

## BOARD OF ADJUSTMENT

### MEETING MINUTES

July 8, 2019

City Hall – Council Chambers

Regular Members Present: Larry Caldwell, Skip Smallwood, William Whitlock

Regular Members Absent: Charles Haubold, Tim Kelley

Alternate Members Present: Ray Buhs, David Hinton

Alternate Members Absent: Ed Hart

Staff Present: Molly Mehner, Carol Peters, Ryan Shrimplin

#### Call to Order

Vice-Chairman Smallwood called the meeting to order at 7:00 p.m.

#### Approval of Minutes

The minutes of the April 4, 2019 Board of Adjustment meeting were unanimously approved upon motion made by Mr. Whitlock and seconded by Mr. Caldwell.

#### Capital Improvement Sales Tax Presentation

Molly Mehner, Deputy City Manager, gave a presentation on the Capital Improvement Sales Tax. She explained that the tax was originally approved in November 1996 and consisted of two parts. The first part, a ¼-cent sales tax, was used to upgrade the City's water system, including renovating the water treatment plant and switching from Mississippi River water to well water. The tax was renewed by voters in 2011 and will expire in 2037. The tax renewal funded the new wastewater treatment facility. The second part, also a ¼-cent sales tax, was used to eliminate combined (sanitary and storm) sewer pipes and make other improvements, which are now complete. The tax will expire this year unless voters approve a renewal, which is on the August 6, 2019 ballot. If approved, the tax will expire in 2034, and will be used for converting the Common Pleas Courthouse to a new City Hall, improvements at the Cape Girardeau Regional Airport, water system improvements and maintenance, and street repairs (as a supplement to the Transportation Trust Fund). She reiterated that the ballot issue is for a renewal of an existing tax rather than a new tax.

#### ZONING CODE VARIANCES

1. A public hearing was held on the request of Benjamin Froemling for a variance from Section 30-407(b)(2), nonconforming uses, for property at 2222 Good Hope Street. Mr. Froemling explained that the property contains a residence but is zoned commercial. He would like to enclose the carport and add a deck to the rear of the house, which would expand the nonconforming (residential) use of the property.

A staff report was submitted to the Board, containing the following findings of fact in reference to the variance request:

Criterion #1: The variance request arises from a condition which is unique to the property in question and which is not ordinarily found, and is not created by an action or actions of the property owner or the applicant.

Finding: The subject property is one of three properties on the north side of this block that are zoned commercial but contain a single-family dwelling and are used for residential purposes. The dwellings were constructed many years ago. Historically, there were several other dwellings on this block but they were demolished as the adjacent commercial developments (KFC and Ruler Foods) expanded. The location of the subject property in an area of commercial expansion is a unique condition that was not self-imposed.

Criterion #2: Approval of the variance request will not adversely affect the rights of adjacent property owners or tenants.

Finding: The properties across the street are zoned R-2 (Single-Family Urban Residential) and contain single-family dwellings. The existing residential use of the subject property is compatible with the uses across the street. Therefore, approval of the variance request to expand the residential use will not adversely affect the adjacent property owners or tenants.

Criterion #3: The strict application of the provisions of the Zoning Code from which the variance is requested will constitute unnecessary hardship upon the utilization of the property.

Finding: The proposed expansion of the residential use consists of enclosing the carport and adding a deck. These types of improvements are typical for a residential property and would be allowed for any of the residences across the street. Denial of the variance request will result in a "penalty" or unnecessary hardship against the subject property because it happens to be zoned commercial even though it has always been used for residential purposes. It should be noted that the proposed improvements would be suitable for a commercial use (such as a professional office) as well should the use of the property change in the future.

Criterion #4: Approval of the variance request will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Finding: The proposed expansion is characteristic of the types of improvements made to other residences in the area. Thus, approval of the variance request will not adversely affect the public.

Criterion #5: Approval of the variance request is consistent with the general spirit and intent of the Zoning Code.

Finding: The unique condition of the subject property, the unnecessary hardship that will result if the request is denied, and the lack of an adverse effect on the adjacent

property owners, tenants, and the public form the basis for approving the variance request in keeping with the general spirit and intent of the Zoning Code.

Based on the above findings, staff recommended approval of the variance request.

Vice Chairman Smallwood opened the public hearing. Seeing no appearances to speak, he closed the public hearing. A motion was made by Mr. Caldwell and seconded by Mr. Buhs to approve the variance request. The motion passed by a vote of 5 in favor, 0 in opposition, and 0 abstaining (*Aye: Buhs, Caldwell, Hinton, Smallwood, Whitlock*). Vice Chairman Smallwood called for a motion to adopt the staff report as the Board's Findings of Fact and Conclusions of Law. Mr. Hinton made a motion to adopt, and Mr. Caldwell seconded the motion. The motion passed by a unanimous vote.

2. A public hearing was held on the request of Jesse and Patricia Williams for a variance from Section 30-322(e)(5)(b), R-1 (Single-Family Suburban Residential District) rear yard setback requirements, for property at 2554 Masters Drive. Ms. Williams explained that she and her husband would like to construct a detached garage in the rear yard, but the setback would force the garage to be very close to the house.

A staff report was submitted to the Board, containing the following findings of fact in reference to the variance request:

Criterion #1: The variance request arises from a condition which is unique to the property in question and which is not ordinarily found, and is not created by an action or actions of the property owner or the applicant.

Finding: The subject property is 119.53 feet deep. The existing house is approximately 30 feet from the front lot line (which is also the front yard setback). The house is approximately 32 feet in depth. Taking into account the front yard setback, the existing house depth, and the rear yard setback, this leaves just under 33 feet for the proposed detached garage. The depth of the proposed garage is 20 feet, leaving less than 13 feet between it and the house. These specific constraints constitute a unique condition, which is not self-imposed.

Criterion #2: Approval of the variance request will not adversely affect the rights of adjacent property owners or tenants.

Finding: Staff researched the surrounding properties and found several that contain structures encroaching on the rear yard setback. Most of these structures appear to have been constructed many years ago, prior to the establishment of the current setback requirements. Some of these structures are closer to the rear lot line than the proposed garage. Therefore, approval of the variance request will not adversely affect the adjacent property owners or tenants.

Criterion #3: The strict application of the provisions of the Zoning Code from which the variance is requested will constitute unnecessary hardship upon the utilization of the property.

Finding: Denial of the variance request will force the property owner to substantially shorten the garage in order to provide the necessary clearance for access to the

garage. Given the unique condition of the subject property and the fact that several of the surrounding properties have structures encroaching on the rear yard setback, denial of the variance request will impose an unnecessary hardship upon the utilization of the property.

Criterion #4: Approval of the variance request will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Finding: The proposed garage encroachment will not create any hazards or other problems affecting the neighborhood or the public at large. Thus, approval of the variance request will not adversely affect the public.

Criterion #5: Approval of the variance request is consistent with the general spirit and intent of the Zoning Code.

Finding: The unique condition of the subject property, the unnecessary hardship that will result if the request is denied, and the lack of an adverse effect on the adjacent property owners, tenants, and the public form the basis for approving the variance request in keeping with the general spirit and intent of the Zoning Code.

Based on the above findings, staff recommended approval of the variance request.

Vice Chairman Smallwood opened the public hearing. Seeing no appearances to speak, he closed the public hearing. A motion was made by Mr. Hinton and seconded by Mr. Buhs to approve the variance request. The motion passed by a vote of 5 in favor, 0 in opposition, and 0 abstaining (*Aye: Buhs, Caldwell, Hinton, Smallwood, Whitlock*). Vice Chairman Smallwood called for a motion to adopt the staff report as the Board's Findings of Fact and Conclusions of Law. Mr. Caldwell made a motion to adopt, and Mr. Whitlock seconded the motion. The motion passed by a unanimous vote.

#### OTHER ITEMS AND COMMUNICATION

Vice Chairman Smallwood asked if the City's new medical marijuana ordinance requires an applicant to obtain consent from the Board of Adjustment if the proposed medical marijuana facility does not meet the distance requirement. Mr. Shrimplin stated that the ordinance does not include such a provision, but because the medical marijuana regulations are in the Zoning Code (Chapter 30 of the City's Code of Ordinances), an applicant could apply for a variance, which would be reviewed and decided by the Board.

#### Adjournment

Upon motion made by Mr. Caldwell and seconded by Mr. Hinton, the meeting was adjourned unanimously at 7:15 p.m.

Respectfully submitted by:



William Whitlock, Secretary