



Board of Zoning Appeals

Public Hearing & Meeting

Town Hall
April 7, 2014
4:00 p.m.

At 4:00 p.m. in the Town Hall, Vice Chairman Jay Wiegner called to order the Board of Zoning Appeals Public Hearing and Meeting. In attendance were Board members Pete Baumann and Julia Parr. Chairman Gene Kelly was not in attendance. There was currently one vacancy on the Board. Also present were Town Planner Rob Testerman, Assistant Town Clerk Amanda Hurley and applicant Patrick Hand. There were approximately eight members of the public in attendance.

Jay Wiegner led the Board in the recitation of the Pledge of Allegiance.

PUBLIC COMMENTS

Deborah Bender, 300 Fulcher Street, Cape Charles, VA 23310

Please see attached.

Frank Wendell, 515 Monroe Avenue, Cape Charles, VA 23310

Mr. Wendell stated that he was commenting on the proposed plan as a citizen and property owner on the commercial side of the street and went on to commend Mr. Hand for his vision and willingness to invest in the downtown commercial area because it would bring a lot of excitement, new retail and foot traffic. Mr. Wendell expressed his concerns for parking for the variance being requested stating that the historical use of the private parking on both sides of the building had been public for well over a half a century and it was naïve on the Town's part to expect that to remain that way for that long. Mr. Wendell hoped the Town would make arrangements or other parking considerations for the commercial district. Mr. Wendell did not see the hardship associated with the zoning variance requests regarding the commercial requirement of two parking spaces per 400 square feet. Mr. Wendell felt that Mr. Hand had enough space for all the parking he needed after he demolished the building and could give the remaining part of it to the commercial district because it put a hardship on the commercial merchant community as a whole. Mr. Wendell asked if the Board could discuss that issue and explain how they viewed it. Mr. Wendell also expressed his concern about the blank canvas of all the property and could not see the hardship of meeting Open Space and asked that the State Code definition of hardship be applied to the request and to do what was in the best interest of the Town. It was his opinion that Mr. Hand allocate the ample amount of parking that was needed to support his exciting project.

There were no other public comments to be heard nor any additional written comments submitted prior to the meeting.

CONSENT AGENDA

Motion made by Pete Baumann, seconded by Julia Parr to accept the agenda format as presented. The motion was approved by unanimous consent.

The Board reviewed the minutes from the September 24, 2013 meeting.

Motion made by Jay Wiegner, seconded by Pete Baumann, to approve the minutes from the September 24, 2013 meeting as presented. The motion was unanimously approved.

NEW BUSINESS

Variance Application – Former Be-Lo Grocery Store Property, Mason Avenue

Rob Testerman explained that the applicant was proposing to demolish the existing building and create a new mixed use development on the property. The development would also open the Strawberry Street viewshed to the harbor.

Rob Testerman reported the following application specifics: i) Section 3.9-F(3)a of the Cape Charles Zoning Ordinance stated: “Mason Avenue Setback Requirement. No building or structure shall be located within 8 feet of the Mason Avenue VDOT right-of-way.” He called Dale Pusey with VDOT and Mr. Pusey was not aware of any VDOT regulations, but he would confirm that. The applicant was requesting that the setback be reduced to 4 feet at ground level. With a 4 foot setback, the building would be set back 16 feet from the curb of Mason Avenue. Portions of the building that fronted Mason Avenue would be setback at least 8 feet from the property line; ii) Section 4.2-F stated “...The following unenclosed uses may extend no more than four feet, but not nearer than five feet to any property line: balconies, eaves, trims...” it went on to state that in the C-1 district (north side of Mason Avenue), balconies located above the first floor may extend to the front lot line. The applicant was requesting that the upper floor balconies be allowed to extend to the property line, as was allowed across the street in the C-1 district; iii) Section 4.5.1 Table of Parking Standards listed the various parking space requirements for different uses. A table was attached for the Board’s reference. The applicant requested that rather than the various requirements depending on the use, that 1 parking space per 400 square feet of commercial be allowed; and iv) Section 3.9-G stated that “open space shall be provided equivalent to 25 percent of lot area.” For purposes of section 3.9, open space consisted of plazas, esplanades, landscaped areas, walkways, public recreational facilities and the like designed and maintained for use by pedestrians and open to the public. Open spaces shall not be open to vehicular uses except for public safety purposes, and shall be directly accessible from the street level. The applicant was requesting that the minimum open space requirement be reduced to 15%.

No variance shall be authorized by the board unless it finds the following: i) that the strict application of the ordinance would produce undue hardship relating to the property; ii) that the hardship was not shared generally by other properties in the same zoning district and the same vicinity; and iii) that the authorization of the variance would not be of substantial detriment to adjacent property and that the character of the district would not be changed by the granting of the variance.

Mr. Patrick Hand gave a brief overview of the project and began by stating that he was interested in the property because of the potential Arts Walk uses and focusing on Strawberry Street as a central location for markets, art events and concerts and he feared the wrong kind of development for that property and the landscape. The pedestrian mall would divide the 600’ of property into two parcels and would provide a better connection between the Town Harbor and Mason Avenue. Mr. Hand described his plan as a loose proposal and explained that both phases of the proposal occupied about 220’ of the 600’ and concentrated a lot of residential into a small area. Mr. Hand stated that there were many ways to construct the project with a lot of parking but he did not feel that was the best plan and pointed out the accessible, usable green space, noting that he was very close to the 25% open space requirement for the harbor district. The use of the commercial space was still unknown at this point but, there would be six sections of commercial store fronts on Mason Avenue and the back and upstairs would be residential. The depth of the property was a hardship as it was only 105’ deep so setback variances were needed. Mr. Hand was questioning whether to condense the frontage on Mason Avenue or spread it out and add more parking in the rear and went on to state that he felt the project was a profitable venture over 18-24 months. Mr.

Hand stated that he sent a proposal to the Town for the opportunity to purchase some much needed parking as well as the pedestrian mall.

Rob Testerman responded to Mrs. Bender's comment, stating that the project would have to be reviewed by the Harbor Area Review Board (HARB), but would need to abide by the Zoning Ordinance first. There was much discussion among the board and the public regarding the sequence and process of review.

Gene Kelly submitted his comments in writing prior to the meeting and Rob Testerman read them aloud. (See attached.)

Pete Baumann stated that he agreed with Gene Kelly on the setbacks and also agreed with the balcony extensions, but he was concerned about the parking requirements and asked to tweak the open space.

Jay Wiegner commented that in order to grant a variance, there had to be a demonstrable hardship and he did not see one and went on to state that he had an issue with the parking as well.

Mr. Hand explained his plans in more detail and stated that without knowing what the use would be, it was difficult to determine the parking standards, but he was confident that the commercial space would be used as office and/or retail. Mr. Hand suggested that the board could make stipulations on the parking depending on the use of the commercial space. It was mentioned that adjacent street parking may count towards the parking required for the project, but Rob Testerman would confirm that.

Rob Testerman pointed out that Section 2.6.2 Powers and Duties of the BZA stated "In authorizing a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee to ensure that the conditions imposed are being and will continue to be complied with."

There was much discussion regarding rear setbacks as well as the parking.

Rob Testerman stated that there were various requests of this single application so the board could approve or deny each piece individually.

Mr. Hand stated that he could allocate enough parking if the Board would provide flexibility on the open space and went on to state that for a commercial space, if one parking space per 400 square feet was not adequate for the board, he would like to know what would be acceptable so he could design to it.

Jay Wiegner stated that he was reluctant to vote on anything and suggested Mr. Hand come back with a different parking plan.

Pete Baumann commented that he thought there was a hardship based on the shallowness of the lot and confirmed that he was comfortable with items 1 and 2 of the Application Specifics but had reservations regarding items 3 and 4.

Mr. Hand stated that there would be 28 residential units, some two bedroom units, so 33-34 parking spaces were needed for residential alone and there would also be five commercial spaces occupying 800 square feet each. Rob Testerman stated that the parking standards of

one space per 200 square feet required 54-55 spaces total including residential parking. If one space per 300 square feet was utilized, 45-46 spaces were needed.

Mr. Hand suggested the Board could approve items they were comfortable with and give a stipulation or condition for the parking and he would try to make it work on the whole parcel or just the individual parcel.

Jay Wiegner stated that he would like to see two scenarios such as one parking space per 200 square feet and one parking space per 300 square feet.

Motion made by Pete Baumann, seconded by Jay Wiegner, to table the application until April 14, 2014. The motion was approved by unanimous consent.

Motion made by Pete Baumann, seconded by Jay Wiegner, to adjourn the Board of Zoning Appeals Meeting. The motion was approved by unanimous consent.

Vice Chairman Jay Wiegner

Assistant Town Clerk

Comments from Deborah Bender

My name is Deborah Bender, and I reside at 300 Fulcher Street. I am here to express my concern that the Board of Zoning Appeals is considering a very important project in the Harbor District, but the Harbor District Review Board has not been consulted.

The project under consideration, 300 Mason Avenue, is included in the Harbor District, as are the Shanty Restaurant, the Harbor Bathhouse, and Cape Charles Yacht Center. If you look at past minutes of the Harbor District Review Board you will see that all those other projects were approved by the Harbor District Review Board.

The applicant is requesting the Board of Zoning Appeals to override Harbor District requirements including parking, setbacks, and open space. All those issues are included in the Harbor District Guidelines.

In 2006 our town spent many hours and thousands of dollars to develop a Harbor Area Conceptual Master Plan and Design Guidelines that were then included in the Town's Comprehensive Plan. Are those plans now going to be ignored?

This application puts the cart before the horse. The applicant needs to first submit his plans to the Harbor District Review Board, and then, depending on what that Board approves, submit plans to the Board of Zoning Appeals.

Cape Charles is a very special little town. It is up to us as citizens, taxpayers, homeowners, and residents to pay attention to what the plans and rules are, and whether they are being followed.

We all want to see the removal of the eyesore that is the Be-Lo building. But that is no reason to ignore proper and established procedures.

I am asking you to defer any consideration of this application until the plans have been submitted to the Harbor District Review Board, and that Board has made a determination.

Thank you.

Comments from BZA Chairman Gene Kelly 4/7/14:

My apologies for not being able to attend today. Apparent Strep Throat.

In relation to this application. I do not have a problem with the adjustment of the setback to 4 ft. at ground level. The proposed balconies extending to the same standards as the properties on the North side of Mason Ave. are also not problematic in my view.

My main concern with the reduction of the parking standards is the major loss of off street parking for visitors to CC. This is primarily a seasonal issue, but the lot across from the theater is utilized year round, and curb side parking is minimal at best. The adjustment from the current requirement of 25% of lot area to 15% does not at first glance, appear to constitute a hardship in my opinion. It is my understanding that establishment of undue hardship is the sole basis for modification of the existing code. With that being said, I don't believe an adjustment, as so framed in the appeal, is called for in this case.

Gene Kelly