

BOARD OF ADJUSTMENT

MEETING MINUTES

February 4, 2021

City Hall – Council Chambers

Regular Members Present: Larry Caldwell, Charles Haubold, Tim Kelley, Skip Smallwood, William Whitlock

Regular Members Absent: None

Alternate Members Present: Ron Robertson

Alternate Members Absent: Ed Hart, Dave Hinton

Staff Present: Carol Peters, Ryan Shrimplin

Call to Order

Chairman Haubold called the meeting to order at 7:00 p.m.

Approval of Minutes

The minutes of the December 3, 2020 meeting were unanimously approved, as corrected, upon a motion made by Mr. Smallwood and seconded by Mr. Whitlock.

ZONING CODE VARIANCES

1. A public hearing was held on the request of McDonald's USA, LLC for a variance from Section 30-334(e)(2), C-2 (Highway Commercial District) standards, for property located at 1701 North Kingshighway. Mr. Shrimplin explained that the applicant's representative is not in attendance, but is available by phone if the Board has any questions. Mr. Smallwood noted that the variance being requested is the same type of variance that was granted to MRV Banks for its development on the adjacent property. Mr. Shrimplin explained that the Development Code (Chapter 25 of the City's Code of Ordinances) now contains a provision requiring dumpsters to be screened on all sides using wood, masonry or other materials as approved by the City staff. The screening requirement alleviates some of the concerns about having a dumpster in the front yard.

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 has street frontage on all four of its sides. Two of the frontages are on public streets (North Kingshighway and North Mount Auburn Road). The other two frontages are on unnamed private streets. Per the Zoning Code, a yard extending across a lot between the main building and the street line (public or

private) is considered a front yard. Because there are streets on all sides of the property, all of the yards along them are front yards. This qualifies as a unique condition because properties typically don't have front yards on all sides.

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

Finding: The adjacent property to the south also has front yards on all of its sides, and the property owner obtained a variance in order to install its dumpster in one of the front yards. The other adjacent property, located to the west, is undeveloped and does not have front yards on all of its sides. When it does get developed, there will be rear or side yards in which a dumpster may be installed in accordance with the Zoning Code. As such, 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 constitute an unnecessary hardship because there is not sufficient room on the property for the dumpster unless it is in a front yard.

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

Finding: Approval of the variance request will not adversely affect the public because the dumpster is required to be screened on all sides, maintained, and kept clean, regardless of its location.

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 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.

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

OTHER ITEMS AND COMMUNICATION

Advisory Board Training

The Board viewed a video presentation by Eric Cunningham, City Attorney, regarding the Missouri Sunshine Law (also known as the Missouri Open Meetings and Records Law) and the City of Cape Girardeau Conflicts of Interest Ordinance. He explained that the Sunshine Law applies to all public governmental bodies. Except as provided in the law, any public meeting must be held in a place that is reasonably accessible. Also, there must be a minimum twenty-four (24) hour notice of the date, time, place and tentative agenda for the meeting. He also explained that the law's definition of "public meeting" is very broad and includes communication among members of a public governmental body, in person and/or by means of communication equipment, on any matter of public business, whether or not a quorum is present. Mr. Cunningham explained what constitutes a conflict of interest under the City's ordinance and the steps that must be taken by a City official or employee if they have such a conflict, including public disclosure of the conflict and abstention from voting on and discussing the matter. Mr. Cunningham invited the Commission members to contact him or Mr. Shrimplin if they ever have any questions.

Board Appointment Recommendation

Mr. Shrimplin explained that the City Council recently changed the term limit for the City's advisory boards from three (3) consecutive full terms to two (2) consecutive full terms. As a result, Mr. Caldwell will reach his term limit on March 6, 2021. Ms. Peters requested the advisory board applications from the City Manager's Office and was informed that there were no active applications expressing an interest in the Board of Adjustment. However, four of the applicants, after being contacted by the City Manager's Office, indicated that they would be willing to serve on the Board if appointed. In addition, another application was just received, which indicates first preference for the Board.

Mr. Smallwood stated that he was under the impression that alternate members would replace regular members when openings occurred, but the Council seems to only consider active applications when making an appointment. He understands why the Council reduced the term limit – to create more opportunities for citizens to serve on an advisory board – but qualified candidates are difficult to find. He would like to see the applicants appear before the Board before it makes a recommendation.

Chairman Haubold asked if the City conducts a background check on each advisory board applicant. Mr. Shrimplin stated that he does not believe so, as it would be expensive and could deter someone from submitting an application even if they have a clean record. Chairman Haubold stated that he feels alternate members should be considered first. Ms. Peters contacted the three (3) alternate members to see if they would be interested in becoming a regular member. None of them were interested. Mr. Robertson stated that he has reconsidered and is interested in becoming a regular member. Chairman Haubold stated that he would like to speak with the other two (2) alternate members and then resume discussion at the next meeting. The other Board members agreed to table the matter. Chairman Haubold asked them to reach out to individuals whom they feel would be a good fit for the Board and encourage them to apply.

Board Communication

There were no communication items from the Board members.

Staff Communication

There were no communication items from the City staff.

Adjournment

There being no further business, the Board voted unanimously to adjourn the meeting at 8:10 p.m. upon a motion made by Mr. Caldwell and seconded by Mr. Whitlock.

Respectfully submitted by:



William Whitlock, Secretary