothing to do situation that the Board was dealing with.

Mr. McKee then asked a series of questions to Mr. Jerry Petzoldt regarding the development viability of property. Mr. Petzoldt indicated that over the past several years he has limited interest in the property. He then presented a series of PowerPoint slides showing the floodplain and stated that even with the variance a portion of the building would still be in the floodplain. He also presented slides which showed other development along this corridor that were in and outside of the floodplain. He stated that it is not normal development practice to build in the floodplain. Also, it was against the city's objective to keep buildings out of the floodplain. Mr. Petzoldt indicate that the proposed plan minimize the impact on the floodplain.

Ms. Rebecca Ketchie, spoke on behalf of Ms. Amber Lee who lives in the Tree Streets Neighborhood which is close to the property. She spoke about the Board's authority to grant a variance. She stated that a variance cannot based on a specific project and that it had to be related to the property in question. She stated that a variance was not intended to allow the property it highest and best use, it is to allow the use of the property at all.

She presented the Board a case (Historical Commission v. Colony Associates Joint Venture). She stated this this property which was surrounded on all four side by streets, was requesting a variance to the sky plain ordinance that did not allow buildings to go straight up on the street side. In that case, the courts found that variance was not warranted. She then pointed out that the lots are not currently bound on four sides by streets. It is the combining of the properties which create the hardship. Also although the properties are impacted by the floodplain, it is not unique because there are properties all over the Downtown which are also impact by the floodplain. She also pointed out the property could be developed without placing a building in the floodplain if they rearranged their plan.

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Ms. Rachel Monderer spoke in opposition to the variance request.

Ms. Lockmiller expressed a concern that if the hardship cited by developer is the floodplain, why was part of the development still in the floodplain.

After considerable discussion, Mr. Povlich stated that based on staff proposed findings of fact, he moved to grant the variance request conditioned upon the provision of 15-foot wide, three-foot tall landscape buffer, Mr. Harrell seconded that motion.

MOTION: Povlich **Based on staff's proposed finding of facts, he moved to approve the variance request conditioned upon the provision of 15-foot wide, three-foot tall landscape buffer**

SECOND: Harrell

VOTE: Approved 3-1 (Lockmiller)

Case Number 777-1

Mr. Neilson indicated that in order to avoid having two separate votes on the same plan, staff was requesting that the Board rescind its earlier vote on Case 777-1.

Ms. Amber Lee expressed a concern about the Board's jurisdiction to rescind the writ of certiorari.

Ms. Ketchie also expressed a similar concern stating that since a writ of certiorari has been granted by the courts and she felt that the authority is out of the hands of the Board of Zoning Appeals.

Mr. James Epps, Staff Attorney stated that he had researched this and the Board did have the authority to rescind this vote.

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MOTION: Povlich **To revoke the Board's earlier decision on Case 777-1 to provide clarity going forward in this process.**

SECOND: Harrell

VOTE: Approved 4-0

There being no further business, the meeting adjourned at 7:26 p.m.

APPROVED:

Dr. Mike Marchioni, Chairman
Board of Zoning Appeals

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