

**WEST CHESTER TOWNSHIP
BOARD OF ZONING APPEALS
June 22, 2016 – Regular Meeting**

MEMBERS PRESENT: Mr. Cavens, Mr. Simmons, Mr. Lenz, Mr. Riddell, Mr. Moeller

MEMBERS ABSENT: Mr. Whited

STAFF PRESENT: Cathy Walton, Property Advisor
Tim Valentine, Property Advisor
Aaron Wiegand, Community Development Director

CALL TO ORDER: 6:30 PM

ADJOURNMENT 7:49 PM

In the absence of the Chairman, Mr. Cavens will be acting as Chair for tonight's meeting.

Mr. Cavens called the meeting of the West Chester Board of Zoning Appeals to order.

BZA 16-12 Ramona Lisa Abner and Marilyn Combs

Mr. Cavens read into the record a statement stating the applicant has requested their case be postponed until the July 13, 2016 meeting.

Mr. Cavens made a motion to postpone BZA case 16-12.

Mr. Moeller seconded the motion.

Aye: Mr. Simmons, Mr. Cavens, Mr. Riddell, Mr. Lenz, Mr. Moeller

Nay: None

Ms. Walton was sworn in by Mr. Cavens.

BZA 16-13 Kane Hospitalty, LLC

Ms. Walton presented the staff report including a PowerPoint presentation, current zoning in the area, aeriels, background of request, staff comments and case history. Ms. Walton stated that the applicant is requesting a variance for the property 9183 Centre Pointe Drive to allow a 20' pavement setback where 25' is required . Ms. Walton reviewed the standards for a variance with the board members.

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Mr. Lenz asked for verification that Muhlhauser and Centre Pointe Drive were considered front yard areas and that Centre Loop Drive is considered side yard area.

Mr. Moeller asked for verification that Centre Loop Drive is not a dedicated street.

Ms. Walton confirmed that was true.

Mr. Lenz asked for verification on the setback requirements.

Applicant: Rob Painter
RVP Engineering
4333 Aaron Court
West Chester, Ohio 45241

Mr. Painter stated that he listed the responses to each of the questions on the application and that basically they have a thin, long corner lot. A restaurant use has no problem with a smaller building to meet parking on this site. The applicant is proposing an Aloft Hotel which is boxy in its layout. The franchise gives several choices and he looked at several options to fit the hotel on the lot. He stated this one fits if he can get a relief on the parking setback. He stated there would be landscaping on both sides. He stated he did not believe the variance is substantial. He reiterated this is a corner lot and the variance is needed to make this work. He stated the request is small to make this property viable again.

Mr. Simmons asked if the applicant was aware of the Zoning at the time of the contract for the property.

Mr. Painter stated he was aware that the property was Zoned CBD and that there is a 25' setback requirement. He also stated the property has not been closed and if the request is denied he isn't sure they will move forward with the closing.

Mr. Cavens questioned if there was another footprint that could be altered or if the franchise had strict requirements.

Mr. Painter stated there are other types of Aloft hotels but that they did not fit the site either.

Mr. Lenz asked if Mr. Painter tried to position the paved parking to meet the setbacks.

Mr. Painter stated he did and they do not meet Zoning requirements for parking if he does that.

Mr. Lenz stated it appeared to him if you move the parking lot to the north to the minimum setback, and reduce the distance in front of the building to the sidewalk on the south side, the 25' setback could be met.

Mr. Painter stated hotels have porte-cochere in the front for drop off that are a set distance.

Mr. Lenz stated he believes the setback can be met. He stated the applicant could shift the parking lot to the 4' setback on the north side and making a few other small changes to meet the requirements.

Mr. Painter stated he would entertain Mr. Lenz showing him how it would work.

Mr. Cavens asked Mr. Painter how long he had been an Engineer.

Mr. Painter stated 25 years.

Mr. Cavens asked Mr. Painter if he had looked at the project from different angles.

Mr. Painter stated he had looked at it from a lot of different angles.

Mr. Simmons asked why they were looking at this particular lot since they knew they would need a variance.

Mr. Painter stated that would be a better question for the owner.

There was further discussion regarding the possibility of moving the parking to the north.

Mr. Riddell questioned the brand of hotel.

Mr. Painter stated it was Aloft.

Mr. Riddell questioned if the hotel would have meeting rooms.

Mr. Painter stated there were conference spaces but they were for guest use and not open to the public.

Proponent: Jason Gibson
3805 Edwards Road
Cincinnati, Ohio 45209

Mr. Gibson stated he was the leasing agent for the property. He stated he was in favor of the proposed plan and feels the Aloft hotel would be a great amenity to West Chester. He stated there was no Aloft hotel in Cincinnati.

Opponent: Mary Cole
6240 Muhlhauser Road
West Chester, Ohio 45069

Ms. Cole stated she is the Controller for the hotel adjacent to the subject lot. She stated they are long term corporate citizens in West Chester and have invested in and added value to the

community. She stated they are opposed to the idea of lowering the Zoning standards and allowing a use too large for the property.

Dave Reed
110 North Main Street, Suite 1700
Dayton, Ohio 45423

Mr. Reed stated he was an attorney and here to speak in opposition to this case. He stated his client is WC4 which owns the adjacent hotel property. He provided the Board with a copy of a motion in opposition that explains why they are opposed from a legal standpoint. Mr. Reed stated he has 25 years of zoning and land use experience. He stated the proposed variance is contrary to the stated purpose and intent of code.

Mr. Reed presented a PowerPoint presentation and went over several reasons he believes the request cannot be approved using the legal standards and land use perspective.

Mr. Lenz asked for clarification on the easements that Mr. Reed mentioned in his presentation.

Mr. Reed stated he wasn't clear on the easements but saw on the site plan that the parking was within some easements.

There was further discussion regarding the easements and parking.

Mr. Riddell asked for clarification on how the variance request harms or damages Mr. Reed's client.

Mr. Reed stated anytime a use is too dense for the property it is a misuse of the property. He stated the property was too small for a hotel use. He stated he believes that damages his client and is harmful to surrounding properties.

Mr. Simmons asked for clarification on how it would be harmful.

Mr. Reed stated it would be aesthetically harmful and too big of a use for the site.

Mr. Simmons asked Mr. Reed if he believed it would be harmful if it were a restaurant use.

Mr. Reed stated he cannot answer that.

Mr. Simmons asked for clarification on Mr. Reed's statement that no hotel use had been requested for the property because it was not suited for a hotel and on what basis he made that statement.

Mr. Reed stated he is speculating and also stated is aware of his client having looked at the site and the developer stated it was unsuitable for a hotel.

Mr. Simmons asked if that could be someone's opinion.

Mr. Reed stated it could.

Mr. Lenz reiterated that if the applicant can find a way to meet the setback requirement, this is a permitted use with no issue.

Mr. Cavens asked Mr. Reed if he would then be satisfied with the applicant meeting all the conditions.

Mr. Reed stated all he understands is the variance request before the Board.

Mr. Lenz stated that if the application is turned down and they lay it out to meet the parking requirements they could apply for permit and build it.

Mr. Reed stated he has not been asked to look into anything other than the variance.

Mr. Cavens confirmed that Mr. Reed has argued for variances in the past.

Mr. Reed stated he had.

Mr. Cavens clarified that Mr. Reed understood that sometimes variances get approved and they are not illegal but for the greater good.

Mr. Reed stated he understands that if they meet the standards they get issued. He also stated he has also taken cases to court that do not meet the standards and they are overturned.

Mr. Moeller asked why the density would change if they met the setback. He stated it did not change the footprint of the building or square footage.

Mr. Reed stated parking is tied to the size of the building and if parking cannot be met, the use is too large.

Mr. Lenz stated that one of Mr. Reed's points was that the request was substantial and asked if the variance was request was one or two feet if it would still be substantial.

Mr. Reed stated he did not know because he has seen cases where 15% was ruled substantial as well as cases where 40% was not considered substantial. He stated a lot if it tied to the uniqueness of the circumstances.

There was discussion regarding what can be considered substantial and the reasons why a larger request would not be considered substantial.

Mr. Simmons asked why Mr. Reed's client was opposing this when the request is for the side opposite their property.

Mr. Reed stated his client believes the use is too large for this site.

Mr. Simmons asked again how this request affects his client on density when they are meeting the standard between the proposed property and the existing property.

Mr. Reed again stated the use was too large for the site.

Mr. Moeller asked for clarification that Mr. Reed believes that a use that is too large potentially harms his client.

Mr. Reed stated yes that is what they believe.

**Wayne Schleimer
8852 Timber Trace
West Chester, Ohio 45069**

Mr. Schleimer stated he has been a resident of Beckett Ridge since 1995. He raised his family here. He stated he wanted to come and explain his position on the application. He stated he is against both the hotel and the variance. He stated he is against both because it could eliminate diverse economic growth in the area. He stated his opinion is that putting a jammed hotel on a small piece of property will ruin the integrity of the Beckett Ridge development.

Mr. Cavens stated that many variances have been issued in that general vicinity and that each variance stands on its own. He asked Mr. Schleimer if he knew anyone involved in this case.

Mr. Schleimer stated not at this time.

Mr. Riddell asked Mr. Schleimer if the applicant was able to redesign the layout to meet the requirements, if he would have any opposition to the use.

Mr. Schleimer stated after learning what he did tonight he believes the property should be used for something other than a hotel.

Mr. Cavens stated the request is strictly for a setback.

Mr. Schleimer stated he had no comment.

Neutral: None

Ms. Walton read a statement into the record that the West Chester Township Community Development Staff had contacted legal council regarding Mr. Reed's questions. Mr. Phillips stated he believes the Township is in a strong position to defend the action of the Board as long as the action is based on the merits of the case.

Board Deliberation

Mr. Moeller stated that rather than speculating on whether the regulations can be met or not that the Board ascertain that there is no variance needed.

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Mr. Lenz suggested they discuss a few things first.

Mr. Cavens stated that he believes this is not an issue if this is not a hotel.

Mr. Lenz stated this is a request for variance along one side of the property only. He stated he has continued to look at the request and believes the setback can be met with some adjustments.

Mr. Moeller agreed with Mr. Lenz.

Mr. Riddell stated it was not the Board's job to redesign an applicant's layout.

Mr. Cavens agreed and stated he believes the Engineer has looked at it from many ways and there is a good reason the application was made.

Mr. Moller stated that was speculative.

Mr. Riddell stated that there has been testimony that the request could harm neighboring properties and that the hotel would be jammed onto the lot. He also 5' is only 2.2% of the dimension and is not substantial. He stated variances are issued contrary to the code. He stated the Central Business District is the area for hotels.

Mr. Cavens agreed with Mr. Riddell and stated he believes the request should be approved.

Mr. Lenz stated that this area is perceived as the entrance to the downtown area and there is a request for a substantial variance on one side of the property. He also stated he believes if they turn down the request, the applicant makes adjustments and then there would be a conforming use.

Mr. Simmons agreed with Mr. Lenz.

Mr. Moeller also agreed.

Mr. Cavens asked the Board if there was anyone that did not want to grant the variance assuming they could not reconfigure the lot to meet the requirements.

Mr. Moeller stated he would reserve judgment until he knew for sure.

Mr. Simmons asked if the applicant could be questioned to see if they had looked to make sure they could not meet the requirement.

There was discussion regarding the need for the variance.

Ms. Walton made the Board aware that they could continue the case if they were looking for additional information.

Mr. Riddell stated that there is an assumption that they can make this work. He also stated he is in agreement with Mr. Cavens that he believes if the applicant could have made this work they would have.

Mr. Cavens asked if a variance could be approved contingent on the applicant proving they could not meet the requirements.

Mr. Riddell stated someone would have to make the architectural engineering decision that they tried and no one was qualified to do that.

Mr. Lenz stated that if the variance is denied, they could still make it work.

Mr. Moeller made a motion to deny BZA case 16-13 and that the applicant examine the feasibility to make it work and come back to the Board.

Mr. Lenz seconded the motion.

Mr. Riddell asked why not to continue to case.

Mr. Lenz stated they would not have to come back if they could make it work.

Mr. Moeller reminded the Board there was a motion and a second and asked for discussion.

Ms. Walton clarified that if they found they could not make it work, they could not come back to the Board with the same request.

Mr. Moeller rescinded his motion.

Mr. Lenz made a motion to deny BZA case 16-13.

Mr. Cavens stated that does not allow the applicant to come back.

Mr. Lenz stated that was the point and if they could make it work, they would not need to come back.

Mr. Riddell suggested to continue to case.

Mr. Lenz asked for clarification that the case could be continued or tabled.

Ms. Walton stated it could be continued.

Mr. Lenz asked what the difference between tabling and continuing was.

Ms. Walton stated since the case has been opened and there has been testimony that it needed to be continued.

Mr. Lenz made a motion to continue BZA case 16-13 for the applicant to come back with a revision.

Mr. Moeller seconded the motion.

There was discussion regarding how much to time to continue the case.

Mr. Lenz withdrew his motion to recall the applicant.

Mr. Cavens reopened the public portion of the meeting.

**Rob Painter
RVP Engineering
4333 Aaron Court
West Chester, Ohio 45241**

Mr. Cavens asked Mr. Painter if he was sure he could not make things work without the variance.

Mr. Painter stated that there is a lot of information that goes into making a site. He stated he had certain parameters that he needed to adhere to that were given to him by the owner and the franchise.

Mr. Lenz asked if the criteria Mr. Painter was given was anything more than the number of spaces.

Mr. Painter stated yes. He stated there is a certain geometry of the building that has to remain intact.

Mr. Lenz stated he was not talking about the building, only the parking lot.

Mr. Painter stated it also included the sidewalk.

Mr. Lenz asked Mr. Painter if he had an issue with continuing the case and coming back.

Mr. Painter stated no.

Mr. Riddell asked if the building and parking footprint were predesigned and were just being planted on this lot.

Mr. Painter stated the building footprint was along with the sidewalk and drive up.

Mr. Cavens clarified that there were certain architectural things that need to be seen with the building, pavement, and sidewalks.

Mr. Painter stated the parking lot is custom based on the site.

Mr. Cavens asked Mr. Painter if he could make this work.

Mr. Painter stated possibly. He stated he has looked at it several times and with the parameters given to him he believes the application before the Board is what will work.

Mr. Riddell stated he is in favor of the continuation.

There was discussion regarding how much of a variance the Board was willing to grant.

**Dave Reed
110 North Main Street, Suite 1700
Dayton, Ohio 45423**

Mr. Reed returned to state that the request is for a 5' variance and there is a lot of discussion regarding things that are not on the table. He stated the applicant did not ask for a 1' variance, but a 5' variance and that is what needs to be considered.

Mr. Cavens stated they are allowed to condition a variance which could be at different distance.

Board Deliberation

Mr. Lenz made a motion to continue BZA case 16-13 to the July 13, 2016 meeting.

Mr. Moeller seconded the motion.

Aye: Mr. Cavens, Mr. Riddell, Mr. Lenz, Mr. Simmons, Mr. Moeller

Nay: None

ADMINISTRATIVE MATTERS

The minutes from the March 9, 2016 meeting were approved.

Ms. Walton stated there were seven cases for the July meeting including the case just continued.

The next meeting will be Wednesday July 13, 2016 at 6:30 pm.

The board adjourned the June 22, 2016 meeting at 7:49 pm.

These Minutes do not purport to be the entire record. A complete transcription of these proceedings was taken under supervision of the Secretary from an audiotape and may be obtained upon written request. Any charges for preparing such transcripts shall be borne by the person requesting same and must be prepaid.

BZA Chairman:



Larry Whited

BZA Secretary:



Cathy Walton