



MEETING MINUTES
Cadillac Zoning Board of Appeals
5:30 P.M.
April 16, 2015

CONVENE MEETING

Chairman Nichols called to order a meeting of the Cadillac Zoning Board of Appeals at 5:30 p.m. on April 16, 2015.

ROLL CALL

MEMBERS PRESENT: Allen, Ault, Bontrager, Engels, Knight, Nichols, Paveglio
STAFF PRESENT: Coy

APPROVAL OF MEETING AGENDA

Motion by Knight, supported by Allen, to approve the April 16, 2015 meeting agenda. The motion was unanimously approved on a roll call vote.

APPROVAL OF MEETING MINUTES

Motion by Paveglio, supported by Ault, to approve the August 21, 2014 meeting minutes as presented the board. The motion was unanimously approved on a roll call vote.

PUBLIC COMMENTS FOR NON-HEARING ITEMS

None

PUBLIC HEARINGS

Zoning Variance Application for a reduction in total lot size and a reduction in the density/spacing requirement within the Code of Ordinances for multiple-family rental units in the R-4 Single Family Zoned District.

Roseann Fowler, owner of the residence located at;
823 First Avenue
Cadillac, MI 49601

The property site is described as S 8 FT. OF E 74 FT. OF LOT 17, ENT. LOT 18 & N 3 FT. OF LOT 19, BLK 132 DIGGENS 1st ADD, CITY OF CADILLAC (Tax Identification Number 10-061-00-054-00). As noted, the common address is 823 First Avenue, Cadillac, MI 49601.

Roseann Fowler and Gerard Fowler the applicant and spouse attended. The applicants address is 22464 Northridge Court
Tustin, MI 39688.

Prior to the meeting at 5:30 pm the applicant provided to the Zoning Board of Appeals 14 pages of information that included information about 823 First Avenue, pictures, a site plan, copy of

lease agreement, newspaper article, and letters from two tenants living in other nearby rental units.

Chairman Nichols opened the case stating a variance application has been filed by the applicant. He referred the matter to staff for comment.

Using the room monitor, Mike Coy, Community Development Analyst, presented a **summary of the ZBA staff report**. In the report Coy noted the following information had been included in the report: variance application, letter submitted by the applicant, city GIS aerial photo of the site, Fire Department Property Maintenance reports dated March 11, 2015 and April 3rd, 2015 and site photographs.

Coy stated the property is located in an R-4 single family zoned district. Surrounding properties to the west, east, south, and north are all also zoned R-4 single family residential.

The applicant is asking for a 3,762 square foot variance from the total lot size requirement of 12,000 square feet needed for a three unit rental within the R-4 Zoned District. The applicant is also asking for a 108 foot variance from the total requirement of 150 feet separating multiple-family rental units within the R-4 Zoned District.

The property contains 8,238 square feet (0.18 acres) with 61 feet of frontage on First Avenue. The parcel is 144 feet deep running from east to west. The lot according to the GIS measurement is 54 feet wide at its west property line. Pictures were displayed of the property using the room monitors. Coy displayed an aerial GIS photograph of the site depicting the applicant's property.

Coy stated that Section 46-747(2)(a) from Chapter 46 of the Cadillac Zoning Ordinance identifies the *Specific Standards* relating to the required minimum lot size for a three unit multiple-family rental in the R-4 Zoned Single Family District. The standards state "Lot size. Fifty percent of the underlying zoning will be added for each additional unit that is proposed." The ordinance minimum standard in an R-4 Zoned District establishes the lot size at 6,000 square feet, thus requiring a 12,000 square feet lot size for a three unit rental within the district.

Coy next explained that Section 46-747(2)(e) from Chapter 46 of the Cadillac Zoning Ordinance identifies the *Specific Standards* for density/spacing relating to the required minimum separation between multiple-family rental units within the R-4 Zoned Single Family District. The standards state "*Density*. Two-family and multi-family uses in single-family zones shall not be within three times the required lot width of the underlying zoning of each other." The minimum lot width for the underlying R-4 Single Family Zoned District is 50 feet. The requirement is then for a minimum of 150 feet of separation from other multiple-family uses within the district.

Coy explained some of the reasons for the required lot size for multiple rental units include the need for adequate vehicle parking, snow removal, and outdoor play areas for children and pets (green space).

Coy on the room monitor showed an aerial picture of 823 First Avenue and pictures of the site from both First Avenue and from the alley to the west.

Coy then pointed out that the property at 827 First Avenue which is two doors north of the applicants rental home is also a multiple-family rental and was approved for a Special Land Use in 1996. The property located between these two multiple-family rentals has a lot width of 42 feet.

Coy next stated the variance application was examined based on the standards from Sections 46-69 (b)(2) in the Code of Ordinances:

Standard - *In reviewing the Variance Standards Coy stated that Section 46-69 (b)(2) of the Cadillac City Code states that the Zoning Board of Appeals may authorize a variance from the strict application of the provisions of the Zoning Ordinance where by reason of exceptional narrowness, shallowness, shape or area of a specific piece of property at the time of enactment of the Ordinance or by reason of exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to, or exceptional undue hardship upon the owner of such property.*

Finding – The parcel does not have an exceptional condition such that compliance with the setback provisions cannot be met. The size and shape of the parcel are within the standards for the R-4 Single Family Zoned District. The site does not possess unique characteristics, such as an exceptionally large size, that would lend itself to a higher density use. The standard in the City Ordinance changes when you add multiple rental units.

Coy also went over the *Considerations for variations* from Section 46-69 (b)(4) in the Code of Ordinances:

Standard – *The variance will not impair an adequate supply of light and air to adjacent property.*

Finding – The variance is not anticipated to impair an adequate supply of light and air to adjacent properties. The impacts on light and air to adjacent properties are not considered significant or beyond the range of impacts exhibited by neighboring properties and structures.

Standard - *The requested variance will not unreasonably increase congestion in public streets.*

Finding – The variance is anticipated to slightly impact traffic volumes. The alley used by vehicles is narrow and not built to the standards of a normal city street. Difficulties associated with ingress, egress, and parking of additional vehicles is anticipated.

Coy showed on the room monitors a picture of the alley behind and to the west of the residence.

Standard – *The requested variance will not increase the danger of fire or endanger the public safety.*

Finding – The requested variance is not anticipated to increase the danger of fire or endanger the public safety provided full compliance with property maintenance codes are met. This is an older rental property and recent inspections on March 11, 2015 and April 2, 2015 by the Cadillac Fire Department identifies a number of violations in need of correction. Copies of the Property Maintenance inspection reports were included with the staff report given to the Zoning Board of Appeals.

Standard – *The requested variance will not unreasonably diminish or impair established property values within the surrounding area.*

Finding – The requested variance may diminish or impair established property values within the surrounding area. The surrounding properties are also zoned as R-4 Single Family. The R-4 designation is considered a single family zone district.

Standard – The requested variance will not impair the public health, safety, comfort, morals, or welfare of the inhabitants of the city.

Finding – The requested variance may impair the public health, safety, comfort, morals, or welfare of the inhabitants of the city. Additional occupants in this rental unit may impact the neighborhood. Children need outdoor room to play as do pets. Vehicle parking may also impact the safety of neighbors who also need to use the alley for access to their parking areas. Snow removal also may become a problem.

Approval of the variance would allow the dwelling to potentially hold three housing units requiring six on-site parking spaces. The site does not lend itself to the efficient circulation and parking of six vehicles.

Coy using the room monitors showed a picture of the parking area for vehicles at 823 First Avenue. Coy pointed out the concrete blocks that were shifted out of place on the garage and that he didn't feel it was suitable for use.

Coy stated that notification of the public hearing on this application was given via first-class mail to all property owners and residents within 300 feet of the subject site and a notice of the hearing was placed in the Cadillac News. These notices were provided not less than 15 days prior to the hearing date. One written comment was received from the Cadillac Area Public Schools superintendent. Coy added that he has received a few phone calls from neighbors asking for more explanation about the variance.

Coy then read from the City of Cadillac Zoning Ordinance, Section 46-162(a) which addresses **Intent**.

- (a) "The R-1 through R-4 one-family residential districts are designed to be the most protective of the residential districts. The intent is to provide for an environment of predominantly low-density, one-family detached dwellings along with other residentially related facilities, which serve the residents in the district."

Coy then gave the staff recommendation.

1. Due to the limited size of this lot and the need for adequate parking, ingress and egress of vehicles, snow removal, along with space needed for children and pets to play outdoors staff recommends this variance request be denied.
2. With a multiple-family rental property located 42 feet north of 823 First Avenue and the effect additional multiple-family rental units may have on property values, health, safety, comfort, morals or welfare of the inhabitants of this single family zoned neighborhood staff recommends this variance request be denied. Pursuant to the above recommendations it is noted the applicant has not been denied the use of the dwelling for multiple-family and income purposes. The dwelling is currently approved for two-family use.

Coy next added. The applicant has not been denied the use of the dwelling for multiple-family and income purposes. The dwelling is currently approved for two-family use.

Coy concluded by again explaining the applicant's two part variance request and described the options available for board action. Based on a finding of compliance or non-compliance with the standards of the ordinance, the Board shall approve, approve with conditions, or deny the variance application. Reasonable conditions may be attached to an approval in order to achieve compliance with the standards of the ordinance.

The Board had questions for Coy. Nichols asked about the need for six parking spaces. Coy explained that the rental ordinance requires a minimum of two parking spaces per rental unit.

Knight asked a question about the site and the property. Coy explained that without a survey it is difficult to know exactly where parking is available. He added that in one site photo of 823 First Avenue a renter may actually be parking partially on the adjoining property to the south.

Engels asked if other multiple-family uses have previously been allowed in the neighborhood. Coy answered yes.

Bontrager asked for more explanation of the density requirement. Coy explained the 150 foot separation required between multiple-family units in the R-4 Zoned District. Bontrager added that this requirement has already been broken for there to be two multiple-family units located so close. There needs to be more diligence in following the ordinance. Bontrager feels the requirement for 150 feet of separation is not applicable in this case.

Nichols asked if 823 First Avenue is approved for two units at this time. Coy answered yes. He added that there is evidence that two units were allowed at this address going back to 1977.

Chairman Nichols opened up the discussion for the public comment. He asked the applicant if they wished to speak first and applicant asked to go later.

Ms. Kathy McGowan who resides at 836 First Avenue spoke first. She and her husband John have owned their home for 25 years raising their children here. She said that she is familiar with 823 First Avenue and said parking is inadequate as many park in the street. There are too many

rentals in the neighborhood. She also added that the neighborhood has deteriorated with the growth of rental units. Crime in their neighborhood has risen with the police being called to their street often. She opposes the variance request.

Ms. Dawn Coon who lives at 830 First Avenue spoke. Dawn and her husband Tim live in the home Tim grew up in. They purchased the home next door to the south and are fixing it up to sell. They have put over \$40,000 of improvements into their two properties on First Avenue. These improvements have included roofing and siding. She added that the rental units on their street have affected neighborhood safety. There are problems with drug usage in the rental properties and she observed a man run out of a rental with a machete chasing another person. The police are often called into their neighborhood. The owners of these properties are absentee owners. These rental properties are damaging the property values for the entire neighborhood. She is opposed to the variance request.

Ms. Holly Siewinski spoke next. She said she owns a three-plex rental unit and gave an address of 5936 E. M-55 in Cadillac. (Her unit may be the one at 827 First Avenue. The owner is listed as Bellski Properties, LLC). She stated that she's familiar with the rental at 823 First Avenue and that it's been a multiple-family rental for many years. She added that the home has for years had three utility meters attached, three bathrooms, and three units. She is supportive of the applicant's variance request.

Gerard Fowler, spouse of applicant Roseann Fowler spoke next. He said he appreciates the neighbor's concerns. He feels conditions in the neighborhood are improving. Property owners are putting money into their rental units. He has spent over \$15,000 making improvements to their rental at 823 First Avenue. He said they got some friends to bring vehicles to the address to see what congestion problems they may have with six vehicles and he said there were none. He added that conditions are improving in the neighborhood as property owners are doing improvements. He asked the board to approve the variance.

Rosanne Fowler the applicant spoke next. She understood there were two units rented when they purchased the property in 2012 but fixed up the third unit. She also said the garage is usable, the cinder block can be fixed and there are two separate doors.

Tim Coon who lives at 830 First Avenue spoke and said there is a rental unit across the street from their home. He's seen residents throw garbage out the door towards a trash container, missing it and then not picking it up. Garbage containers are often left at the street days after the trash pickup. He also said he's seen renters scoop up dog poop and throw it in a neighbor's yard. Vehicles parked in the street on the opposite side of the street make it at times difficult to back out of his driveway. He sees a lot of different cars. He does not like to leave his house unattended. Mr. Coon is opposed to the variance request.

Bill Flynn who lives at 835 First Avenue spoke and asked that no more multiple-family rentals be allowed in their neighborhood. He is opposed to the applicant's variance request.

The Fowlers spoke again. Ms. Fowler said that there are many other rentals in the city that are in worse shape than theirs. The Fowlers added comment about the neighbor's fence to the south as

a point of reference to the lot boundary. Coy asked to speak and asked Board Members to refer to the GIS photo of the property. There is some distortion but the neighbor's fence appears to be set south of the property line by a significant amount. Coy added the property line needs to be surveyed for any determination of the property line.

Knight asked Coy if parking on the grass is allowed. Coy said yes as long as it's not on the neighbor's property.

Knight had a couple questions. Where they will put snow with six vehicles and did the Fowlers research if three units were allowed? Have you had the property surveyed? The Fowlers responded that besides the three meters there were three hot water heaters when they purchased the property. They thought it was okay for three units. They have not gotten a survey done.

Ms. McGowan spoke and asked if the current zoning maps are accurate. Do the maps need to be cleaned up?

Board member Bontrager spoke and said it is difficult to figure out the past. When you purchase a property that has three gas meters you would assume it has been approved by someone for three units. Coy added that the City does not have the authority to access Consumers Power company records. Bontrager added that we should not be in this situation.

Nichols spoke and said we can't change past decisions. He added that there are many unregistered rentals within the city that have not been inspected for rental usage.

Knight added that there needs to be due diligence by the buyer prior to the purchase. You need to do your homework.

Paveglio asked; if we don't apply the provision in the ordinance then are we gutting the standard?

Knight said he respects that the city has already allowed them income with two rental units here already. This cannot be about whether you are a good landlord or not.

Engels asked; if there was a store front at 823 First Avenue at some earlier time? The answer by the Coon's was yes. Engels added that property values in this neighborhood have already been affected by the number of rentals.

Paveglio added; what would we say to the next multiple-family applicant if we approve this. Can we turn them down? Knight added that we need to keep emotion out of our decision.

Mr. Fowler spoke about the egress windows mentioned in the Fire Marshall's inspection and that the current code does not require a change. He added that the Fire Marshall told him that future changes to the code will require a change in the egress windows in the future which he will make.

Allen added that he didn't feel an insurance company would insure a rental without proper egress windows in bedrooms.

Knight said he didn't feel the proper homework was done by the applicant before they purchased the property.

There being no additional public comments, Chairman Nichols closed the public speaking portion of the hearing and asked board members for comment or motion.

After discussion Knight made a motion to deny the applicants request for a variance. The motion is based on two findings.

- 1. There not being adequate room on the property to meet the 12,000 square foot standard needed for three rental units as required in Section 46-747(2)(a) of the Cadillac Zoning Ordinance that relates to the required minimum lot size for a three unit multiple-family rental unit in the R-4 Zoned Single Family District.*
- 2. Secondly from Section 46-747(2)(e) of the Ordinance the required minimum separation of 150 feet between multiple-family rental units in the R-4 Zoned District cannot be met.*

Motion supported by Paveglio. On a roll call vote, the motion was unanimously supported to deny the variance request.

Chairperson Nichols told the Fowlers they can appeal the Zoning Board decision to the Circuit Court.

ZBA MEMBER COMMENTS

One member asked if they could have copies of the City Zoning Map. Coy will get them for the ZBA members.

ELECTION OF OFFICERS

After a short discussion;

Motion was made by Paveglio to have Louis Nichols return as Chairman, Shari Ault be the Vice-Chairman, and Robert Engels be Secretary. Supported by Allen. On a roll call vote, the motion was unanimously supported.

ADJOURN

Chairperson Nichols adjourned the meeting at 7:00 p.m.