

North Little Rock Board of Zoning Adjustment Minutes Record – April 30, 2020

The meeting of the North Little Rock Board of Zoning Adjustment was called to order by Chairman Tom Brown at 1:30 P.M. in the City Council Chambers, 300 Main Street, North Little Rock, AR. Roll call found a quorum to be present; a quorum being three members present.

Members Present

Tom Brown, Chairman
Mike Abele
Gardner Burton
Tim Giattina
Steve Sparr

Members Absent

None

Staff Present

Donna James, City Planner
Tim Reavis, Assistant Director of Community Planning
Marie-Bernarde Miller, Deputy City Attorney

Others Present

Thomas Pownell, Thomas Engineering, 3810 Lookout Road, North Little Rock, AR 72116
Pat Lester, Orion Capital Partners, 2200 N Rodney Parham Road, Little Rock, AR 72212
Via Phone - Demond Hervey, Victory Lap Circle EDU Solutions, 26 Wesley Drive, Sherwood, AR 72120
Christina Brewster, Home Sweet Home Rentals, LLC, POB165293, Little Rock, AR 72216
Freddie Brewster, Home Sweet Home Rentals, LLC, POB 165293, Little Rock, AR 72216

Approval of Minutes

Mr. Sparr formed a motion to approve the minutes from the previous meeting of February 27, 2020. Mr. Giattina seconded the motion and there was no dissent.

Administrative

Chairman Brown noted the following items were being postponed or withdrawn from the public hearing on this date:

BOA 2020-04 – property located at 115 W 7th Street - **BOA 2020-05** – property located at 2208 West 58th Street were both being postponed to the May 28, 2020 public hearing and **BOA 2020-06** –310 Skyline Drive being withdrawn.

Old Business

None

New Business

BOA 2020-07 - A variance is requested from the area provisions of Section.12.15 B (1) of the City of North Little Rock Zoning Ordinance to allow the placement of a fence within the front yard, which exceeds the height typically allowed within a residential zoning districts; and Section 12.15 B (2) of the City of North Little Rock Zoning Ordinance to allow the front yard fence material to be chain-link for property located at 2401 Parker Street, North Little Rock, AR 72114. Chairman Brown called the applicant's forward and requested they present their case.

Mr. Freddie and Ms. Christina Brewster, the property owners, were present representing the request. Mr. Brewster stated the request was to allow for the placement of a chain link fence around the parking lot located on their property. He stated the area was a tough neighborhood, there was a great deal of crime, and he wanted the fence to secure the property and to provide protection for the tenants. He stated the fence was a commercial grade fence material, similar to fencing found around pools and hospitals.

Ms. Brewster stated she felt they had not made the application request clear, she stated the fence would be a commercial grade and would not take away from the neighborhood. She stated the fence would not look bad. She stated if the Board desired a fence material other than chain link then the Board should tell them their desire.

Chairman Brown requested the applicants state their hardship. He stated in order for the Board to approve the variance request the applicant had to present a hardship:

Ms. Brewster stated the hardship was people walking through the parking lot. She stated it was more for security and safety of the tenants. She stated there was a lot of activity in the area and the fence was necessary to secure the site. She stated currently there were people walking through the property instead of walking around the property along the streets. She stated she wanted to make the tenants feel safe and the fencing would do so but would also bring up the area as well.

Mr. Brewster stated they had recently purchased the property and were currently making upgrades to the apartments. He stated there were plenty of times they would pull up to the apartments and there would be people just hanging out. He stated they were not tenants of the property just people hanging out on the property. He stated there was trash

and people had placed couches on the curb, which created a nuisance. He stated these nuisances were cause due to the site not having a fence.

Mr. Brown questioned if the applicant had read the ordinance regarding the material of fencing which would be placed on the site. Mr. Brewster stated he felt staff was requesting an architectural fence. Mr. Brown read to the applicant the ordinance requirement stating the problem was the proposed chain link fencing within the front yard.

Mr. Giattina questioned if the applicants were agreeable to installing a decorative style fence material as requested by staff. Mr. Brewster stated they had originally thought wrought iron style fencing but when they went to the fence company, they saw the black chain link fence and felt it would be a better choice.

Mr. Able stated his concern was the driveway was not adequate to allow cars to pull out of traffic to open the gate. Mr. Brewster stated the gates would not be closed. Mr. Brewster stated the gate was a deterrent. Mr. Able stated if someone pulls in and the gate is closed, they are going to be sticking out into the street.

There was a general discussion between the Commissioners and the Brewster's concerning if the gates would be open or closed. Ms. Brewster stated the primary concern was the property to the north. She stated there was a great amount of activity at this property and people would park on their property and walk to the house to the north. She stated it was less likely they would park on the Brewster's property and walk around the fence to go to the house to the north.

Mr. Giattina stated he felt it was most likely a better situation if the gates could be installed to install the gates. He stated if the reason for the fence was security if the gates were not installed there was still the security risk. Mr. Brewster stated with the fence people were less likely to walk through the site and throw their trash on the property. Mr. Giattina stated he agreed but without the gates, the site was not totally secure.

Mr. Sparr stated he had driven by the property and wanted to commend the Brewster's on the work they had done on the property. He stated he agreed, the house the Brewster's were concerned about was in fact a problem. He stated the fence would act as a deterrent to the people coming and going from the house to the north and he felt at some point in the future a gate would be the better option to totally secure the site. Ms. Brewster agreed in the future a gate would be the most desirable.

Chairman Brown requested staff to read the staff's recommendation. Ms. James read the recommendation to the applicants. Mr. Brown questioned if the applicants were agreeable with staff's recommendations.

There was a general discussion concerning the installation of the gates and the placement of the gates. Staff stated they could install the fence without the gate and the gate could be added in the future. Staff stated if and when the gates were installed the

gate opening from the back of the curb to the face of the gate was to have a minimum setback of 20-feet.

Chairman Brown entertained a motion for approval. Mr. Sparr made the motion for approval, which was to include staff's recommendations based on the applicant's hardship of the need to secure the site to limit their liability, and for the safety of the residents.

Chairman Brown stated prior to the issuance of the permit he wanted staff to have a picture of what the fence would look like. Ms. James stated during the commercial plan review the applicant would provide the plan along with the fence materials.

Deputy City Attorney Miller questioned if the applicants could build the fence without installing the gate. Staff stated the fence could be placed without the gate and if a gate was desired in the future then the gates could be added. Mr. Brown stated his concern was if the fence permit were issued without the gate then they would never install the gates.

Mr. Sparr amended his motion to include the installation of the gates at the time the building permit was issued for the fence. He stated the fence could be placed at the property line but the gates were to be placed a minimum of 20-feet from the back of the curb.

Chairman Brown requested a roll-call vote. All members voted in the affirmative. The motion as amended was passed.

BOA 2020-08 - A variance is requested from the area provisions of Section 13.5 of the North Little Rock Zoning Ordinance to allow a reduction in the number of on-site parking spaces for a restaurant use for property located at 4000 Vali Court, North Little Rock, AR 72116. Chairman Brown called the applicant's forward and requested they present their case and to provide a valid hardship.

Mr. Thomas Pownell, Mr. Pat Lester and via phone – Mr. Demond Hervey were present representing the request. Mr. Pownell stated the hardship was based on the operation of the restaurant. He stated the building contained 11,000 square feet of floor area and only 5,000 square feet was available for seating. He stated the code as written did not reflect the operation of the restaurant.

Ms. Miller provided the Board with the definition of a hardship and the items for the Board to consider when granting a variance based on a hardship.

Mr. Sparr asked if the restaurant was still a functioning restaurant. Mr. Lester stated the restaurant was still an operating restaurant and when the current order related to the current virus was lifted, the restaurant would open again. He also questioned if the

restaurant was going to remain after the current lease expired. Mr. Lester stated there were several options being considered for the building but a restaurant was not one of the uses being considered.

Mr. Brown questioned why the applicants needed a reduction in the total number of parking spaces. Mr. Pownell stated the reduction in the parking was necessary to facilitate the redevelopment of the western portion of the site with a carwash. Mr. Brown stated he had personally not heard a valid hardship to allow the variance request. Mr. Brown stated the Board had to have a hardship before they could circumvent the ordinance.

Mr. Pownell stated he had had several successes in saying the code did not reflect the operation of the current use. Meaning if a developer want to build a building 200-feet tall but there was not a code that allowed that then the lack of code was the hardship. He stated in the operation of this restaurant if it has 11,500 square feet of floor area and there was seating for one person then code did not reflect the operation of that restaurant. He stated this was an exaggeration but the restaurant did not have seating for that large of a building. He stated the seating was 5,000 square feet not 11,500 square feet. He stated the kitchen was large and there were a number of banquet rooms. He stated any time there was an issue with the code, which did not allow for a particular type of development then a variance was sought. He stated a restaurant with seating for one person was not reflected in the ordinance. He stated the current code did not allow for the operation of the existing restaurant based on the current restaurants customer traffic.

Mr. Burton questioned the number of parking spaces proposed vs the number of required parking spaces. Mr. Pownell stated the request was reducing the number of parking spaces from 112 spaces to 56 parking spaces for the restaurant.

Mr. Brown questioned the number of parking spaces within the write-up vs the number of spaces stated.

Staff stated a portion of the parking spaces were located on the carwash site.

Mr. Pownell stated the restaurant site was proposed with 56 parking spaces and not the 112 typically required and the carwash site would stand on its own.

Mr. Able questioned how parking was calculated on sites. Staff stated for the most part parking was calculated on the gross square footage of a building and based on the use of the building. Mr. Able questioned the fast food restaurant, which had been developed along McCain Boulevard. Staff stated parking had been provided and in cases of drive-through service, a portion of the stacking was allowed to count toward the total parking requirement.

There was a general discussion concerning the access to the carwash and the restaurant. Mr. Pownell stated at one point there were discussion concerning placing a driveway on

McCain Boulevard. He stated the concern was the speed of traffic and the potential for customers waiting to leave the site and turn left, east down McCain. He stated it was determined for safety a full access drive on McCain was not in the best interest of the site. He stated the two uses would share the drive on Vali Court.

Deputy City Attorney Miller stated the code required a valid hardship for the Board to consider the variance request. She stated a hardship was not that the code does not allow me to do what I want to do so therefore there is a hardship. She stated creating the second lot to allow for a more valuable property was not a hardship.

Mr. Pownell stated he felt this was a hardship since the application of the zoning ordinance did not reflect the current operation of the site.

Mr. Hervey stated the restaurant was built as a buffet style restaurant. He stated the kitchen was built as an industrial sized kitchen. He stated the original restaurant operated serving large families and large crowds. He stated when he met with the current operator his comments were the restaurant did not operate at capacity. Mr. Hervey stated the owner had stated due to the location of the restaurant the traffic flow was not traveling this far down McCain. He stated a hibachi style restaurant located in the Lakewood Shopping Center was garnering all the traffic. He stated the owner of the restaurant indicated his original business model was to operate as a hibachi grill with less focus on a buffet style operation. Mr. Hervey stated the restaurant has since taken out the hibachi grill and was now focused on a fast casual service, offering a grab and go style buffet with a no wait option. He stated customers were given carry out trays. He stated the current owner noted on busy day he would see cars in the range of 14 to 18 and on busy nights, there would be 22 to 28 cars. He stated the lobby area contained 1,200 square feet and was now functioning as a gift shop just to supplement the income lost from removing the hibachi. Mr. Hervey stated he questioned the restaurant owner as to why he stayed and the owner had indicated he had signed a seven-year lease. Mr. Hervey stated the owner stated he was currently trying to find ways to supplement his income and meet the lease agreement. Mr. Hervey stated the hotel to the south had agreed to allow overflow parking. He stated the owner indicated guest check out at the hotel was between 11 and 12 and he would support over-flow parking on the hotel site from the restaurant.

Mr. Hervey stated as a new owner he did not want to deal with a restaurant. He stated the restaurant tenant's lease was up in December 2020. He stated he and his team had done due diligence on future uses for the building. He stated the building was more in keeping with a medical office or a general office use.

The Board questioned if the plan was to repurpose the building at the end of the restaurant tenants lease then why not wait until the tenants lease expired. Mr. Pownell stated the developers wanted to get started on the carwash.

Mr. Able questioned if the variance was approved would the variance stay with the property or was the variance approved for an individual.

There was a general discussion concerning access to the site. Mr. Burton stated it appeared to him the access and the site was congested. Mr. Pownell stated the cars entering the carwash would come in to the site and turn left to queue up to the north, turning south with additional queue and then enter the carwash heading to the north. He stated this would stack a large number of cars. He stated leaving the carwash the cars would drive in front of the restaurant.

The Board questioned the length of time necessary to build the carwash. Mr. Hervey stated the carwash would be completed in 60 to 90 days.

The Board questioned staff to determine if there was a way to make the request work to allow the subdivision of the lot and allow the existing building to remain. Staff stated not as long as there was a restaurant user on the property. Staff stated the only way to support the request was to repurpose the building or take down the building and build a new building that the parking available was more in keeping with the parking available on the lot.

Mr. Hervey questioned if there was a way to limit and place restrictions on the property to exclude a restaurant as an allowed use. He stated his team was going in a new direction and a restaurant was not in their plans.

Chairman Brown entertained a motion for approval of the request. Mr. Sparr made the motion to approve the request as filed.

Chairman Brown called for a second on the motion. Hearing none, he called for a second time a second on the motion. Hearing none, he called for a third time for a second on the motion. Hearing none, he called for a fourth time for a second on the motion. No second was provided.

Chairman Brown stated due to the motion failing to receive a second, the motion failed.

Mr. Pownell requested clarification on when he could refile an application to this Board. He stated his question was since the request did not receive a second was this the same as receiving a negative vote. Mr. Pownell questioned if he could refile an application immediately or if there was a waiting period for refiling a request to the Board. Staff stated the applicant could file an application that was substantially different and would not have to wait to refile the request.

PUBLIC COMMENT/ADJOURNMENT

Mr. Sparr formed a motion to adjourn at 2:10 pm and there was not dissent.

PASSED: 28th of May, 2020 RESPECTFULLY SUBMITTED:


Tom Brown, Chairman