Legislation Text

File #: RES 15-289, **Version:** 1

Memorializing City Council action taken on January 14, 2015 denying the appeal of Rafic Chehouri of a December 8, 2014 decision of the Board of Zoning Appeals which granted a parking variance but denied setback variances for the property at 945 Grand Avenue.

WHEREAS, on September 22, 2014, Rafic Chehouri ("Applicant"), in DSI-Zoning File No. 14-332913, made application to the Board of Zoning Appeals ("BZA") for several variances for the purpose of expanding Applicant's existing retail store located on property commonly known as 945 Grand Avenue and legally described as Summit Park Addition Tost Pa Lot 23 Blk 27 [PIN: 022823310078]; and

WHEREAS, Applicant's building expansion required two variances from the dimensional standards for BC districts under Leg. Code § 66.431: (1) A front-yard setback of 25 is required. Applicant proposed a 0-foot setback for a variance of 25 feet. (2) A side-yard setback of 4 is required. The existing side-yard setback along the west side of Applicant's property line is 3.5 feet. Applicant proposed to construct the walls of the new addition in-line with the existing building's walls. Applicant therefore requested a .5 foot variance. Finally, under Leg, Code § 66.442's off-street parking standards, Applicant's existing use required 5 spaces. Applicant provided 3 spaces. Applicant's expanded use requires 7-spaces. The difference between the existing use required spaces (5) and the proposed use required spaces (7) yields a variance request for 2 spaces; and

WHEREAS, on October 27, 2014, pursuant to Leg. Code § 61.601, the BZA duly conducted a public hearing on the said variance applications where all persons interested were afforded an opportunity to be heard; and

WHEREAS, at the close of the said hearing the City Attorney advised the members present of that an affirmative vote of not less than four BZA members is required under Leg. Code § 61.2039 to approve variance applications. After a discussion between the members present, it appeared that there were not 4 votes to approve or deny the requested variances and the matter was duly laid over to November 10, 2014 where it was presumed that all seven BZA members would be able to attend meeting; and

WHEREAS, on November 10, 2014, the BZA, with five members present, the matter was reopened. The Applicant appeared and represented that he was willing to reduce the front- yard setback variance by "two to three feet." The hearing was thereafter closed. The BZA discussed the now modified variance requests. A motion was made to approve the variances which failed on a 2-3 vote. Another motion was made to deny the variances and failed on a 3-2 vote. A motion to lay the matter over to December 8, 2014 was duly approved on a 5-0 vote; and

WHEREAS, on December 8, 2014, the BZA, with six members present, again reopened the matter. The Applicant appeared and represented that he was now withdrawing the side-yard setback variance. The hearing was thereafter closed. The BZA discussed the variance requests as modified. A motion was made to approve the modified variance requests. This motion failed on a 2-4 vote. Whereupon the original staff recommendation to deny the dimensional variances and approve the parking variance was made; and

WHEREAS, the motion to approve the staff recommendation, based upon all the records, reports, and evidence presented at the public hearing, as substantially reflected in the minutes, was approved on a 4-2 vote based upon the following findings of fact set forth in BZA Resolution No. 14-332913 as follows:

"1. The variance is in harmony with the general purposes and intent of the zoning code.

The building on this site has a mixed commercial retail use and a two-bedroom dwelling unit. The first floor is occupied by both the commercial and the residential use but the second floor is residential only. The building is currently located 25 feet from the front sidewalk and sits about three feet above the street elevation. The applicant is proposing to remove the existing attached front deck and constructing a one-story addition to the front of the building with a zero setback from the front property line.

The proposed addition will have parking implications. However, it has been difficult to exactly determine how many parking spaces will be needed because the applicant's plans keep changing. Plans initially submitted showed a building floor area of 1,830 square feet and a parking arrangement consisting of 4 spaces stacked in the driveway, one parking space in the garage and one parking space behind the fence along the alley for a total of 6 parking spaces.

When it was pointed out to the applicant that a stacked parking arrangement cannot be counted toward meeting the required parking without a full time attendant, he subsequently revised his plans. The revised plans indicate that the existing commercial space is now 800 square feet. The plans also show that 5 parking spaces could be provided.

However, this parcel is 40 feet wide and off-street parking must be set back 2 feet from property lines in the BC district. Additionally, a standard parking space is 9 feet wide by 18 feet long, therefore, only three parking spaces, including a handicapped space, can legally be provided, meeting the parking requirement for the existing use.

According to the applicant's plans, the proposed addition plus the existing commercial use would occupy 1,319 square feet of commercial space on the first floor at street level which is currently the basement of the existing building. It appears that the current first and second floors would be one residential dwelling unit.

Assuming that the revised plan indicating that the commercial space is 800 square feet is accurate, the requested variance changes from 2 parking spaces to one space (the difference between 3 spaces required for the existing use and 4 spaces required for the proposed use).

According to the applicant, the purpose of the proposed addition is to address a number of issues on this site. A zero setback from the front property line would make the building more accessible to his customers, who are mostly elderly, and allow them to safely get in and out of the retail space at street level. The applicant states that his building is shielded by the adjacent building to the west which was built right up to the sidewalk, causing eastbound traffic on Grand to often miss his business. The proposed setback will improve the visibility of his building.

The BC community business (converted) district is intended to allow businesses with minimal traffic impact to operate in existing residential structures within commercial areas, and at the same time to retain the visual character of the building forms and open space associated with residential uses such as front yards, side yards and parking. The applicant's request to construct an addition that leaves no front yard is not in keeping with the purpose and intent of the BC district. This finding is not met for the setback variance request.

Although parking may be a problem on Grand Avenue, one parking space seems minimal. Additionally, the applicant intends to reconfigure the rear yard to allow additional if necessary which would be in keeping with a purpose and intent of the zoning code to lessen congestion in the public streets. This finding is met

for the parking variance request.

2. *The variance is consistent with the comprehensive plan.*

   The Area Plan Summary of the Summit Hill/District 16 Neighborhood Plan is an addendum to the Comprehensive Plan. It includes a strategy H9 Mixed-Use Buildings (Commercial plus Residential) which seeks to "ensure that new and renovated mixed-use buildings on Grand Avenue respect the historic nature and character of the neighborhood, as well as providing dedicated off-street or underground parking for residents and tenants." Buildings on Grand Avenue have various setbacks, with some closer to the sidewalk than others. The request to bring the building closer to the sidewalk is not inconsistent with this strategy. For the parking variance (see Finding 1). This finding is met for both variance requests.

3. *The applicant has established that there are practical difficulties in complying with the provision that the property owner proposes to use the property in a reasonable manner not permitted by the provision. Economic considerations alone do not constitute practical difficulties.*

   Because the BC district is intended for parcels to visually look more like a residential lot than a commercial lot, yards and setbacks typical of residential uses must be provided. The setback variance request is intended to address some of the challenges presented by the topography of the parcel. The existing handicap access ramp is located in the rear yard and it is not convenient for elderly customers especially during winter months. The lot is three feet above the street elevation and access to the front of the building requires using stairs. This is challenging for the applicant's elderly customers. Also, the view of the applicant's building from eastbound traffic is shielded by the building on the adjacent parcel to the west, which according to the applicant, has negatively affected his business.

   Although the lot has topographical challenges, other alternatives could be explored. For example, since the retail store would be on the street level, excavating the building in the front could be sufficient to resolve accessibility issues without the need to extend the building forward. There are other commercial buildings within the immediate area that are similarly set back from the street. A handicapped ramp could be built into the front slope with switch-backs to accommodate the elevation change. Allowing the proposed zero setback for this building may trigger a snowball effect on front setback variances from other businesses to be closer to the street. This request although reasonable is not due to any practical difficulty. This finding is not met for the front setback variance.

   The variance request for is due to the narrow width of the lot; a practical difficulty to provide additional. Based on the applicant's testimony, the additional parking space could be provided. This finding is met for the parking variance request.

4. *The plight of the landowner is due to circumstances unique to the property not created by the landowner.*

   This property, like many others, is typical of converted, original residential properties along Grand Avenue. The streetscape of Grand Avenue is unique with various building setbacks and various zoning districts. In this case, nothing about this property is unique to justify the requested setback variance. This finding is not met for the setback variance request.

   The width of the lot is a circumstance unique to the property not created by the applicant. The finding is met for the parking variance request.

5. *The variance will not permit any use that is not allowed in the zoning district where the affected land is located.*

   The requested variances if granted will not change the zoning classification of the property. This finding is met for both variance requests.

6. *The variance will not alter the essential character of the surrounding area.*

   Although located in the BC zoning district, the requested setback variances will not alter the character of the area which consists of buildings with various setbacks and façade designs. The variance request for one additional parking space will not alter the character of the area. This finding is met for both variance requests."

WHEREAS, on December 18, 2014 and pursuant to Leg. Code § 61.702(a), the Applicant duly filed with the City Clerk, under DSI-Zoning File No.14-35502, an appeal from the determination made by the BZA in this matter and requested a hearing before the City Council for the purpose of considering the actions taken by the BZA; and

WHEREAS, January 7, 2015, pursuant to Leg. Code § 61.702(b), and upon notice to affected parties, a public hearing was duly conducted by the City Council where all interested parties were given an opportunity to be heard and, at the close of the hearing, the Council duly moved to lay the matter over to January 14, 2014 for further consideration; and

WHEREAS, on January 14, 2014, the Council again took up the matter; and

WHEREAS, the Council, having heard the statements made, and having considered the variance application, the report of staff, the record, minutes and resolution of the BZA, does hereby

RESOLVE that the decision of the BZA, based upon the following findings of the City Council, is hereby affirmed.

1. The Council finds that the Applicant has failed to demonstrate that the BZA erred in any of its facts, findings, or procedures in this matter. Therefore, the Council in denying the Applicant's appeal from the December 8, 2014 decision of the BZA, hereby adopts the facts and findings of the BZA in this matter, as set forth in BZA Resolution No. 14-332913 as its own to support its decision to the deny the said appeal.

AND, BE IT FURTHER RESOLVED, that the appeal of Rafic Chehouri be and is hereby denied; and,

BE IT FINALLY RESOLVED, that the City Clerk shall mail a copy of this resolution to Mr. Chehouri, the Zoning Administrator, the Planning Commission and the BZA.