



MINUTES
BOARD OF ADJUSTMENT
Thursday, September 20, 2007 - 9:00 AM
City Council Chambers
201 S. Cortez Street, Prescott, AZ

I. CALL TO ORDER

II. ATTENDANCE

MEMBERS PRESENT:

E. Calvin Fuchs, Chairman
Mike Klein, Vice Chairman
Johnnie Forquer
Tom Kayn
Ken Mabarak
Bill Warren

OTHERS PRESENT:

George Worley, Assistant Community
Development Director
Gary Kidd, City Attorney
Dick Mastin, Development Services Manager
Ryan Smith, Community Planner
Bob Bell, Council Liaison
Kathy Dudek, Board Recording Secretary

MEMBERS ABSENT:

Duane Famas

III. REGULAR AGENDA

1. **Approve the minutes** of the July 19, 2007 public hearing.

Mr. Mabarak, **MOTION: to approve** the minutes as amended, changing page 4, paragraph 2, from "Webster" to "Nalda". Ms. Forquer, 2nd. **Vote: 5-0-1** (abstention due to absence: Kayn).

2. **CUP07-006, 1995 Victoria Drive.** APN: 116-06-057 and totaling ± 0.99 acre. LDC Section 10.2.1. Zoning is Single-Family 18 (SF-18). Request conditional use permit for expansion of detached legal, non-conforming guest quarters. Owner is Chuck Hiatt. Applicant/agent is Mike Henwood. Community Planner is Wendell Hardin.

Mr. Hardin reviewed the staff report and indicated:

- the request is to expand the guesthouse in a Single-Family 18 (SF-18) zoning district;
- the property is one acre in size and is heavily vegetated;
- the guesthouse is to be located 50' to the rear of the house and totals 480 SF;
- the original guesthouse was built in 1969 and was used as a home while the main house was being built;
- there is minimal impact on site disturbances;
- the structure has been a legal, non-conforming structure since 1969;
- the owner is following the proper procedure in requesting a conditional use

- permit;
- the utilities are shared on a single-line, and the guesthouse cannot be rented; and,
- the lot coverage, with the addition to the guesthouse, is within the *LDC* requirements.

Board members queried and remarked on:

- if the lots on both sides have been developed [Mr. Hardin: yes]; and,
- the slabs already being poured [Mr. Hardin: the applicant was told he could start on the slab at his own risk].

Chairman Fuchs asked if anyone from the public wished to speak. No one came forward.

Mr. Kayn, **MOTION: to approve CUP07-006**, 1995 Victoria Drive, as presented. Mr. Mabarak, 2nd. **Vote: 6-0**.

3. **V07-006, 123 Bradshaw Drive.** APN: 110-04-141P and 110-04-141Q and totaling ± 2.86 acres. *LDC* Section 6.2.3. Zoning is Business General (Planned Area Development) [(BG (PAD)]. Request variance to reduce required parking for a senior apartment building. Owner is Bradshaw Senior / Prescott LP, William Spreitzer. Applicant/agent is Fergis & Harding, Inc. Community Planner is Mike Bacon.

Mr. Smith reviewed the report for Mr. Bacon and indicated:

- the parcel is vacant;
- this project went to both the Planning and Zoning Commission and City Council and was approved as a 52-unit senior apartment building;
- Planning & Zoning Commission found excessive grading but recommended approval to City Council;
- the applicant is now requesting the elimination of the south parking;
- the applicant has demonstrated that less parking is needed; and,
- the applicant is now proposing a 46-unit structure without parking to the south.

Board members queried and remarked on:

- the *Land Development Code (LDC)* not having any distinctions between a senior apartment project and an apartment project [Mr. Smith: it is viewed as an apartment building under the *LDC*; however, the data that the applicant has presented shows that less parking is needed for seniors;
- the pitch being made today should have been made to the Planning & Zoning Commission where the issues were more appropriate [Mr. Smith: the applicant felt it best to follow the *LDC*. Afterwards the applicant felt he would like to reduce the number of parking spaces. He would now be in violation of the *LDC*];
- what guarantee is there that this project will always be a senior living facility [Mr. Smith: the project is not actually using federal funds for construction. A tax credit is given with a stipulation that this is to be maintained as an adult living facility. After 15 years, the project could convert to an apartment];
- why this request does not go back to Planning & Zoning Commission and

City Council for review since it has not been built and there is a change [Mr. Smith: it could have gone back to City Council, but staff felt it was more appropriate to come before the Board of Adjustment (BOA)];

- the developer chose to eliminate parking to the south, and is this a remedy from a cost point of view; and,
- if parking is eliminated due to grading concerns, how was the parking and grading handled originally.

City Attorney Kidd proffered that the matter must be looked at in terms of a self-imposed hardship. Under the *LDC*, the Planning & Zoning Commission could review the project. City Council could consider the request for decreased parking. Procedural issues have been raised.

Board members further queried and remarked on:

- staff's mention of the overall site which will potentially include two additional future phases of development;
- if a decision is made today, will future development of that property get the "right" to have the same reasoning as the future phases of the property is developed [Mr. Kidd: No. The second issue is whether or not the decision sets a procedural precedent. Each case before the BOA is looked at individually].

Further discussion and queries included:

- is there language that could be a condition which would preclude future development from having any claim [to reduced parking] and is the route being pursued appropriate;
- the size of the parcel in question [2.68 acres];

Mr. Chris Fergis, applicant, Fergis & Harding Architects, 7227 N. 16th Street, Phoenix, stated:

- the 2.14 acres is just the area outlined which uses a portion for Phase I;
- the concerns about the topography and excessive parking requirements were discussed at the Planning & Zoning Commission;
- it was understood that there was no relief that we could be given for parking;
- we were told that we had to apply for a variance;
- the project was designed to accommodate the full amount of parking spaces, but we felt that landscaping and aesthetics were more important; and,
- the topography and *LDC* requirements presented a hardship.

Discussion and further questions from the Board members included:

- was the issue of reduced parking raised before the Planning & Zoning Commission [Mr. Fergis: No. We did discuss the parking requirements and asked if there was any relief. It [parking requirements for senior housing] is not in the Code and there is no difference between senior apartments and apartment buildings;
- were either the Planning & Zoning Commission or the City Council apprised of reducing parking spaces for this project [Mr. Fergis: It wasn't discussed];
- decisions were approved by Planning & Zoning Commission and City Council without addressing parking [Mr. Fergis: we wanted to pursue this avenue with respect];

Chairman Fuchs stated that the Board is being asked to release the requirements that you agreed to when you went to Planning & Zoning and City

Council [Mr. Fergis: that's correct], all of which you knew [Mr. Fergis: that's correct].

Mr. Bill Spreitzer, 4745 N. 7th Street, Phoenix, president of WESCAP indicated:

- this project is the first of three phases and is below three acres in size;
- we knew what we were getting into;
- we designed according to Ordinance;
- we talked to the City of Prescott about the parking being excessive for seniors;
- this is the only community that doesn't have provisions for senior apartments;
- the parking situation for Prescott is based not on units but on number of bedrooms;
- demographics of 62 years minimum age and ladies from 75-77 years of age who typically do not drive;
- couples will comprise 10% of the rentals;
- we have completed a project in Flagstaff where parking for a 70-unit project requires 56 parking spaces, but 70 parking spaces were built for that project;
- the parking ratio is about .8;
- the project completed in Prescott Valley with 64 units and a parking ratio of .8 is below one parking space per unit;
- due to the direction given by staff to design in the course of the hearings, one of the [Planning & Zoning] Commissioners suggested that we take another look at grading and also mitigating the grading;
- after hearing comments from Planning & Zoning Commission, we decided to take a hard look at mitigating grading on the site;
- we are proposing a 1.4 parking ratio, and we are approaching parking with an excessive amount of parking for seniors;
- a row of parking on the southern boundary has been eliminated and retaining walls have been eliminated;
- Phase I has 46 units, Phase II will have 46 units of senior housing and sits to the north, and Phase III will be a family development of 56 units with parking to meet *LDC* requirements;
- this type of development is financed by Arizona Department of Housing (ADOH) in the form of a tax credit which makes the housing affordable for seniors;
- rents will be approximately \$300 for a 1-bedroom unit and approximately \$600 for a 2-bedroom unit;
- under the requirements of a tax credit, covenants will run with the land for a period of 30 years;
- we would like approval today because [we are] on a fast track in getting started in November. If we are forced to go back to Planning & Zoning and City Council, it will set us back months; and,
- we want to maintain the fast track, starting construction on October 29 and taking 10 months to complete the project. Leasing will start on September 1, 2008.

Further questions and discussion by Board members included:

- whether the applicant was aware of Prescott's *LDC* when the project was started and the awareness that the *LDC* lacked provisions for senior living;
- if a lifetime attachment to the proposal could be made in regard to having the project be made permanently for senior apartments;

- being aware of all circumstances when this project was initiated presents no overwhelming circumstance that we [the Board] need to continue;
- a timeline for the project [Mr. Spreitzer noted the timeline for all three phases and indicated that this project is in a very competitive field];
- observing the parking impact six months after project completion and having time to require additional parking for Phase II, as land will be available for additional parking [Mr. Spreitzer: yes, the area is there. We could remove some of the hillside if parking has been determined to be insufficient];
- is this senior apartment project subsidized housing [Mr. Spreitzer: no, the incentive for development is the federal tax credit];
- what will happen with the remainder of the 2.86 acre parcel [Mr. Spreitzer: the project has been designed with a 28,000 SF footprint, is 3 stories in height, with open space of approximately 47%. Our intent is to leave it natural, with landscaping over and above what is required];
- what is planned for the land to the east [Mr. Spreitzer: the overall site identified is approximately 6.5 acres, and the 2.86 acres is part of that site];
- the hammerhead [Mr. Spreitzer: it is temporary for the Fire Department and will continue on to the east and access the family unit [Phase III];
- is there a grading plan for this site [Mr. Spreitzer: plans are with the architect and will be completed with the intent to submit next week. During P&Z hearings, commissioners asked if we would submit our grading and drainage plans for their review. There is no stipulation of approval, but just for review. . . trying to mitigate impact on that site and we will demonstrate we followed what P&Z asked];
- when the plan is submitted, does it have to go to City Council [Mr. Smith: No, it doesn't];
- financing timeframe [Mr. Spreitzer: the timeframe we are on is critical to retaining the tax credits];
- the Board is struggling with “re-writing” the *LDC* for senior housing. This issue should have been addressed at the original Planning & Zoning Commission and City Council meetings. There is a problem with going in and taking a project that was approved by City Council and the Planning & Zoning Commission and allowing it to be changed.
- the Board has the responsibility for changing things that have been left out. This Board exists to consider circumstances that were not foreseen when the *LDC* was written.

Chairman Fuchs indicated that there is a need to address the fact of whether certain pieces of property with topography, etc., that would make this application a hardship. It is not our [the Board's] job to fix a deficiency in the *LDC*. Staff has told you that it [the project] would not “fly” with reduced parking. In going forward with this, you could not assume that the Board of Adjustment would approve a variance.

Mr. Fergis stated that the topography presents a hardship. He was told the proper process was to get a variance. Rather than stop the timeframe, it was not possible to ask for a variance. We felt we had a good case with the topography. The ordinance is a hardship and was another large issue.

Chairman Fuchs stated that there is a “hole” in the *LDC* with regard to senior housing. The parking requirement may possibly be an excessive requirement. This Board did not pass the *LDC*, and we do not change it. The City Council changes the *LDC*. Both you and the BOA are in a difficult spot by what you have

told us. There is nothing that stops you from meeting Code now. We could give you a letter that says you may not need the parking. It is not our jurisdiction to fill in the *LDC*.

City Attorney Kidd noted that City Council has the ability to waive conditions. The City has a history of approving senior apartments and senior living projects with less parking.

Mr. Smith stated that the 15% grade is reason to grant a variance.

Chairman Fuchs proffered that other projects approved by the City Council did not have a variance. [Mr. Smith: correct].

Further remarks and questions by Board members included:

- the project has already been designed accommodating a 15% grade and it is possible to complete the project without the reduction of parking spaces; and,
- Bradshaw Drive is fairly narrow, and are there plans or requirements to reconfigure the entrance [Mr. Mastin: this has been passed by Transportation and Engineering Services and there is no requirement to have additional lanes].

Mr. Fergis indicated that they were required to generate a Traffic Impact Analysis (TIA) for the area. It was one of the conditions for approval of the project.

Mr. Jim Judd, 403 Webb Place, who lives to the east stated:

- there is a concern with the remaining development;
- we have been assured that it will be senior development for a minimum of 30 years;
- putting in retaining walls and extra parking spaces would be wasting money;
- Planning & Zoning Commissioner Joe Gardner was concerned with maintaining slopes;
- if parking is not there, it will be an incentive to remain senior housing; and,
- he is in favor of the variance.

Further queries from the Board included:

- would you [Mr. Spreitzer], be interested in an attachment to the property that would state that this structure always be used as a senior housing facility [Mr. Spreitzer: hesitant with what the ADOH may view as a stipulation like that, and with our lenders];
- if you were not to receive a tax credit for Phase II, would the project be built [Mr. Spreitzer: if not in 2008, we will come back in 2009, there is room to add parking spaces if something happens with the tax credit program, enough room is on site if it becomes a problem];
- in looking at the two site plans, more than 30 spaces have been removed [Mr. Fergis: Yes, that is correct. Initially the plan showed 100 parking spaces. When the number of units was reduced, the number of parking spaces became 94; and, we are asking for a reduction of 30 spaces];
- there is a change in the driveway configuration [Mr. Fergis: the reconfiguration of the driveway was in response to grade at Bradshaw and ingress and egress]; and,
- concern with setting a precedent for parking in other projects and hearing: "the BOA reduced parking on the first phase. . ." and the other future

phases.

Chairman Fuchs noted that there is difficulty with no definition in the *LDC* as to what a senior complex is. To interpret that means nothing because it doesn't tie into the *LDC*.

Further queries and discussion centered on:

- problems that may arise with approving parking that is "adequate";
- violations will be complaint driven; and, it is the understanding that the applicant has the land now and is trying not to disturb the natural layout of the land;
- requiring that a certain amount of land be set aside in case parking becomes a problem; and,
- this should go to the Unified Development Code Committee for study and/or possible *LDC* amendment.

Mr. Fergis stated that construction plans are scheduled to be submitted at the end of next week. Construction plans will be looked at by the Building Department. Load density with fewer parking spaces will be examined. I [Mr. Fergis] don't know that the City Council would have an issue.

Mr. Mastin noted that the hammerhead is new in the revised site plan.

Chairman Fuchs asked the applicant if he was sure there are 64 spaces [Mr. Fergis: yes . . . I hope].

Motions were made by:

- a) Mr. Warren – dies for a lack of a second;
- b) Mr. Kayn, Mr. Mabarak 2nd – discussed then withdrawn;
- c) Mr. Kayn, amending previous motion, Mr. Mabarak does not 2nd the amended motion – motion withdrawn.

A straw poll was taken with support of the variance to reduce the number of parking spaces. The results were 4 to 2 (Fuchs, Klein).

Mr. Smith offered that reducing the number of parking spaces from 94 to 64' could possibly occur with staff approval.

Additional motions were made and failed to receive seconds or were withdrawn.

Mr. Kayn called for Point of Order and asked that an adjustment to the site plan be undertaken, revising it to some form that could be approved.

Mr. Worley proffered that the question is whether or not the reduction can be tied to some aspect of the design. The question before the BOA is 94 vs. 64 parking spaces. Where the places end up is a Planning & Zoning issue, not a BOA issue. They have to meet the parking space number in a practical and functional manner. If you say they must have 64 spaces per this variance, they will have to show this during site plan review. They will have to fit them on site.

Mr. Mabarak asked if we [the Board] approves something today reducing the number of parking space requirements by 28 or 30 spaces, and the Planning & Zoning Commission will review, without formal action, if it will be forwarded to

City Council. He then asked if there was any way an action could be taken that would sanction the reduction of the number of spaces that would go back to City Council.

Mr. Worley indicated that this does not have to go back before City Council. Planning & Zoning Commission wanted to see a plan before building commences. Permits have been issued. It will not be an action item. Mr. Worley stated that he was not aware of any action that would enable this item to be forwarded to City Council.

City Attorney Kidd indicated that the BOA is limited to the variance request only. There are also a number of different ways to approach the situation:

- a) to modify parking only tied to a specific plan;
- b) a pending motion dealing with required parking, leaving it to the staff;
or,
- c) amending the site plan process.

City Attorney Kidd indicated that if senior housing is tied into a non-existent code, it means nothing. Also, the request to look into low-income housing or transitional housing is not defined in the *LDC*, and also has no meaning.

Mr. Mabarak noted that the Planning & Zoning Commission needs to be more thorough; consequently, he is uncomfortable reducing the number of parking spaces by one third. He feels a need for Planning & Zoning Commission to recommend their decision to City Council.

A motion was made by Mr. Warren and seconded by Mr. Kayn and was withdrawn.

Mr. Kayn, **MOTION: to approve V07-006**, 123 Bradshaw Drive, with a reduction of the 28 parking spaces shown in blue on Exhibit B dated 07-30-07. Mr. Warren, 2nd. **Vote: 2-4.** (for approval: Kayn, Warren; opposed: Forquer, Fuchs, Klein and Mabarak). **MOTION FAILS TO CARRY.**

IV. REVIEW ITEMS

None.

V. SUMMARY OF CURRENT OR RECENT EVENTS

None.

VI. ADJOURNMENT

Chairman Fuchs adjourned the public hearing at 11:23 AM.

E. Calvin Fuchs, Chairman