

BOARD OF ADJUSTMENT

MEETING MINUTES

July 1, 2021

City Hall – Council Chambers

Regular Members Present: Charles Haubold, Tim Kelley, Ron Robertson, Skip Smallwood, William Whitlock

Regular Members Absent: None

Alternate Members Present: Dave Hinton

Alternate Members Absent: Ed Hart

Staff Present: Carol Peters, Ryan Shrimplin

Call to Order

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

Mr. Smallwood made a motion to amend the agenda to hold the election of officers before the Board appointment recommendation discussion. Mr. Whitlock seconded the motion. The motion passed unanimously.

Approval of Minutes

The minutes of the March 4, 2021 meeting were unanimously approved upon a motion made by Mr. Smallwood and seconded by Mr. Kelley.

ZONING CODE VARIANCES

1. The Commission reviewed the request of Eugene Besand for an extension of a variance granted on December 3, 2020 from Section 30-322(e)(5)a of the Zoning Code to allow the encroachment of a new single-family dwelling in the front yard setback at 303 Stepping Stone Way. Mr. Besand explained that the recent surge in prices for certain construction materials has made the project cost-prohibitive at this time. He is requesting a 180-day extension of the variance to allow prices to return to normal levels. A motion was made by Mr. Smallwood and seconded by Mr. Whitlock to approve a 180-day extension of the variance. The motion passed by a vote of 5 in favor, 0 in opposition, and 0 abstaining (*Aye: Haubold, Kelley, Robertson, Smallwood, Whitlock*).

OTHER ITEMS AND COMMUNICATION

2. Liquor License Request for Consent – 531 Broadway

The Board reviewed a request by PHI Hospitality for consent to obtain a liquor license for the building at 531 Broadway, located within two hundred (200) feet of a church (Trinity Lutheran Church). Adam Gohn, owner of PHI Hospitality, explained that he recently purchased the building and is in the process of renovating it to create two (2) suites. The

front suite is proposed to be occupied by an upscale wine bar and bistro. The rear suite will be occupied by his law firm. Because the suite for the wine bar and bistro is within two hundred (200) feet of a church, consent from the Board of Adjustment is required in order to proceed with the liquor license review process. He stated that he made several attempts to speak with a representative of Trinity Lutheran Church, but he was not successful.

A staff report was submitted to the Board, containing the following findings of fact in reference to the liquor license request for consent:

Criterion #1: There is a condition that is unique to the property in question, 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 located downtown in the Central Business District (CBD). Unlike other areas of the city, the CBD is characterized by dense, mixed-use developments with little or no building setbacks. The diversity of uses and close proximity of buildings in the CBD present a challenge for liquor-oriented businesses that are looking to locate downtown. The applicant wishes to operate a wine bar and bistro in a storefront building on Broadway near the Frederick Street intersection. The building footprint occupies the entire lot. Behind this building is a church building located less than 60 feet away. This condition is not ordinarily found outside of the CBD due to the setback requirements for other districts.

Criterion #2: Approval of the request for consent will not adversely affect the rights of adjacent property owners or residents.

Finding: The proposed wine bar and bistro will be an upscale establishment serving both liquor and food. This type of establishment will not adversely affect the surrounding property owners and tenants; in fact, they will benefit from the building being occupied by a viable business that will enhance the downtown experience.

Criterion #3: Denial of the request for consent will constitute unnecessary hardship upon the utilization of the property.

Finding: In recent years, the Board has granted consent for other liquor establishments along Broadway. These establishments have not adversely affected the surrounding area. The proposed wine bar and bistro is very similar to these establishments in terms of quality and context. Denial of the request will constitute an unnecessary hardship because there is no apparent basis for treating this establishment differently from the others.

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

Finding: Approval of the request will not adversely affect the public because, as stated above, this type of establishment has been shown to not adversely affect the surrounding area.

Criterion #5: Approval of the request for consent will not undermine the general spirit and intent of the City Code.

Finding: Section 5-6 authorizes the Board of Adjustment to grant consent if the criteria are met. The unique condition of the subject property, the nature of the proposed use, the unnecessary hardship that will result from denial, and the lack of an adverse impact form the basis for granting consent in keeping with the general spirit and intent of the City Code.

Based on the above findings, staff recommended approval of the liquor license request for consent.

Chairman Haubold asked if anyone in the audience would like to speak regarding the request.

Mark Beaudean, President of the Trinity Lutheran Church Board, stated that the church is opposed to the request. He explained that the Board is concerned about the precedent that will be set if the request is approved. He stated that the Board also has concerns about patrons of the bar potentially using the church's private parking lot.

Mr. Smallwood asked Mr. Beaudean if the Church Board would be willing to meet with Mr. Gohn to see if their concerns can be addressed. Mr. Beaudean replied that such a meeting could be arranged but he did not feel it would change the Board's position.

In response to a question from Chairman Haubold, Mr. Shrimplin stated that staff had not been contacted by anyone in opposition to the request.

A motion was made by Mr. Smallwood and seconded by Mr. Robertson to approve the liquor license request for consent. Mr. Smallwood stated that he feels it would be beneficial for Mr. Gohn to meet with the Church Board. He explained that while he supports new businesses locating downtown, he feels it is important to be respectful of the church's concerns. Mr. Kelley stated that the two hundred (200) foot distance requirement exists for a reason, which is to protect churches and schools from potential adverse effects created by a liquor establishment. Mr. Robertson expressed agreement with Mr. Kelley. Mr. Whitlock stated that he also supports new businesses locating downtown.

In response to a comment by Mr. Gohn, Mr. Shrimplin noted that the Board of Adjustment had approved a liquor license request for consent for a gastropub at this same location on July 5, 2018. He verbally read from the meeting minutes, which indicated that a representative of Trinity Lutheran Church expressed concerns about safety, but stopped short of stating that the church was opposed to the request.

Mr. Kelley asked Mr. Gohn if he would like the Board of Adjustment to table the request to allow time for him to meet with the Church Board. Mr. Gohn stated that he would like the Board to vote on the request tonight. The motion failed by a roll call vote of 1 in favor, 4 in opposition, and 0 abstaining (*Aye: Whitlock; Nay: Haubold, Kelley, Robertson, Smallwood*). Mr. Shrimplin stated that per Section 5-6 of the City Code, Mr. Gohn has until July 31, 2021 to file an appeal of the Board's decision to the City Council.

Amendment to the Rules of Procedure

Mr. Shrimplin asked if there were any questions or comments regarding the proposed amendment to the Board's Rules of Procedure, which were presented at the last meeting.

There being no questions or comments, the amended Rules of Procedure were unanimously approved upon a motion made by Mr. Smallwood and seconded by Mr. Kelley.

Election of Officers

The Board held its annual election of officers. A motion was made by Mr. Smallwood and seconded by Mr. Whitlock to re-elect Mr. Haubold as Chairman, Mr. Smallwood as Vice Chairman, and Mr. Whitlock as Secretary. The motion passed unanimously.

Board Appointment Recommendation

Chairman Haubold explained that Mr. Robertson was recently appointed to the Board as a regular member. His previous seat as an alternate member is now vacant. The Board reviewed the eligible Advisory Board applications and did not wish to make a recommendation at this time. Mr. Shrimplin noted that the state law governing boards of adjustment states that: "Three alternate members may be appointed to serve in the absence of or the disqualification of the regular members." Because the state law authorized but did not require alternate members, the Board decided to postpone making a recommendation.

Board Communication

There were no communication items from the Board members.

Staff Communication

Mr. Shrimplin stated that the new City Manager, Dr. Kenneth Haskin, has now started his employment with the City.

Adjournment

There being no further business, the Board voted unanimously to adjourn the meeting at 7:55 p.m. upon a motion made by Mr. Smallwood and seconded by Mr. Whitlock.

Respectfully submitted by:


William Whitlock, Secretary