

Board of Zoning Appeals
December 20th, 2018
Minutes

The Chairman called the meeting to order at 4:30PM. The following members were present: Dr. William Semans, Mr. Kevin Zeiher, Mr. Feick and Mr. Walter Matthews. Ms. Angie Byington, Tom Horsman, and Greg Voltz represented the Planning Department; Mr. Trevor Hayberger represented the Law Department.

Dr. Semans moved to approve the minutes from the November 15th, 2018 meeting as written. Mr. Matthews seconded the motion. The motion carried with a unanimous vote.

Mr. Feick swore in those giving testimony.

Mr. Voltz stated that applicant is Larry and Angel Cunningham for a variance to construct a fence on a lot without a main structure **on Parcel 58-00236.000**. There is no new additional items on this application, the zoning of the property is R1-40 single family dwelling. They would like to place a fence on entire property, the applicant would like to use the fence to screen fruit trees and storage. City Commission and Planning Commission did not recommend approval for the rezoning of the property, staff also recommended denial. Currently there is no principle building or use on the property. Staff also believes that this property should be utilized as residential property, if a primary use is constructed they would be able to build a fence. Staff is recommending denial of the application.

Mr. Zeiher moved to deny the request; Mr. Matthews second the motion. With no further discussion the motion to deny the request was passed.

Mr. Feick stated that the next application is from David Makkos for a use variance to allow for a transient rental use at the property located at **1119 Fourth Street**, this application has been tabled.

Mr. Zeiher moved to bring the application off the table; Mr. Matthews seconded the motion. With a unanimous vote the motion passed.

Mr. Zeiher stated that he understands that to allow this the variance or Commission would need to be granted or Commission would have to recreate the transient overlay district for this to happen. He is also aware that the property has been developed for a transient rental, he lives next door to the property, he takes care of both properties, and the Board has previously granted a six month variance to allow this use. Mr. Zeiher ask if the Board can attach conditions with this approval that states as long as he continues to own both parcels and if the property sells the variance will cease.

Mr. Hayberger stated that you cannot attach a variance to an individual, all variances run with the land. They could place a sunset provision, however you have to determine that he is entitled to the use variance and assure that a hardship and the standards have been met.

Mr. Feick ask if the applicant has to meet all seven standards. Rarely do the applications meet all seven standards.

Mr. Hayberger stated the use variance has to comply with seven factors as well as the additional five conditions in Section 1106.02, and all five of those have to be met.

Mr. Horsman stated the property on 4th street was granted a six month variance, the resident does live next door. Staff did not recommend approval based strictly on zoning code and what the state law states for granting a use variance. Mr. Horsman reviewed the reasons for recommendation of denial, stating that the standards for a use variance are high. Staff is not able to recommend approval as the conditions have not all been sufficiently met.

Mr. Feick stated that the home could be rented every two months and could have much more of an impact to the surrounding property owners than brining a good tenant in on a Sunday for the week. Quality renters are

important and may be better option for this location. To date we have not heard any complaints from this property.

Mr. Hayberger stated that in a use variance it is important to note that the use is not expressly allowed, it is also important to determine that a hardship was not self-created. This owner purchased the property in 2017 when the transient rental ordinance was in effect by then. This property was never permitted to be utilized as a transient rental.

Mrs. Byington confirmed that the property was always zoned as single family, transient rental is not permitted. Mr. Zeiher stated that they are in a situation in which Mr. Makkos believed that he was able to have transient rental at this property, he made improvements to the home and set it up for that use. The Board then allowed a six month variance. Mr. Zeiher stated that he does not want Mr. Makkos or the City to incur legal fees for this situation.

Mr. Hayberger stated that case law is very clear that they have to show a hardship as it relates to the property.

David Makkos, 1113 4th Street, stated that his initial hardship is that he has spent over \$10,000 in furniture and an additional \$4,000-\$8,000 to improve the home to make it conducive for a transient rental. He has not recouped all of his cost to date. Mr. Makkos stated that he will also loose six months' rent as he would have to make the house conducive to a year around rental. One additional hardship is that some of his renters will be out a place to stay, many of the individuals that have stayed at his rental informed him that they would not stay on Meigs Street because they do not like the area. The Planning Department is aware that he is currently consulting with an attorney for a class action lawsuit, then the house sits empty for a year or two.

Mr. Zeiher stated that the lawsuit is not a hardship.

Mr. Feick stated that this body does not want to get there, however this will be your choice.

Mr. Makkos stated that he does not look at this use as being a threat to a neighborhood. All the neighbors are fine with it, however they are afraid to come to the meeting and say anything. Mr. Makkos stated that individuals will are interested in expanding the district.

Mr. Feick ask the applicant if he was aware that there was a transient rental ordinance when he purchased the property.

Mr. Makkos stated he was not aware of the transient rental ordinance and once he received a cease and dismiss order he did stop renting the property.

Mr. Feick swore in Mr. Stookey.

Timothy W. Stookey, 1307 Fifth Street, stated that this is area is the McCelvey Plat, from First Street to Cleveland Road. They are trying to improve the area, he is nervous about this use. He has been living on this street since 1971 and has been around the area his whole life. Mr. Stookey stated that they may open themselves up to problems if they allowed transient rental within the area. One of the first problems he has is the house is also located close to the school. If the applicant can guarantee that the transient rental tenants will not bring drugs into the area he would not have an issue, but he cannot guarantee this. Mr. Stookey stated he bought the home next to him to assure it would not become a transient rental property.

Mr. Feick stated that school is generally not in session when the house would be utilized for transient rental. Mr. Stookey stated that he went down to the Auditors office, the transient rental tax is now being implemented by the County and the applicants should also be aware of this tax. He is against the use as he did not follow the correct procedures.

Sharon Johnson, 1139 Fifth Street, stated that this is spot zoning. Mrs. Johnson stated that Mr. Feick has rentals as such he may have a conflict of interest and may not want to vote. If the owner does a transient rental it will only be for six months of the year, the property owner should just get a yearly rental. If we allow this property to be used as transient rental others will want this as well. The property values of the surrounding properties will continue to decrease if this is permitted. Mrs. Johnson stated that she would like a map indicating the approved locations for transient rental within the downtown area.

Mr. Feick ask Mrs. Johnson how many complaints that she had regarding noise, cars, etc. on this property.

Mrs. Johnson stated that she did not have any issue with this particular transient rental, she did not even know there was a transient rental until this came up.

Mr. Feick stated that in regards to the Duncan Standards there is only one that the applicant does not comply with, in regards to the other standards that need to be reviewed for a use variance there is only one of those that he does not meet; as such there are more positive than negatives. Mr. Feick ask if the Board can place a five year cap on this and approve the variance as a condition.

Mr. Hayberger stated that if the Board is finding that the application does not comply with one of the second set of standards you should not discuss forming conditions of approval. In regards to the second set of standards, every single one of those have to be met. Mr. Hayberger stated that the applicant does not have a hardship, a financial issue is not a hardship.

Mr. Feick confirmed that the applicant needs to comply with all of the standards referenced in 1106.02.

Mr. Hayberger stated that this is correct.

Mr. Makkos stated that money is a hardship from the research he has done. Mr. Makkos stated that he is willing to try to expand the district, he has canvased the whole neighborhood trying to get the interest in extending the transient rental area. He is willing to look at a temporary variance, however he wonders why if six months variance is okay why a year variance would not be okay.

Mr. Feick stated that he would love to make this work, however legal counsel has stated that the board would be incorrect to approve a use variance unless it met all the standards.

Mr. Makkos stated that transient rental is the way of the future, this should be considered on a case by case basis

Mr. Zeiher stated that they currently have to enforce the current regulations regarding this matter.

Dr. Semans stated that the transient rental has be to be maintained better than a standard rental property, these are all matters that will be addressed by the Planning Department. Currently the Board's hands are tied.

Mr. Makkos ask the board if they would consider a one year variance to allow for time to expand the district.

Mr. Feick stated that the applicant has requested a variance, the Board tabled the application and now the Board has been giving their marching orders to move forward. He believe that what the applicant is doing is great and could bring people to the area. At this time it would be in the Planning Department and City Commissions hands to make any changes.

Mr. Brady stated on behalf of City Commission, the Commission and staff have spent 100's of hours creating legislation regarding transient rental. There is currently a process to create an overlay district and exceptions, he does not foresee the City Commission reinventing the wheel on this issue. Staff is currently representing the existing ordinance.

Mr. Feick stated that if he brings everyone on Fourth Street forward in support of an overlay district this should be considered.

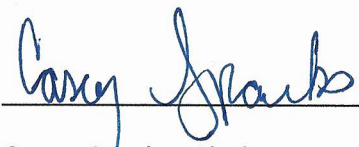
Mr. Zeiher moved to deny the variance request; Mr. Matthews seconded the motion.

With no further discussion the Board unanimously approved the denial of the application.

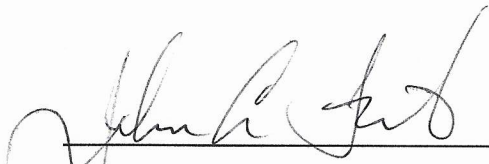
Mr. Zeiher moved to adjourn the meeting; Mr. Matthews seconded the motion.

The meeting was adjourned at 5:31pm.

APPROVED:



Casey Sparks, Clerk



John Feick, Chairman