

**MINUTES
ZONING BOARD OF APPEALS
REGULAR MEETING
WEDNESDAY, NOVEMBER 18, 2015, 4:00 P.M.
COUNCIL CHAMBERS, CITY HALL
109 EAST OLIVE ST., BLOOMINGTON, IL**

Members present: Mr. Briggs, Mr. Kearney, Ms. Meek, Mr. Simeone, Mr. Bullington, Mr. Brown

Members absent: Chairman Ireland

Also present: Mr. Tom Dabareiner, Community Development Director
Mr. George Boyle, Assistant Corporation Counsel

Mr. Dabareiner called the meeting to order at 4:03 p.m. and called the roll. With six in attendance, a quorum was present.

There being no chairman, Mr. Dabareiner asked for nominations for Acting Chairperson. Mr. Kearney nominated Acting Chairman Briggs; seconded by Mr. Simeone. There were no other nominations. The selection of Acting Chairman Briggs to serve as Acting Chairman was **approved** with six (6) voting in favor and zero (0) against with the following votes being cast on roll call: Mr. Brown—Yes; Mr. Bullington—Yes; Mr. Simeone— Yes; Mr. Kearney—Yes; Mr. Briggs— Yes; Ms. Meek—Yes.

Acting Chairman Briggs took his position as Acting Chairman.

PUBLIC COMMENT: None

The Board reviewed the minutes from October 21, 2015 and accepted the minutes with modifications. The modifications included the spelling of Mr. Kearney’s last name. On page 8, “he noted that precedent does not start today” replaced the similar draft phrase. On page 9, add to the end of “...all findings need to be found in favor” the following: “and asked whether the City agreed.” Under Other Business, the “...as allowing replacement of a four foot fence” in place of the similar draft phrase. The minutes as amended were **approved** unanimously.

Acting Chairman Briggs explained the meeting procedures. Mr. Dabareiner stated all items were published.

REGULAR AGENDA:

SP-04-15 Public hearing, consideration, review and approval of the petition submitted by Fred Wollrab and Carol Shepard for: 1) A Special Use for a two-family residence under the Municipal Code 44.6-8.D All for the property located at 1314 Fell Avenue. Zoned R-1C, High Density Single-Family Residence District.

Julia Davis, attorney for the petitioner, 1313 East Washington, Bloomington; Mr. Wollrab, 107 Hilltop Road, Bloomington; and, Ms. Shepard, 7 Thomas Drive, Normal, were sworn in. Ms. Davis remarked on the property’s history before the City with a request earlier this year for a

rezoning to allow multi-family residences at 1314 Fell Avenue. She noted that the new owners are requested a duplex structure, which is allowed as a Special Use, in the R-1C district. Ms. Davis pointed out the building is 20,000 square feet in size and distributed photos of the outside of the structure. She noted the only change is the addition of a wall between the two units and no changes to the footprint are proposed. She added that the property exceeds the zoning requirements for a two-family residence.

Mr. Simeone confirmed that the petitioner was not changing the outside of the house and that separate entrances were planned; Ms. Davis concurred. Ms. Shepard explained the house had additions over the years and is now an L-shape. Mr. Bullington asked if the dark line on the plans indicated where the duplex would be separated and requested clarification that separate kitchens would exist; Ms. Shepard agreed.

Jean Barkoviak, 1310 Fell Avenue, was sworn in. Ms. Barkoviac stated she has lived at 130 Fell for 41 years and praised the exterior paint and maintenance already performed.

Ann Bailen, 1406 North Clinton Boulevard, Bloomington, was sworn in. Ms. Bailen also praised the exterior of the house. She asked about the meaning of Special Use and whether it limited the number or types of residents at the location.

Mr. Dabareiner presented the staff report. He indicated the property's location and provided an aerial photograph and surrounding property photos for context. He explained the Special Use considerations. He noted that the R-1C district contemplates allowing duplex residences, that property's reuse will help property values, and that its conversion would not impede local development. He suggested that limiting parking would discourage the use from evolving into student housing and asked that a limit of four spaces be placed as a condition of approval, along with landscaping over the remaining spaces.

Acting Chairman Briggs explained the Special Use designation and its purpose. Mr. Dabareiner stated that the parking changes should be a condition with Special Use approval. He added the petitioner agreed to reduce the number of parking spaces but to a higher number than the staff recommendation; furthermore, the petitioner had not addressed how the remaining parking spaces would be removed.

Mr. Simeone asked for the definition of multi-family; Mr. Dabareiner responded that 3 or more units in a building constitute multi-family residential. Mr. Simeone asked if four students could rent one of the proposed units; Mr. Dabareiner stated that the City code limits this situation to three unrelated persons living in a single unit, but we respond with code enforcement only if we receive complaints. Mr. Simeone suggested that the request for more parking spaces relates to the potential of having several unrelated individuals renting each unit. Mr. Dabareiner reiterated that staff's recommendation is two spaces per unit, noting that the petitioner may return with a request for more spaces if they establish that need. Mr. Boyle provided a definition of family as any number of individuals who are related by blood or marriage and up to two unrelated individuals. Mr. Brown asked if staff was trying to discourage Illinois Wesleyan students from living in this building; Mr. Dabareiner state that we cannot prohibit anyone from using the space legally, but City code addresses the question in terms of limiting the number of unrelated people living in a single unit. Acting Chairman Briggs noted that historically the building housed students. Mr. Dabareiner mentioned a couple other nonconforming multi-family buildings exist

on the same block, but they would not be allowed to become multi-family residences today in this zoning district.

Mr. Kearney asked if there is any connection between this property and Illinois Wesleyan; Mr. Dabareiner responded no. Mr. Kearney pointed out he works for IWU and asked if the City considered it a conflict in any way for him to participate; Mr. Boyle responded he saw no conflict because no relationship exists between the school and this property. Mr. Kearney asked if the City intended to discourage IWU students from renting these units; Mr. Dabareiner replied that staff and the code are neutral as to who will rent or occupy the units.

Acting Chairman Briggs asked how the parking condition should be phrased; Mr. Dabareiner suggested that the parking be limited to a total of four with the rest of the parking area landscaped.

Ms. Meek suggested that given the size of the building and the units that limiting the parking to a total of four spaces placed a severe restriction on the residences' use. Mr. Dabareiner reiterated that staff's goal was simply to discourage the building from becoming multi-family and added that the Board may adjust the number.

Ms. Davis stated that the property has no affiliation with IWU and the petitioner has no objection to Mr. Kearney voting, in response to Mr. Kearney's question about whether the petitioner saw any potential conflict of interest.

Ms. Davis indicated that the property would need to be rezoned before it could become multi-family; that restricting the parking devalues the property and limits who the tenants could be, especially if a family owns more than one vehicle. Ms. Davis repeated that the code indicates that two spaces per unit is the minimum required. Ms. Shepard stated that some of the remaining parking would become green space but they had not considered the extent or the planting materials yet. Mr. Simeone asked if they would be building a garage; Ms. Shepard indicated that no garage would be built in this phase. Mr. Boyle asked the petitioner to clarify for the record the number of spaces they are requesting; Ms. Shepard indicated eight spaces.

Mr. Wollrab repeated that they had not yet decided what areas would be paved or green space and believed no parking restrictions should be placed on the property. Acting Chairman Briggs repeated that the Board must consider whether conditions exist that would allow the use to change from the approved use; that to fit into the neighborhood, limiting the parking would help prevent it from becoming multi-family. Acting Chairman Briggs stated that the Special Use stays with the property and not the owner; should the current owner sell the property, future owners should be clear about the approved use.

Mr. Bullington recommended limiting parking to four spaces per unit for a total of eight spaces and made a motion to that effect; Mr. Simeone seconded. Acting Chairman Briggs asked the petitioner if the total of eight spaces plus turning the rest into green space was acceptable; Ms. Davis agreed. The motion was **approved** with six (6) voting in favor and none against with the following votes being cast on roll call: Mr. Bullington—Yes; Mr. Simeone—Yes; Mr. Brown—No; Acting Chairman Briggs—Yes; Mr. Kearney—No; Ms. Meek—Yes. Mr. Dabareiner reported a 4-2 vote in favor of the amended condition. Mr. Bullington asked if all other

conditions in terms of compliance with City codes remained part of the recommendation; Mr. Dabareiner confirmed this is the case.

Acting Chairman Briggs requested a roll call vote on the Special Use. The motion was **approved** with six (6) voting in favor and none against with the following votes being cast on roll call: Mr. Brown—Yes; Acting Chairman Briggs—Yes; Mr. Simeone—Yes; Ms. Meek—Yes; Mr. Bullington—Yes; Mr. Kearney—Yes. Mr. Dabareiner indicated he would determine when this case would go before Council and asked the petitioner to contact him.

SP-05-15 Public hearing, consideration, review and approval of the petition submitted by Jonah Smith for: 1) A Special Use for an Antique Store under the Municipal Code 44.4-6 D.3. where a former legal nonconforming use may be replaced with a second nonconforming use provided the second use is less nonconforming or more compatible with the district. All for the property located at 403-405 East Locust Street. Zoned R-3A, Medium Density Multiple-Family Residence District.

Jason Barickman, attorney for the petitioner, 202 North Center Street, Bloomington; Jonah Smith, 1107 West Daniels Street, Champaign; and, Dennis Godbey, 2508-1/2 South Bunn, Bloomington, were sworn in.

Mr. Barickman stated that Mr. Smith is the petitioner and property owner and wishes to sell the property to Mr. Godbey. Mr. Barickman stated that the building is about 2,300 square feet, two stories, and built around 1925; and second story consists of two residential rental units. He added that the first story is commercial space with a bank of large windows facing Locust Street; parking is located next door and loading is in the rear of the building. Mr. Barickman stated the building is zoned R-3A and the proposed antique store is allowed as a special use based on the history of uses in the building. He stated Mr. Godbey plans no structural improvements to the building. According to Mr. Barickman, the petitioner has owned the property since 2012 and the building has included a variety of uses, including a beauty salon and counseling center; he stated that the proposed antique store would be a less nonconforming use than these prior uses.

Mr. Bullington stated that staff is recommending limited hours of operation and a prohibition of “flea market” types of activities; he asked the proposed buyer to address the proposed operations of the store. Mr. Godbey stated his hours of operation are proposed to be open from 10:00AM or 11:00AM to no later than 5:00PM or 6:00PM; weekends would be maybe four hours on Sundays and Saturday would probably be like a weekday. Mr. Bullington agreed to wait until after the staff presentation to review the flea market prohibition.

Ms. Judy Stearns, 316 East Locust, was sworn in. She thanked the ZBA for their sensitivity to historic neighborhoods in the City. She noted that Locust Street carries a lot of traffic. She stated that she and her neighbor are property owners and residences; many others in the corridor are renters. She noted her objections to a few prior proposals for this property, including a convenience store. Ms. Stearns asked for a definition of “antique” store and whether the special use can be limited to that use. She also asked if there is any issue with the owner being the applicant while the buyer has the proposed antique store; what happens to the special use if the sale does not happen? Acting Chairman Briggs stated that the special use goes with the land, not the owner. She also communicated that the neighborhood understands it is a commercial space and that a vacant property is usually not a good thing. She stated that limiting the hours would be

helpful.; she also stated some landscaping between 401 East Locust and 403 East Locust would be nice to have as a buffer.

Mr. Dabareiner presented the staff report. He provided an overview of the location with a zoning map and an aerial photograph. He showed photos from the location's viewpoint. Mr. Dabareiner indicated that the zoning ordinance does not define "antique" store. Mr. Dabareiner ran through the standards after explaining that the code allows another nonconforming use to replace a nonconforming use if the second use is considered less nonconforming, but needs a Special Use. Mr. Dabareiner concluded that the Special Use standards were met. As for hours of operation, staff believes limited them to between 8:00AM and 6:00PM was fine, Monday through Saturday. Staff believes that prohibiting Sunday hours allowed for less impact on the residential neighborhood. Mr. Dabareiner stated that staff was also seeking to restrict flea market activities which are advertised events to attract large volumes of people and outside displays and activities. Ms. Meek asked if tents in the parking lot would be prohibited. Mr. Dabareiner concluded by asking that the parking lot be brought up to current parking lot standards which would entail striping and a possible handicapped space.

Acting Chairman Briggs noted that antique stores are not listed at all as allowed in the R-3A zoning district in the use matrix. Mr. Dabareiner confirmed this and indicated that this is why the proposal is before them, to allow as a special use a less nonconforming use than the prior nonconforming uses. Mr. Bullington asked about the flea market restriction, asking if the concern centers on outdoor events; Mr. Dabareiner indicated staff is concerned about a large event that occurs outside the building, but as long as the sales activity was all indoors, staff had no concerns. Acting Chairman Briggs suggested placing a limit on the number of sidewalk sales.

Mr. Simeone noted that the staff report indicated that one parking space is required per 250 square feet of building space and he asked how many parking spaces was required; Mr. Dabareiner indicated about ten spaces were needed. Mr. Simeone stated that normally the ZBA receives a drawing showing how much parking is available. Mr. Dabareiner suggested asking the petitioner. Acting Chairman Briggs asked about the buffer requirements in the code; Mr. Dabareiner replied that the buffer is required where a commercial district use sits adjacent to a residential district use, so there is no requirement in this case because the zoning is the same across the parcels.

Mr. Barickman stated that Mr. Godbey would like to be open on Sunday, but is open to other limited hours. He also noted that there is no intention to host flea market activities, but Mr. Godbey would like the ability to display items for sale on the sidewalk. Acting Chairman Briggs asked about limiting the amount of on-site sales to off-site sellers; Mr. Barickman indicated that consignment sale of items on behalf of off-site sellers is the norm for antique stores and asked that that no restriction be placed. Mr. Barickman stated that the condition of the parking lot may not be suitable for striping and that the issue of a buffer between the parking lot and 401 East Locust should be a private matter to be worked out between the property owners.

Acting Chairman Briggs agreed there is no definition inside the zoning ordinance for "antique" store. Ms. Stearns asked how this can be regulated to remain an antique store without a definition. Mr. Dabareiner stated that typically when using a zoning ordinance, not everything is

defined, meaning that one refers to a common dictionary for a definition. Ms. Stearns repeated her concerns about display and sales outside of the building and endorsed limiting hours.

Mr. Kearney stated it will be difficult to define some of these terms in this meeting; for example, “antique” is widely defined based on his cursory research so a working definition is not possible right now. Mr. Kearney noted that everyone has an image in their minds of an undesirable-appearing antique store. Mr. Simeone noted that staff will identify a common definition for antique store. Mr. Bullington stated that he does not believe the ZBA should provide a definition for the City of Bloomington; code enforcement should be able to determine whether the store is no longer an antique store. Mr. Boyle confirmed that when the code does not define a term, we go to commonly found definitions and that this approach is enforceable. There was a consensus to not draw up a definition for antique store.

Mr. Dabareiner indicated he had looked at other store hours and felt 8:00PM to 6:00PM was adequate with no hours on Sunday. Ms. Meek stated this is a business and the ZBA should not prohibit Sunday hours.

Mr. Bullington motioned to limit the hours from 8:00AM to 6:00PM Monday through Friday and from 10:00AM to 5:00PM on Saturday and Sunday; seconded by Mr. Simeone. Mr. Barickman indicated the prospective owner is amenable to that restriction, but asked to amend the motion as it applies to Monday through Friday to 9:00AM to 6:00PM because he thinks 8:00AM is too early for a residential neighborhood. Mr. Barickman concurred with the revised hours. The motion was **approved** to place a condition to limit the hours as last indicated with six (6) voting in favor with the following votes being cast on roll call: Mr. Bullington—Yes; Mr. Simeone—Yes; Mr. Brown—Yes; Acting Chairman Briggs—Yes; Ms. Meek—Yes; Mr. Kearney—Yes.

Ms. Meek stated that since the staff recommendation sought to prohibit flea markets, she would prefer no reference to that. Mr. Bullington asked to clarify that the antique store activities be limited to 405 East Locust and that 403 East Locust be limited to only parking, with display and sales activities prohibited from the parking lot; seconded by Mr. Simeone. The motion was **approved** to place a condition to limit activities on the two properties as indicated with six (6) voting in favor with the following votes being cast on roll call: Mr. Bullington—Yes; Mr. Simeone—Yes; Mr. Brown—Yes; Acting Chairman Briggs—Yes; Ms. Meek—Yes; Mr. Kearney—Yes.

Acting Chairman Briggs asked for a vote on the Special Use. The motion was **approved** to allow a Special Use for an antique store at 405 East Locust with six (6) voting in favor with the following votes being cast on roll call: Mr. Brown—Yes; Acting Chairman Briggs—Yes; Mr. Bullington—Yes; Mr. Simeone—Yes; Ms. Meek—Yes; Mr. Kearney—Yes.

OTHER BUSINESS:

Acting Chairman Briggs noted the clarification that a four-foot fence is allowed in front yards; Mr. Dabareiner apologized for his confusion.

NEW BUSINESS:

Ms. Meek asked about electing a Vice-Chair. Mr. Kearney suggested placing this on the next meeting’s agenda. Mr. Boyle noted that the term “Acting Chair” is what is used in the ordinance;

Mr. Bullington concurred. Acting Chairman Briggs indicated that in the past they had a Chair and Vice-Chair. The question arose as to whether the Chair position needs to be elected too and staff was asked to refer back to the June 14 ZBA meeting for guidance. There was agreement to place "Election of Officers" on the next agenda.

Mr. Kearey suggested placing on the next agenda an item on clarifying roles for the City Attorney's position in attendance at the ZBA. Mr. Kearney indicated that he has not reached his own conclusion yet on the matter; he has great respect for Mr. Boyle. However, he is concerned about clarity of roles from the public's perspective noting that the ZBA has discussed on the record the change that placed the City Attorney here. Mr. Kearney noted it is a change to have the City Attorney sitting on the dais side-by-side with board members; he has concerns about it, indicating that the City Code does not contemplate having the City Attorney sitting at the dais like the Secretary. He indicated that he was concerned that the City Attorney asked the petitioner a question of clarity and stated that he is not sure that the question should not have come from a board member. Mr. Kearney said he would like this placed on the agenda for clarity, while he does some research on his own. Acting Chairman Briggs stated that whenever the ZBA had a legal question in the past, a city attorney came in, responded, then left; agreeing with Mr. Kearney over the concern raised when Mr. Boyle asked a question of the petitioner. Acting Chairman Briggs stated that because the City Attorney represents the City, it may place him in a conflict of interest role with the decision-making of the ZBA; that a city attorney's statements should be advisory only. There was consensus to place this item on the next agenda for discussion.

ADJOURNMENT: 5:50PM

Respectfully,

Tom Dabareiner AICP