

MINUTES

**Independence Planning Commission
Independence Board of Zoning Appeals**

Tuesday, December 4, 2018

Veterans Room

Memorial Hall

5:30 p.m.

Call to Order

Planning Commissioner Present

Steve McBride, Jim Hardy, Andy McLenon (outside), Philipp Umlauf, Brian Beecham, Michelle Anderson, and Andy McLenon (outside)

Planning Commissioners Absent

Barb Emert, Nick McCollam (outside)

Staff Present

Kelly Passauer, Assistant City Manager/Zoning Administrator

Visitors

Henry Williams

Minutes

- a. Consider approving minutes from the November 6, 2018 meeting.

Philipp Umlauf made a motion to approve the minutes of the November 6, 2018 meeting, Andy McLenon seconded the motion. The motion carried 7-0.

Board of Zoning Appeals

- b. Consider a variance request to decrease the setbacks and increase the lot area coverage in a C-2, commercial services zoned district at 410 East Main Street.

The following staff report was provided:

Overview of Variance Requested

The Board of Zoning Appeals has received the attached application from Henry Williams representing Barbara Near requesting a variance from the district regulations. Mr. Williams is planning on constructing 22' X 26' building to house a boxing ring.

Specifically, the variances are from the following sections shown in bold which state:

510.4. *Intensity of use regulations:*

a. Maximum lot coverage: 50 percent.

510.5. *Height regulations:*

a. Maximum structure height: 35 feet or 2½ stories (whichever is smaller).

510.6. *Yard regulations:*

a. Minimum front yard: 35 feet measured from property line.

b. Minimum side yard: None.

Exception: Ten feet where abutting a side street; 15 feet where abutting a C-1 or O&P zone; 25 feet where abutting a residential zone.

c. Minimum rear yard: Ten feet.

Exception: 25 feet where abutting a residential zone.

The district regulations of the City zoning ordinance above state that in a C-2, commercial services district the maximum lot coverage is 50 percent and the minimum rear yard setback shall be 25 feet when abutting any "R" (Residential) district. The applicant is requesting that 50 percent maximum lot coverage be exceeded and the 25' rear yard setback be encroached 15' for a reduced rear yard setback of 10'.

In reviewing the conditions that must be met when considering the variance, we wish to provide the following information:

a. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by any action or actions of the property owner or the applicant; This area was originally developed many years ago prior to the zoning code. It includes buildings that are more typical of a C-3, central business district type development with zero lot lines on the front and both sides. The existing building also exceeds the maximum lot by of 50 percent, as the current lot area coverage before the variance is approximately 67 percent.

b. That the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents; City staff does not foresee that approval of these variances will adversely affect the rights of any property owners or residents. It is anticipated that the planned building will contain the activity. There is also an alley easement that is approximately 20' in width that serves as a buffer between the commercial zone and the residential zoned property. In addition, Mr. Williams has advised that he has spoken to the neighbors and they have no objections.

c. *That the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;* The applicant has indicated that without the variance they would not have enough space to construct their building.

d. *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;* Staff does not foresee this creating any adverse impact on the public health, safety, morals, order, convenience, prosperity, or general welfare.

e. *That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.* The General Development Plan Map shows this area commercial from Main to Myrtle. Staff does not feel that approval of this variance will be opposed to the general spirit and intent of the zoning regulations.

Staff Recommendation

Staff recommends approving the variance as requested by increasing the maximum 50 percent lot coverage 40 percent, for a maximum lot area coverage of 90 percent; and by reducing the 25' rear yard setback 15' for a reduced rear yard setback of 10'.

Steve McBride made a motion to accept staff's recommendation and approve the variance as requested by increasing the maximum 50 percent lot coverage 40 percent, for a maximum lot area coverage of 90 percent; and by reducing the 25' rear yard setback 15' for a reduced rear yard setback of 10'. The motion was seconded by Andy McLenon and passed 7-0.

Planning Commission

- c. Consider a text amendment to Appendix B – Zoning Code relating to Off-street parking requirements.

The following staff report was provided:

On your November 6, 2018 Planning Commission meeting staff provided an update regarding the feedback from the City Commission at their November 5, 2018 City Commission meeting. Staff advised that we would place this on your next regular agenda (December 4, 2018) for reconsideration. An except of the minutes of your October 2, 2018 meeting regarding this item are attached which include the staff report and the original recommendation of the Planning Commission.

Regarding the text amendment for off-street parking (gravel in industrial areas) the following timeline has occurred:

- The original public hearing was July 2, 2018 -- The Planning Commission adjourned to October 2, 2018
- On October 2, 2018 the Planning Commission made a recommendation to the City Commission to modify the language, adding additional definitions related to ADA requirements and gravel, and modified the design requirements in the off-street parking regulations to allow gravel meeting certain specifications in M-1 and M-2 (industrial) districts.
- On November 5, 2018 the City Commission tabled action and returned this item back to the Planning Commission for reconsideration and provided the following feedback:
 - They want to know the initial intent and purpose of the text amendment.
 - They want to know if it will attract new businesses.
 - They had the following concerns:
 - The appearance of large gravel parking lots.
 - Gravel running off in heavy rains.
 - Ability to adequately mark ADA spots.
 - They provided the following suggestions:
 - Limiting the size of gravel parking lots to a maximum number of spaces.
 - Continue to require new buildings or new industries to hard surface required off-street parking to City code standards but allow existing industries that already have a gravel parking lot that is grandfathered in (a non-conforming use) to expand (enlarge) their existing gravel parking lot.
 - However, if they have an existing hard-surfaced parking lot any expansion (enlargement) would have to be hard surfaced.

In reviewing this item further, staff would also suggest considering the following:

- Whether to require ADA parking spaces and pathways to be hard-surfaced;
- Whether to require some sort of border material to ensure gravel stays in place;
- Whether to require gravel surfaces to be treated and maintained to be dust free; and
- Whether or not to allow a parking lot that is currently hard-surfaced to be removed and replaced with gravel.

Philip Umlauf agreed that the ADA pathways should be hard surfaced, due to marking and not be non-compliance. He stated that the border material ensures the gravel stays in

place. He indicated that we do not need require new buildings or industries to have that hard surface as we want to reduce the cost for new businesses to come to our town and establish it as a place to do business, as opposed to going to Chanute or another town that will let them do a gravel parking lot.

Andy McLenon stated that the estimated cost is \$8 per square foot to do concrete, asphalt is around \$5.50 - \$6 per square foot and is a timing issue, while gravel is \$4 - \$4.25. He further stated that he talked to a couple of businesses. One originally had gravel, and was required to asphalt it, and their property taxes went up, and then had to concrete it and it went up another 33%. He also talked to other businesses that had asphalt already that would be motivated to rip it up and come back with gravel due to property taxes. He stated that he was pro-gravel because businesses have cycles; "If you have a cycle you need to staff up, and you are out of employee parking spaces, the options are to provide a gravel pad. That cycle may be temporary. To give flexibility to the businesses, we need to have a timebound solution to this. Maybe they come in with a gravel parking lot, but they have a timeframe, going back to the fire station, granted them 24 months. For a new business, gravel gets you in here. For a 10,000 square foot parking lot, you are talking an additional \$35,000 expense to do that. For startups, if you can slash a line item by \$35,000 it is attractive."

Philip Umlauf stated that he agreed but disagreed with allowing existing hard surface parking to be ripped up to reduce their taxable amount.

Andy McLenon stated that he was shocked that you would forgo that expense for a tax bill.

Philipp Umlauf stated that it opens a can of worms, all the sudden if we are going to allow it. If you have hard surface, you must keep and maintain it but can't rip out an existing hard surface because it is counterproductive to the plan for the town.

Steve McBride asked if you have a large area that is hard surfaced that is in bad shape, would you allow them to remove that and put in gravel.

Andy McLenon stated he was thinking about the Matcor parking.

Brian Beecham stated that it's a business cycle. The focus on what the town looks like, there are main areas that people travel through. Certain areas can be addressed. High rent district has different standards. He had a conversation with the Construction Manager for Orizon; stating "They are taking employees from another company in Fredonia. Driving up living conditions. You don't want a hard surface to hold up that type of progress."

Philipp Umlauf stated that he asked the plant manager and he said they went to Chanute because they could have a gravel parking lot; "They were considering around where Sedan Floral. They are building 737 fuselages for Boeing and want to expand. 200-300 jobs that Independence did not get, that are in addition to the existing 300 jobs."

There was discussion of whether or not this business (Orizon) is in the City or County.

Brian Beecham stated; "Even at our last meeting when they are talking about the new buss building, they didn't have it in the budget to hard surface that."

Philipp Umlauf stated that; "Durham is out of here after next year."

Steve McBride stated; "The school district will employ all those people and give those people raises. They will save \$600,000, but that doesn't mean that they can pave it."

Kelly Passauer brought up the County parking lot stating that if they rezoned it to industrial this modification would address that issue.

Philip Umlauf stated that he agreed with the service drives being hard surfaced.

Brian Beecham stated that it needed to be flexible to drive people in.

Mary Jo Meier stated; "There's got to be a bridge, when do they have to be [ADA] compliant?"

David stated as soon as they open.

Philip Umlauf stated that the most cost-effective way to handle that would be when they are pouring their foundation for their building.

Mary Jo Meier stated; "Have to prepare in advance for the ADA, and if that is done in advance they can."

David stated; "The surface must be firm and slip resistant. There is no way for me to determine if something is slip resistance. The surface must be unchanged by forces or other material. ADA says as long as the material is able to be compacted and sufficiently stabilized you can use other material such as screenings, AB3, but it is maintenance issue, you need borders to contain it, it is an acceptable use for ADA parking. We have an ADA complaint at the ballfield. To put in concrete and make the accessible paths for the North Park complex is \$600,000 to do all that work. It is a maintenance requirement, we have a Rec Board. Speaking to what Andy said, it does give them the opportunity to come in and establish their business and improve it later."

Andy McLenon stated "It is the businesses' responsibility to be ADA compliant, but there will be some sort of annual audit for compliance. It could be, they may get creative, they could go with physical structures. When ADA changes in 6 months or 6 years we don't have to revisit it, they just have to be compliant."

Philipp Umlauf stated; "That's why I thought to require those to be hard surface so that they are never a complaint."

Andy McLenon stated; "The smart businesses will do what you said and be done with it."

Philipp Umlauf stated; "My reasoning is to push that direction, this town has a long history of ADA complaints and non-compliance, to say we are not even going to mess around with this."

Mary Jo Meier stated; "That makes an awfully lot of sense."

Philipp Umlauf stated; "We have a bunch of businesses that may have to go back and fix this."

Andy McLenon stated; "Existing business that has an existing parking lot, they need to roll out some AB3 and put in another 50 stalls. Do the temporary stalls have to have ADA?"

David Cowan stated; "It goes off their total number and access to the building. If it is close together it may only cost them one stall."

Philipp Umlauf asked what the ratio was

David Cowan stated that it is a chart. Further stating; "If you look at the stadium, there are 2,000, there aren't that many ADA spaces, maybe eight to ten. I think only six are required. It's not as many as you might think."

Mary Jo Meier stated; "If it is going to cost \$600,000, what would be the cost for that business to upkeep the ADA? If they have gravel and have to upkeep the gravel on their own nickel. It would be nothing compared to hard surfacing."

Andy McLenon stated; "Compliant with all ADA, preferred solution would be hard surface parking for the ADA slots."

Jim Hardy suggested that he can see it both ways.

Andy McLenon is not worried about saving money, just giving latitude to the business.

Philipp Umlauf thinks that unless it is this way, there will be push back from the Commission, and we may be having the same conversation in a month or two.

Mary Jo Meier asked what the penalty was.

David Cowan said the Department of Justice (DOJ) imposes penalties. Stating; "We are not going to issue a building permit or occupancy until it is compliant. But once they are running, we are not the police. That employee will go to the DOJ, and it will be between them and the DOJ. I'm not going to go to Hugo's after they are opened and see if it is maintained. Once they meet the initial requirements of the City it is their responsibility to hold them to task."

In response to the Commission's feedback regarding the initial intent and purpose of the text amendment, and whether it will attract new businesses, a motion was made by Philipp Umlauf that responded; "To make the City more attractive to recruit new businesses to the City to enable flexibility for existing businesses to expand their parking area if need be for growth in alignment with the Economic Development Strategic Directive No 1 of the Strategic Plan, seconded by Andy McLenon. The motion carried 7-0.

Philip Umlauf stated that they would have to be maintained like someone would maintain their yard, they get notices if they don't mow.

Andy McLenon made a motion to require service drives to be hard surfaced, seconded by Philipp Umlauf. The motion carried 7-0.

Motion to approve the Design requirements as modified, Andy seconded. Motion carried.

Philipp Umlauf moved to not limit the size of non-hard surface parking lots to a maximum number of spaces, nor require new businesses or industries to hard surface, or business expansions to hard surface. Andy McLenon seconded. The motion carried 7-0.

Steve McBride moved to not allow an existing hard surface parking lot to be removed and replaced with non-hard surface material. Jim Hardy seconded. The motion carried 7-0.

Andy McLenon moved to modify the previous motion in relation to business expansion to the following: If a business currently has a hard surface parking lot, and needs to expand that parking area, they can expand it using a non-hard surface parking material for up to 2 years, at which time they will need to convert that expanded parking area into hard surface or remove the expanded parking area. Michelle Anderson seconded. The motion carried 7-0.

Adjournment

The meeting was adjourned with a motion by Andy McLenon, seconded by Brian Beecham. The motion carried 7-0



Mary Jo Meier, Vice Chair



Andy McLenon, Secretary