ZONING BOARD OF APPEALS MINUTES

October 3, 2024
Regular Meeting - 7:00 PM

1) CALL TO ORDER

IN A REGULAR SESSION held on Thursday, October 3, 2024 at 7:00 PM in the Council Chambers of City Hall, 323 West Michigan Ave, Marshall, MI 49068, the Marshall Zoning Board of Appeals was called to order by Chair Fisher-Short.

2) ROLL CALL

Roll was called:

Present: Members Byrnes, Hill, Fisher-Short, Karns, Alternate Wolfersberger

Also Present: Jeff Keesler from McKenna, City Manager Perry, Deputy Clerk Pickford

Absent: Member Stewart

3) ELECTION OF OFFICERS

A. Election of Chair

Moved by Hill, supported by Karns to appoint Fisher-Short as board chair. On a voice vote: **Motion carried.**

B. Election of Vice Chair

Moved by Karns, supported by Hill to appoint Ian Stewart as board Vice Chair. On a voice vote: **Motion carried.**

4) APPROVAL OF AGENDA - Items can be added or deleted from the Agenda by City Council action.

Moved by Hill, supported by Karns to approve the agenda as submitted. On a voice vote: **Motion Carried.**

5) APPROVAL OF MINUTES - Items can be added or deleted from the Agenda by board action.

A. December 14, 2023 Meeting

Moved by Karns, supported by Hill to approve the minutes from the December 14, 2023 meeting as presented. On a voice vote: **Motion Carried.**

6) PUBLIC COMMENT ON AGENDA ITEMS Persons addressing the board are required to give their name and address for the record when called upon by the Chair. Members of the public shall be limited to speaking for a maximum of five (5) minutes. Comments should address AGENDA ITEM topics. Public Hearing items should be addressed during the PUBLIC HEARING portion of the meeting agenda. Non-Agenda items should be addressed during the PUBLIC COMMENT-NON-AGENDA ITEMS portion of the meeting agenda.

NONE

7) PUBLIC HEARINGS & SUBSEQUENT BOARD ACTION

8) OLD BUSINESS

9) REPORTS AND RECOMMENDATIONS/NEW BUSINESS

A. Appeal 2024.01- 15861 W Michigan Ave Dimensional Variance

Jeff Keesler of Mckenna stated that the project was to split a parcel which previously contained a K-Mart building into 3 parcels, which would create 2 parcels with a sideyard setback of zero feet, which is less than the required 25' setback. The three parcels would allow for 3 smaller businesses to be in the larger parcel. A site condo agreement was proposed, but the applicant did not wish to go that route. He stated that there is a recommendation of an easement to be placed. Keesler went over the staff findings as found in the packet. He stated that it passed all 6 criteria as found in the ordinance for a dimensional variance.

Richard Lindsey spoke on behalf of his client, BR Great Northern Mall. He stated that there is at least one business in the structure already operating, another under construction, with the potential space for 2 more businesses.

Fisher-Short questioned why the applicant chose not to go with the site condo. Lindsey stated that there is much more required for a site condo with deed agreements and other paperwork, and this would essentially accomplish the same thing once the easements are in place in an easier and cheaper fashion. Fisher-Short questioned the status of the easements. Lindsey stated that survey's had been completed and drafts prepared to move forward pending the appeal. Wolfersberger questioned what PBA stands for in the drawings. Lindsey stated that it was the area of parcel 3 that could be built on. Wolfersberger questioned if the fire department had weighed in on the combined spaces. Lindsey believed that there had been, as there had been discussion on the types of walls that needed to be built, but could not confirm. Wolfersberger stated that he would like any potential approval to be subject to approval of the designs by the Fire Chief. Fisher-Short stated that any approval should be contingent on the items listed as needed in the McKenna letter. Al Liberman, the architect for the project, stated that plans had been submitted to the city to meet the required codes. Karns questioned on the parcels how they would be delineated, such as monuments in the ground. Lindsey stated that they would be surveyed to meet title requirements.

The board went over the findings as presented by McKenna:

1. Strict compliance with the specified dimensional standard(s) will deprive the applicant of rights commonly enjoyed by other property owners in the same zoning district, create an unnecessary burden on the applicant, or unreasonably prevent the owner from using the property for a permitted purpose.

The need for a variance is due to the side yard setback for two of the proposed parcels being zero feet, which is less than the required 25-foot side yard setback listed in the Zoning Ordinance. The applicant has stated that they have tried to redevelop the site as one large retail space to no avail. Strict compliance with the required side yard setback would create an unnecessary burden on the applicant by requiring the demolition and relocation of a portion of the existing building to create standalone structures that comply with the side yard requirement of 25 feet.

2. The variance will do substantial justice to the applicant, as well as to other property owners, and a lesser variance than requested will not give substantial relief to the applicant or be consistent with justice to other property owners.

Granting the variance would provide substantial justice to the applicant by allowing the effective redevelopment of a currently abandoned space and would provide substantial justice to surrounding property owners by providing an increase in commercial/retail *traffic to the surrounding commercially-zoned parcels.*

3. The need for the variance is due to unique circumstances peculiar to the land or structures involved, that are not applicable to other land or structures in the same district.

The need for the variance is due to the unique circumstance of being unable to find a suitable tenant for such a large retail space connected to a strip mall. The granting of the variance would allow for the large retail space to be condensed into smaller spaces to be more easily leased to potential tenets.

4. The problem and resulting need for the variance has not been self-created by the applicant or the applicant's predecessors.

The need for a variance was not self-created by the applicant or predecessors, as the change in demand for different types of storefronts could not have been predicted at the time of construction for the existing building. This requested variance provides an opportunity to allow smaller developers to come in and redevelop the blighted space.

5. The variance will not cause significant adverse impacts to adjacent properties, the neighborhood or the City, and will not create a public nuisance or materially impair public health, safety, comfort, morals or welfare.

The requested variance would likely not cause significant adverse impacts to the surrounding area, though a potential increase in traffic along Michigan Ave. could likely be expected with more retail development, which could be considered both beneficial and detrimental.

6. The alleged hardship and practical difficulties that will result from a failure to grant the variance include substantially more than mere inconvenience, or an inability to attain a higher financial return.

Failure to grant the requested variance would create practical difficulties for the applicant by limiting the potential development to tenants who are solely interested in big box stores as opposed to more sustainable developments.

Wolfersberger stated that he was in agreement of the findings, as long as the conditions were attached. Fisher-Short questioned if it was necessary or just wanted as a financial choice. Hill stated that McKenna spelled it out well and agreed with their findings. Karns stated that he thought it was a creative use of the property that he hoped would bring people in.

Fisher-Short stated that the contingencies need to be determined. There was agreement on the board on the need for reciprocal easement agreements. The board stated that they would like to see a fire safety review. Lindsey stated that any separation walls would have to meet code. Wolfersberger questioned if it was outside the scope of the board to ask for a fire review. Manager Perry stated that the building department would have to review the plans as part of their process, but they need to know how to treat the building in order to move forward based on the direction of the board's approvals. Keesler stated that the board was just deciding if they were going to allow the split with the zero yard setbacks, and that the building and fire code review would come after the fact before any certificate of occupancy could be issued for a business to open. Fisher-Short stated that the appeal would be granted in perpetuity regardless of the use, and is there any potential harm if the use changes, which is why he would consider the safety plan review. Hill questioned if there will be a shared maintenance agreement. Liberman stated that there is currently an REA already in place for the entire structure.

Moved by Hill, supported by Karns to approve variance 2024.01 with the following contingencies:

-The applicant creates a notarized, written easement agreement recorded by the Calhoun County Notary's Office regarding the access of all parking spaces and submit a copy to the City of Marshall
-The applicant creates a notarized, written shared lot maintenance agreement recorded by the Calhoun County's Notary Office and submit a copy to the City of Marshall.
On a roll call vote:
Ayes: Byrnes, Hill, Fisher-Short, Karns, Wolfersberger
Nays: None
Abstain: None
Motion carried.

10) **PUBLIC COMMENT ON NON-AGENDA ITEMS** Persons addressing the board are required to give their name and address for the record when called upon by the Chair. Members of the public shall be limited to speaking for a maximum of five (5) minutes. Comments should address NON-AGENDA ITEM topics. Public Hearing items should be addressed during the PUBLIC HEARING portion of the meeting agenda. Agenda items should be addressed during the PUBLIC COMMENT-AGENDA ITEMS portion of the meeting agenda.

Richard Lindsey thanked the board for approving the variance

11) **BOARD REPORTS**

None

12) **ADJOURNMENT**

The meeting was adjourned at 7:33 pm.

Respectfully submitted by,

Michelle Eubank
City Clerk