

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

September 18, 2013

City Council Chambers

MEMBERS PRESENT: Leanne Cardoso, Bernie Bossio, Tom Shamberger, George Papandreas, and Jim Shaffer

MEMBERS ABSENT: None.

STAFF: Christopher Fletcher, AICP

- I. **CALL TO ORDER AND ROLL CALL:** Bossio called the meeting to order at 6:30 PM and read the standard explanation of the how the Board conducts business and rules for public comments.
- II. **MATTERS OF BUSINESS:**
 - A. **Minutes for the August 21, 2013 Hearing.** Shamberger moved to approve as presented; seconded by Papandreas. Motion carried unanimously.
- III. **OLD BUSINESS: NONE**
- IV. **NEW BUSINESS:**
 - A. **CU13-15 / Sunnyside Properties, LLC / 300 Carson Street:** Request by William Morlino, on behalf of Sunnyside Properties, LLC, for conditional use approval for a personal storage facility at 300 Carson Street; Tax Map 20, Parcel 148; B-2, Service Business District.
 - B. **V13-36 / Sunnyside Properties, LLC / 300 Carson Street:** Request by William Morlino, on behalf of Sunnyside Properties, LLC, for variance relief from Article 1339.04 as it relates to setbacks at 300 Carson Street; Tax Map 20, Parcel 148; B-2, Service Business District.
 - C. **V13-49 / Sunnyside Properties, LLC / 300 Carson Street:** Request by William Morlino, on behalf of Sunnyside Properties, LLC, for variance relief from Article 1361.03(P)(1) as it relates to design and performance standards at 300 Carson Street; Tax Map 20, Parcel 148; B-2, Service Business District.
 - D. **V13-50 / Sunnyside Properties, LLC / 300 Carson Street:** Request by William Morlino, on behalf of Sunnyside Properties, LLC, for variance relief from Article 1361.03(E) as it relates to transparency at 300 Carson Street; Tax Map 20, Parcel 148; B-2, Service Business District.

- E. **V13-51 / Sunnyside Properties, LLC / 300 Carson Street**: Request by William Morlino, on behalf of Sunnyside Properties, LLC, for variance relief from Article 1361.03(Q)(2) as it relates to minimum parking requirements at 300 Carson Street; Tax Map 20, Parcel 148; B-2, Service Business District.
- F. **V13-52 / Sunnyside Properties, LLC / 300 Carson Street**: Request by William Morlino, on behalf of Sunnyside Properties, LLC, for variance relief from Article 1361.03(O)(5) as it relates to minimum building height at 300 Carson Street; Tax Map 20, Parcel 148; B-2, Service Business District.

Fletcher read the Staff report stating that on 16 JUL 2008, the petitioner obtained variance approval under Case No. V08-32 to develop a surface parking lot on the subject site where two public rights-of-way intersect and conditional use approval under Case No. CU08-11 to establish a “Commercial Parking Lot” use in the R-3 District.

On 01-May-2012, City Council enacted a Zoning Map Amendment under Case No. RZ12-01 reclassifying the subject realty from R-3, Multi-Family Residential District to B-2, Service Business District. Addendum A of this report illustrates the location of the subject site.

The petitioner seeks to construct a garage/storage structure on Parcel 148 utilizing the existing foundation walls of a former nonconforming structure that was razed and removed several years ago. The proposed structure is 30 feet X 27.75 feet or 832.5 square feet in area.

It should be noted that the subject 40’ X 40’, 1,600 square foot tract of realty is considered a nonconforming parcel as it does not comply with minimum lot area (6,000), minimum lot frontage (60 feet), or minimum lot depth (100 feet) standards for the B-2 District. The parcel’s front is along Carson Street.

The following narrative describes each of the conditional use and variance cases presented herein.

Agenda Item A Case No. CU13-15

The proposed garage storage building use does not appear to be included as a permitted principal land use in Table 1331.05.01 as such structures are generally characterized as accessory structures/uses to another principal structure/use.

Article 1357.05 provides administrative interpretation authority when specific proposed land uses do not clearly fall within land use categories listed as either permitted or conditional uses and/or do not clearly fall within the common meaning of any of the land uses listed in Table 1331.05.01 and defined in Article 1329.02.

The proposed use appears to be substantially similar to a “Personal Storage Facility or Self-Service Storage Facility” use, which is defined in Article 1329.02 as:

“A building or group of buildings consisting of individual self-contained units leased to individuals, organizations, or businesses for self-service storage of personal property.”

“Personal Storage Facility” uses are permitted in the B-2 District with conditional use approval by the BZA. Article 1375.05(E)(4) provides that:

“If the proposed use is most similar to a use allowed only as a conditional use in the district in which it is proposed to be located, then any use interpretation authorizing such use shall be subject to the issuance of a conditional use permit...”

As such, conditional use approval is required to develop the proposed garage storage structure.

Agenda Item B Case No. V13-36

The following table identifies related lot coverage and setback requirements for the proposed garage storage structure and notes requisite variances in bold font highlighted in yellow. [See staff report for table illustrations]

As the table above illustrates, variance relief of 16.75 feet from the minimum side (east) setback standard and 18 feet from the minimum rear setback standard is required for the development as proposed.

Agenda Item C Case No. V13-49

Article 1361.03(P)(1) provides that the first two (2) floors of a building must be constructed of natural materials including stone, brick, and wood siding, but not including materials such as, or similar to, wood roof shingles, reflective glass, split-faced concrete block, imitation stone, and imitation stucco or Drivit.

Because the proposed development program includes the use of split-faced concrete block, variance relief is required. It should be noted the petitioner has stated that wood siding will be used rather than the reference to brick illustrated on the submitted renderings.

Agenda Item D Case No. V13-50

Article 1361.03(E) provides that building facades adjacent to public streets must have at least 60% ground floor transparency. Because no windows are provided in the proposed development along Carson Street or Grant Avenue, variance relief is required.

Agenda Item E Case No. V13-51

Article 1347.06 and Table 1365.04.01 provides the following minimum parking requirement for Personal Storage Facility or Self-Service Storage Facility” uses:

3 spaces plus 1 space per 100 units

Although Article 1361.03(Q)(2) permits on-street parking spaces immediately adjacent to a land use to count towards fulfilling minimum parking requirements, the subject’s frontage along Carson Street and Grant Avenue is striped yellow and on-street parking is not permitted.

Because the proposed site plan does not include on-site parking, variance relief from the minimum parking requirement is required.

Agenda Item F Case No. V13-52

Article 1361.03(O)(5) provides a minimum building height of two (2) stories along secondary streets in the Sunnyside Overlay Districts. Because the proposed building height is one (1) story, variance relief is required.

Staff recommends that the Board, without objection from members of the Board, the petitioner, or the public, combine the public hearings for one (1) conditional use and five (5) variance

petitions presented herein. However, each respective conditional use and variance petition must be considered and acted upon by the Board separately.

Bossio recognized the petitioner, William Morlino of 2045 University Avenue, who stated he concurred with the staff report and had no further information to add.

There being no comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a conditional use or variance by reaching a positive determination for *each* of the respective "Findings of Fact" submitted by the applicant. Addendum B of this report provides Staff recommended findings of fact.

Fletcher noted that each respective conditional use and variance petitions must be considered and acted upon by the Board separately and that he would read staff's recommendations as the Board considered each petition.

For Agenda Item A concerning Case No. CU13-15, Fletcher stated that staff recommends the following conditions:

1. That shiny metal roofing or unfinished metal roofing may not be used.
2. That, if the subject building includes a metal roof, it must be finished in a neutral, earth-tone color that does not unduly call attention to the building. Examples of colors that may not be used are orange, red, yellow, and white. Fletcher noted that these design standards are provided in Article 1331.06(15) for "Self Storage and Personal Storage Facility" uses.

The Board decided to review and consider each finding of fact individually with Bossio reading the question and Fletcher reading Staff's recommended response for each of the findings of fact.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

Structure to be used as storage. Maximum vehicle use should be limited to one vehicle at any given time.

Bossio asked what the structure's distance is from the street. Morlino stated the distance from the garage door to the street is approximately 10 feet.

Papandreas made a motion to find in the positive for Finding of Fact No. 1 as revised by Staff; seconded by Shaffer. Motion passed unanimously.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

Very limited use of structure. The building will comply with all related building and fire codes.

Papandreas made a motion to find in the positive for Finding of Fact No. 2 as revised by Staff; seconded by Shamberger. Motion passed unanimously.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

The proposed building will be a one story structure on existing foundation with much of the building below adjoining grades, which should not adversely affect existing light distribution and air flow patterns.

Papandreas made a motion to find in the positive for Finding of Fact No. 3 as revised by Staff; seconded by Shamberger. Motion passed unanimously.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

Will occupy only 52% of existing lot.

Papandreas made a motion to find in the positive for Finding of Fact No. 4 as submitted by petitioner; seconded by Shaffer. The motion passed 4-1 with Bossio voting nay.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

No person will be living in the structure.

Papandreas made a motion to find in the positive for Finding of Fact No. 5 as submitted by petitioner; seconded by Shaffer. Motion passed unanimously.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The proposed one-story storage structure will not require additional public services or facilities that are not presently available to the site or the general vicinity.

Papandreas made a motion to find in the positive for Finding of Fact No. 6 as revised by Staff; seconded by Shamberger. Motion passed unanimously.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

The proposed building and use should serve to improve a nonconforming parcel that is currently vacant, underutilized, and otherwise a noncontributing tract of land.

Shaffer made a motion to find in the positive for Finding of Fact No. 7 as revised by Staff; motion died for lack of second.

Cardoso expressed concerns with how the surrounding area would be affected by the structure.

Shamberger noted the area was recently rezoned to a B-2 district.

Bossio asked if adding apartments above the structure would be more of a benefit to the surrounding areas.

Papandreas noted that standards are improving in the neighborhood and agreed that apartments above would make the structure more compatible with the surrounding environment however parking requirements could be an issue.

Shamberger expressed that a storage facility use is not for a B-2 District area.

Bossio asked if there was a similar case that had been presented to the Board in the past. Shamberger confirmed and referred to property that was located in Sabraton behind the CVS drug store and noted the case was tabled and was changed to meet the code ordinance.

Papandreas referred to the site plans and asked if there is an existing foundation wall that the structure will sit on.

Bossio asked if that question was relevant to the petition. Papandreas explained he was interested in knowing if the structure will be sitting on an existing foundation.

Morlino explained the existing stackable foundation wall will be located inside of the proposed garage. An 8 inch trough exists behind the wall that was part of the foundation prior to being demolished. The new building would be approximately a foot off of the old back foundation of the house.

Papandreas asked if the pre-existing foundation was located directly behind the stackable retaining wall. Morlino referred to the site plan and explained the location of the existing foundation.

Shamberger noted that the buildings are not conserved and does not meet the current B-2 standard requirements for both setback and façade.

Cardoso expressed concerns with the value of the surrounding buildings and the structure becoming a detriment to those buildings.

Papandreas noted there are many developments in that area that are headed in a positive direction and the values of the surrounding property could possibly be more conserved by an empty lot rather than constructing the storage unit. He is not completely against the use if there is a way to camouflage it.

Bossio agreed and referred back to the earlier discussion of putting apartments on the upper level of the structure and suggested a duplex if that would be easier to meet the parking requirements.

Papandreas agreed and stated that if the structure included dwelling units, then he would be more favorable to support the use.

Based on the discussion, Fletcher provided the following negative response for Finding of Fact No. 7:

Finding of Fact No. 7 – Value of buildings will NOT be conserved, in that:

The “Personal Storage Facility” use, as proposed, appears to be more commonly associated with an accessory use rather than a principal use, which will not contribute to or conserve the value of neighboring uses, structures, or the built environment given the B-2 District zoning classification of the subject property and the prevailing development pattern of commercial and multi-family residential uses within the immediate B-2 District.

Shamberger made a motion to find in the negative for Finding of Fact No. 7 as stated by Staff; seconded by Cardoso. Motion passed unanimously.

Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:

The proposed building and use should serve to improve a nonconforming parcel that is currently vacant, underutilized, and otherwise a noncontributing small tract of land.

Shamberger made a motion to find in the positive for Finding of Fact No. 8 as stated by Staff; motion died for lack of second.

Bossio noted that a storage use is not the most appropriate use for the land and the structure should include a service that supports the neighborhood since it is located within the B-2 District.

Based on the discussion, Fletcher provided the following negative response for Finding of Fact No. 8:

Finding of Fact No. 8 – The most appropriate use of land is NOT encouraged, in that:

The “Personal Storage Facility” use, as proposed, does not appear to be the highest and best use of the subject property given the B-2 District zoning classification of the subject property and immediate area; the uses and development opportunities otherwise permitted by-right thereon; and, the existing uses and development patterns within the immediate area.

Papandreas made a motion to find in the negative for Finding of Fact No. 8 as amended by Staff; motion passed unanimously.

Shaffer moved to deny conditional use petition CU13-15 based on the Board’s negative findings of facts; seconded by Shamberger. Motion passed unanimously.

Bossio reminded Mr. Morlino that the Board’s decision can be appealed to Circuit Court within thirty days and that any work related to the Board’s decision during this period would be at the sole financial risk of the petitioner.

Fletcher noted there are other cases related to the conditional use petition and asked the Board if it would be appropriate to table the related variance petitions until Staff can discuss with the petitioner alternate approaches.

After discussion by the Board, it was agreed that tabling the related variance petitions would prove favorable to the petitioner.

Shaffer moved to table Case Numbers V13-36, V13-49, V13-50, V13-51, and V13-52; seconded by Papandreas. Motion passed unanimously.

Bossio explained to Morlino that the items had been tabled so he will not have to make additional applications and can discuss with Staff an alternate approach. Morlino asked if he had any decision in the matter as he would prefer the related variances be denied so he could go to Circuit Court. Bossio explained the items were tabled in order to give the opportunity of researching alternate approaches and the decision has already been made to table the items. Bossio did tell Morlino that he has the right to take all decisions by the Board to the Circuit Court.

V. ANNOUNCEMENTS: Fletcher read the Final Order / Scott Properties, LLC vs. Board of Zoning Appeals Write of Certiorari / CU13-01 into the record.

Attached herewith is the Final Order dated 13 SEP 2013 by The Honorable Judge Russell M. Clawges, Jr. in Civil Action No. 13-AA-2 concerning the Board's 16 JAN 2013 denial of conditional use petition Case Nu. CU13-01 / Scott Properties, LLC / Old Golden Blue Lane.

In summary, the Court agreed with the petitioner (Scott Properties, LLC) that the Board's subject decision was arbitrary and capricious; the Board's reasons for denying the subject conditional use petition were speculative; and, the Board's failure to approve the subject conditional use petition was plainly wrong in view of the evidence on the record. As such, the Court reversed the Board's decision to deny conditional use petition Case No. CU13-01.

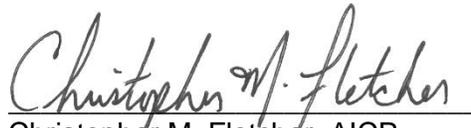
City Attorney Stephen Fanok advised this Office to report this Final Order to the Board as a part of the Board's 18 SEP 2013 hearing so that it is a part of the record; advise the Board that no further action was required by the Board; and, place the Final Order in the related conditional use file.

VI. ADJOURNMENT: 7:30 PM

MINUTES APPROVED:

October 16, 2013

BOARD SECRETARY:


Christopher M. Fletcher, AICP