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Minutes of the Regular Meeting of the City of Rensselaer Zoning Board of Appeals
First Floor Conference Room, Rensselaer Community Center, 62 Washington Street
October 27, 2008

Members Present:

Gene Hilstro – Chair, Bill Bulnes – Vice Chair, Meghan McNamara, Terrance Russo, Michael Scott

Members Not Present:

Brian Ferdinand, Nancy Johnson

Staff Present:

Marybeth Pettit – Director of Planning, Kevin McLoughlin – Assistant Director of Planning, John Spath – Deputy Corporation Counsel, Dan Moore – Building Inspector & Code Enforcement Officer

Others Present

Jerry Wainman, Robert Paquin, Thant Zin, Than Than Win

Call to Order:

Gene Hilstro called the regular meeting of the City of Rensselaer Zoning Board of Appeals to order at 6:15 PM. Roll call was taken and it was determined that there was a quorum.

Adoption of Past Meeting Minutes:

The minutes of the regular meeting of September 22, 2008 were approved as submitted without amendment or correction.

Old Business:

1. **Noah Bond, 1489 Broadway** – Request for Use Variance to allow a 48 square foot (3'x16') sign for a home occupation in a multi-family residential (R3) zoning district.

Mr. Hilstro asked if the public hearing had been closed at the prior meeting. Mr. McLoughlin confirmed that it had.

Mr. Hilstro read a suggested resolution into the record for consideration by other board members. He invited discussion, suggested amendments, or dissenting resolutions from the board.

Ms. McNamara moved to deny the request for a Use Variance and render an Interpretation that the property has no status as a pre-existing, non-conforming commercial use putting the existing insurance and computer business under the home based business regulations of the zoning code (full text of the resolution can be found in the decision sheet). Mr. Bulnes seconded. All in favor.

New Business:

1. **Thant Zin, 1302 3rd Street** – Request for Area Variance to permit construction of an 8'x8' shed in the side yard in a two-family (R2) residential zoning district. Area Variance(s) requested: a) 2' variance on north lot line from required 5' side yard.

Thant Zin stated that he wished to build a shed for storage of yard tools and children's toys. Mr. D. Moore explained that the rear yard of the applicant's property was taken up by a paved driveway area, which only left the side yard available for shed construction.

Mr. McLoughlin asked if a stop work order had been issued. Mr. D. Moore stated one had been issued and the applicant complied.

Mr. Bulnes asked how close the shed was to the rear property line. He was told it was approximately 40' from the shed to the rear property line. Mr. Bulnes also asked if the new fence followed the location of the previous fence. The applicant responded that the old fence line was followed.

Mr. Hilstro opened the public hearing at 6:30 PM. Hearing no one else wishing to speak for or against the application, Mr. Hilstro closed the public hearing at 6:32 PM.

Mr. Ruso moved to grant the Area Variance of 2' to allow a 3' setback on the north property line. Mr. Scott seconded. All in favor.

2. **Robert Paquin, 1122 2nd Street** – Request for Area Variance to allow construction of a shed in a side yard adjacent to the adjoining property line in a multi-family (R3) residential zoning district. Area Variance(s) requested: a) 2' variance on north lot line from required 5' side yard.

Robert Paquin stated that he put up a fence for which he had a permit and having help from a friend decided to put up a shed as part of the project. Since the shed is 102 square feet (appx. 7'x15') he did not need a building permit. The applicant stated he was unaware of the requirement for a set back for any structure from adjacent lot lines.

Mr. Bulnes asked if the shed was used to store animals. Robert Paquin said that he did not plan to house his dogs (as originally stated to the planning staff), but for rakes and yard equipment.

Mr. Hilstro pointed out before and after photos of the applicant's parking area and fence. He noted that the applicant appeared to have removed dirt lying next to the neighbor's foundation as part of grading the parking area. Mr. McLoughlin noted that this went against the concerns and

recommendations of the Planning Commission and ZBA when they granted the applicant an Area Variance exception from required off-street parking so he could get a C.O. for a basement apartment.

Mr. Hilstro and Mr. Bulnes both asked if the applicant had proof of the property line location. Robert Paquin stated that he had a survey indicating that the property line extended right to the neighboring building to the north. Mr. McLoughlin noted that the applicant had responded to prior staff requests for a survey by stating he did not have one.

Mr. Bulnes suggested reserving decision until the next meeting in order to wait for the applicant to produce the survey he stated he had in his property records.

Mr. Hilstro clarified that in order to continue with the variance request that the applicant would need to produce a survey. If the applicant did not wish to produce a survey, he would be in compliance with the zoning code if he removed the shed 5' from the property line.

The applicant stated that he now preferred to withdraw his application.

3. Than Than Win, 40 Partition Street – Request for Interpretation (under Article IX, Section C.5.a of the zoning code) to allow a change of a non-conforming use to an equal or more restricted classification or a Use Variance to allow operation of a grocery / market in a two-family (R2) residential zoning district at the location formerly occupied by Jim's Pizza.

Than Than Win explained that he purchased the building a little over a year ago with the intent to renovate the pizza shop area into a grocery / market. He stated that he was unaware that the legal commercial use of the property could expire because the building was located in a residential zone.

Than Than Win stated that he obtained a building permit within a few months of purchasing the building and had performed renovations as quickly as his time and money allowed.

Mr. D. Moore confirmed that he had discussions with the applicant regarding code requirements for commercial units with residences above when the applicant obtained his building permit.

Mr. McLoughlin explained that the Planning Commission had forwarded the application with a recommendation to find that there has been no expiration of the use due to vacancy.

Mr. Hilstro opened the public hearing at 7:00 PM. Hearing no one else to speak for or against the application, Mr. Hilstro closed the public hearing at 7:03 PM.

Mr. Hilstro asked whether there would be deliveries. Than Than Win stated that he would be using a small truck to personally deliver supplies on the weekends. The applicant further stated that customers would walk to the store or use existing on-street parking and the only sign would be lettering in the window as with Jim's Pizza.

Mr. Hilstro moved to find that: 1) the property had a long-standing use as Jim's Pizza on the ground floor and apartments on the 2nd floor which ceased in July 2007 when the applicant

purchased the building 2) the applicant purchased the building with the intent to maintain commercial use of the ground floor 3) the applicant obtained a building permit on August 17, 2007 and began substantial and costly renovations (as personal time and funds allowed) within a year of the closing of Jim's Pizza 4) the applicant's intended use of the property as a grocery / market with dry goods and some refrigerated products is equivalent to the classification of a pizza parlor under the zoning code 5) the applicant does not intend to expand any aspect (signage, traffic, parking, deliveries) of the prior use; therefore be it **Resolved** that the board interprets under Article XI, Section B.1 of the Zoning Code that the pre-existing non-conforming commercial use of the property was not abandoned under Article IX, Section D.1 of the Zoning Code, and be it further **Resolved** that the board Approves a Change of Use from pizza shop to grocery under Article IX, Section C.5.a of the Zoning Code. Mr. Bulnes seconded. All in favor.

4. **Jerry Wainman, 51-57 Washington Street** – Request for Use Variance to permit construction of a non-accessory parking lot in a local business (LB) zoning district for the relocated city courts.

Jerry Wainman described the project as a parking lot to handle the expected need from the relocation of the city court from the old city hall. The city plans to lease the lot from Mr. Wainman for a set fee.

Mr. Ruso asked who would park in the lot. Ms. Pettit stated that the lot would be for patrons of the court and others visiting city hall while judges and court employees could park in the existing lots for city employees. She added that the green space met the zoning requirements and would include some low shrubs, grass, and a few small trees with a cluster of plants along the Washington Street frontage. The final landscape plan would be approved by the planning staff.

Mr. Ruso asked if there was any lighting planned for the lot. Ms. Pettit responded that there was no special lighting installation considered as there is considerable street lighting on Washington and Academy Streets.

Mr. Bulnes asked about the drainage. Jerry Wainman stated that 30% of the lot would drain to Academy Street and 70% would drain to Washington Street which in turn drain to catch basins on 2nd Avenue. Mr. McLoughlin distributed a letter from the City Engineer stating that the lot would not generate a significant amount of new runoff and that the existing infrastructure was adequate.

Mr. Bulnes asked about the access and flow. Jerry Wainman stated that the intent was for vehicles to enter on Washington Street and exit on Academy Street. Mr. Ruso pointed out that some vehicles would be confused by not being able to turn left onto Third Avenue (to Albany). He suggested that the entrance and exit allow two-way traffic, but that the entrance curb-cut could still be limited to around 15' as with the City Hall employee lot across the street.

Mr. Hilstro opened the public hearing at 7:37 PM. Hearing no one else to speak for or against the application, Mr. Hilstro closed the public hearing at 7:39 PM.

Mr. Bulnes moved to grant a Use Variance to allow an off-street parking lot on a property without a primary structure with the following stipulations: 1) 2-way entrance / exit on both

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Washington and Academy Streets 2) 30% minimum green space as shown on approved site plan 3) grading of the site and pavement with a 1% pitch with approximately 30% of runoff directed to Academy Street and approximately 70% of runoff directed to Washington Street 4) lot is not intended for use by city employees 5) planning office will explore lighting needs and options to ensure security of site at night and limit insurance risk conditional on the County Planning Bureau deferring review of the decision to local consideration. Ms. McNamara seconded. All in favor.

Adjournment:

Hearing no objections, Mr. Hilstro adjourned the meeting at 7:49 PM.

Next Meeting:

The next regular meeting is scheduled for November 24, 2008 at 6:00 PM

Record of Decisions:

An official record of decisions noting the details of motions from this meeting along with conditions & stipulations has been filed with the City Clerk and a copy maintained in Planning Department records.

Respectfully submitted,

Marybeth Pettit
Secretary