

DELAWARE BOARD OF ADJUSTMENTS
July 31, 2018

The scheduled meeting for the Delaware Board of Adjustments was held on July 31, 2018 at Town Hall. Those in attendance were Mayor Michael Houlihan, Director of Public Works Jerome Reid, Attorney James Waehler, Planning and Zoning Chair William Boyan, Community Development Coordinator William Hardin, and Clerk of Council Cindy Fisher. Guests: Matthew Leimbach, Robert Palmer and Chris Walter.

Called To Order

Mayor Houlihan called the Public Hearing to order.

Approval of Minutes

Public Works Director Reid made a motion to approve the June 19, 2018 minutes as presented. Town Attorney Waehler seconded the motion which passed with 3 ayes and 0 absent.

New Business

Mayor Houlihan introduced the Board as himself; Mayor of Delmar, Delaware, Public Works Director Jerome Reid and Delmar, DE Town Attorney James Waehler. Also in attendance is the Planning and Zoning Chairman along with being a Delmar, Delaware Council Member William Boyan, Community Development Coordinator William Hardin and Clerk of Council Cindy Fisher will be taking the minutes of this meeting.

A notice has been posted on the property advertising this Public Hearing and notice has also been advertised in a newspaper of general circulation. Mayor Houlihan read the notice which indicated that Matt Leimbach is the petitioner and he is asking to restore the non-conforming uses for the minimum lot size, front side and rear setbacks, minimum lot area per dwelling unit and maximum lot coverage for 2 N. Pennsylvania Avenue., Delmar, Delaware. The property is zoned Community Business. He asked that anyone who is planning on giving testimony for or against the petition or anyone who will be offering informational testimony to stand up and be sworn in. Town Attorney Waehler administered the Oath to all that stood.

Mr. Matt Leimbach introduced himself as hopefully being the new owner of 2 N. Pennsylvania Avenue, Delmar, Delaware. He said that Robert Palmer from Beacon Engineering will be able to go over the details of his plan.

Mr. Palmer stood and introduced himself as a professional engineer with Beacon Engineering. He thanked the Board for scheduling this meeting on such short notice. He said that Mr. Leimbach has a very short due diligence time period with the bank, so this meeting is very important to them. They have already been to the Planning and Zoning meeting and were given a favorable recommendation.

Mr. Palmer stated that they want to re-establish several non-conforming uses for the structure at 2 N. Pennsylvania Avenue, since it has long been abandoned. He feels that this request is consistent with the Town's Zoning Ordinances and the Comprehensive Plan for the Town.

Mr. Palmer reviewed and read Section 3 of the Town's Zoning Code in reference to the character of the zone and it being vacant for so long. Their application will seek to increase traffic in the Central Business District. He also stated that in Section 8 of the Town's Zoning Code under "Central Business District" it states that the purpose is to create an atmosphere that encourages the preservation and revitalization of the historic business district. Residential use is also encouraged.

Mr. Palmer said that he remembers when the back of the building fell off and while doing some research, he discovered in a 1958 Pomeroy and Beers Atlas of Delaware that Pennsylvania Avenue was called Delaware Street. He provided an enlarged copy of the atlas that depicts what Delmar looked like in 1868. The building in question was a store and sat next to Elijah Freaney's property. The building has been here for a very long time and predates the zoning regulations of Delmar. He informed the Board that there are several code requirements that this property does not comply with.

In the mail packet, Mr. Palmer provided a list of code requirements that the structure does not comply. He stated that the first four came from Section 8 of the Delmar Zoning Code and the last 5 come from Section 14 of the Zoning Code. He reviewed each one as follows:

- 1- The minimum lot area requirement is 5,000 sq. ft. as reference in Section 8, C 1 of the Zoning Code. The existing minimum lot area is 4,506 sq. ft. which would require a variance of a reduction of 494 sq. ft.
- 2- The minimum lot width requirement is 50 ft. as referenced in Section 8, C 3 of the Zoning Code. The existing lot width is 48.70 ft. which would require a variance of a reduction of 1.3 ft.
- 3- The minimum front yard setback requirement is 20 ft. as referenced in Section 8, C 4a of the Zoning Code. The existing front yard setback is 1.9 ft. which would require a variance for a reduction of 18.1 ft.
- 4- The minimum side yard setback requirement is 15 ft. as referenced in Section 8 C 4c of the Zoning Code. The existing side yard setback is 0 ft. which would require a variance for a reduction of 15 ft. Mr. Palmer informed the Board that in reference to a side setback, on one side there is a common wall between this property and the properties to the north.
- 5- The maximum density requirement is 25% of the lot area as referenced in Section 14 B 1 of the Zoning Code. The existing density is 68% which would require a variance for an increase of 43%.

6- The minimum lot area per dwelling unit requirement is 3,200 sq. ft. as referenced in Section 14 B 2 of the Zoning Code. The existing minimum lot area per dwelling unit is 376 sq. ft. which would require a variance for a reduction of 2,824 sq. ft.

7- The minimum front or corner setback requirement is 30 ft. as referenced in Section 14 C 1 of the Zoning Code. The existing front or corner setback is 1.9 ft. which would require a variance for a reduction of 28.1 ft. Mr. Palmer stated that this building has 2 front yards and does not sit square on the property.

8- The minimum side or rear setback requirement is 30 ft. as referenced in Section 14 C 2 of the Zoning Code. The existing side or rear setback is 0 ft. which would require a variance for a reduction of 30 ft.

9- The maximum lot coverage requirement is 25 % as referenced in Section 14 D 1 of the Zoning Code. The existing lot coverage is 68% which would require a variance for an increase of 43%.

Mr. Palmer stated that his testimony for re-establishing the non-conforming use is not contrary to the special conditions and the literal meaning of the zoning restrictions themselves would be a hardship. There will be no detriment to the public good and will not impair the zoning ordinance. Mr. Palmer said that it is Mr. Leimbach's plan to renovate and improve the historic aspect of the building.

There will be 4 commercial units on the first floor probably used for professional office space. On the second and third floors, he is proposing a mixture of one and two bedroom apartments. Both uses are permitted in the Central Business District. In regards to the water and sewer allocation, Mr. Leimbach was thinking he would need 3 EDU's. After speaking with the Town's engineers, he suggested that 4 additional units would be made available.

Mr. Palmer indicated that Chapter 2 A of the Comprehensive Plan speaks of the goals and objectives of the Plan. Number 7 of the Chapter speaks of promoting the development of safe, decent and sanitary housing, in a variety of housing types, in attractive neighborhoods, in order to assure a wide selection of housing, within the means of families, to meet family housing needs. The smaller apartments would provide lower rent with the appeal of supplemental help and improve the rentals in Delmar.

Also in Chapter 2 of the Comprehensive Plan, Mr. Palmer stated that under the "Housing" section, there are 3 points that pertain to this situation.

He reviewed each one:

Item 6- speaks on providing increased housing, particularly in the downtown area for small families, including the elderly, semi-retired and other families with no children.

Item 7- speaks on encouraging families seeking affordable housing to consider community reinvestment of older, abandoned property. Mr. Palmer said that Mr. Leimbach is looking to put from \$800,000 to \$1 Million into the project.

Item 9- speaks on protecting residential zones from incompatible activities and land uses to create comfortable and safe living environments.

Mr. Palmer stated that he did not find anything in the Town Code about re-establishing a non-conforming use. He took information and criteria from the County's website for his use on the property.

1- The application has unique physical properties in lot size and shape. Mr. Palmer stated that this property pre-dates the zoning code and is a mid-1800's structure. The lot is already narrow at 50 ft. and the setbacks would create an unbuildable lot.

2- Such circumstances that there is no possibility that the property can exist, with the strict zoning regulations. Non-conforming use- the historic nature of the property makes it impossible to meet all the requirements. The unnecessary hardship has not been created by the applicant. The property was here long before any of us here at this meeting.

3. A variance would not alter the character of the neighborhood. This is the same for the rest of the properties north on Pennsylvania Avenue. The Town's Comprehensive Plan supports this type of development in this area. The Town has recognized the importance of this when they waived the parking requirements.

Mr. Palmer said that there is consideration for reconstructing the rear fire escape of the building. There is a possibility of having an elevator tower in the back. He is asking for 9 variances and is suggesting that the approval is for the re-establishment of the non-conforming uses for the other conditions.

Town Attorney Waehler questioned the elevator tower. Mr. Leimbach said that it would be something he would be considering, if needed, to comply with any ADA requirements. He stated that it would likely be built in the grassy area in the back and the extent of the elevator would not encroach the easement. He said that his intent for the rentals is for 55 and older and that it depends on the cost of the elevator tower. They have not met with the fire marshal as of yet. They wanted to make sure the Town was open to their plan and receive some kind of approval before approaching the fire marshal. In response to a question, Mr. Leimbach stated that a fire escape is mandatory for the back of the building.

Town Attorney Waehler asked about parking. Community Development Coordinator Hardin stated that in the Zoning Code under "Central Business District" and "Parking", it reads "The buildings facing the railroad tracks on Pennsylvania Avenue from East Street in Delmar, Maryland to Grove Street in Delmar, Delaware are exempt from all parking use requirements."

Town Attorney Waehler asked CDC Hardin if the Town had an ordinance for the residential use requiring sprinkler systems. CDC Hardin responded that in the State of Delaware, there is no mandatory requirement. Since it is a mixed use building, they will have to abide by whatever the Fire Marshal mandates. They will have to follow all other agency mandates as well before a building permit and/or a C.O. can be issued.

Town Attorney Waehler asked about the regulations for restoring a non-conforming use that has lapsed over time for non-use. CDC Hardin stated that there is no language in the Zoning Code that relates to the restoring of a non-conforming use property. CDC Hardin did state that under "Abandonment" in the Nonconforming uses and structures permitted area, Item #2- "Whenever a nonconforming use or structure has been discontinued or is inactive for a period of one year or more, such use or structure may not, thereafter, be reestablished and any future use or structure shall be in conformity with the provisions of this ordinance." CDC Hardin stated that the only relief for this structure is for a variance. But there is nothing in the regulations speaking of the restoring of a non-conforming use.

CDC Hardin considers the building as a non-conforming structure and it lost the grandfathered non-conforming use after it was vacant for over a year.

Town Attorney Waehler said that the ordinance is difficult to interpret and this particular petition is not set forth in any standards. CDC Hardin said that the Town's regulations mirrors the standard for a variance almost word for word. In Section 31 B 3- Variances; Cases in which a variance may be granted to relieve a hardship: 1) Where, by reason of the exceptional narrowness, shallowness, or unusual shape of a specific piece of property, or by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, a variance is necessary." The non-conforming use is asked to be allowed by authorizing the variances.

Mayor Houlihan asked if there is anyone in attendance who would like to speak out either in favor of or against the petition.

Mr. Chris Walter stood and identified himself as the owner of 10 N. Pennsylvania Avenue, Delmar, Delaware. He has met with Mr. Leimbach. He has no problem with the front and side setback variances. He wanted everyone to know that there was an easement in the rear of the property. His biggest concern is with parking. Elderly residents with an elevator in the back will want to park right next to the elevator. He also said that with an elevator, Mr. Leimbach will have to sprinker the building. He is in favor of seeing the property restored. Mr. Walter said that Mr. Leimbach does not own the entirety of the back property. Mr. Walter said that he purchased the land in the back of the building and sold it to the Town to be used as public parking. Mr. Palmer said that there is still enough land to install the elevator tower and not encroach on the parking area.

When asked, Mr. Walter stated that he has apartments on two levels above ground level and there is no age restrictions for his rentals. He thinks that if Mr. Leimbach is going to have age

restricted 55 and older apartments for rent, the elderly will require closer parking. His experience has shown him that they want to park right next to the entrance/exit door. Mr. Leimbach said that he is proposing 12 rental units on the 2 floors which will probably average around 12-20 additional people when fully rented. Parking is a concern for him as well but he does not have an answer.

Mr. Palmer stated that he, Mr. Leimbach, Town Manager Bynum-King and CDC Hardin had a pre-development meeting in the beginning of July. Parking was discussed at this meeting. The Town Manager indicated that the Town has a lease with the railroad that allows parking in the railroads right-of-way. The rental units that are a block south from this building are using that area for parking now. There is ample parking just not right next to the back door of the building. There was a suggestion that the elevator be located inside of the building since there seems to be more parking available in the front than in the back.

Mr. Palmer informed everyone that the property line goes back and in-line with the brick side walk and yes there is a 10 ft. easement in the back. That easement coincides with the rear setback of the property and there will be no encroachment of an elevator tower to this easement.

Planning and Zoning Chairman and Delmar, Delaware Council Member William Boyan stated that if the Board would make the property comply with the zoning code, he, personally would be outraged. It is a historic building. Also he said that being a senior citizen himself, one should not assume that seniors cannot walk. Elevators in the rear or in the front does not cause a problem.

He also stated that on July 26th, the Planning and Zoning Commission gave a favorable recommendation to this Board for variance approval. They were not aware that the property had lost its' grandfather status. The only other choice is to tear down the building and there would be a lot of empty space that no one can build on. The Planning and Zoning Commission is fully in favor of keeping the building as it is and restoring it to its' former self.

Town Attorney Waehler asked Planning and Zoning Chairman Boyan if the 55 and older age restriction was a deciding factor in the favorable recommendation given by the Planning and Zoning Commission. P&Z Chairman Boyan said that the age restriction was not the deciding factor for the Commission. It was something that was discussed but wasn't material to the decision.

Mr. Leimbach said that initially he wanted to have the age restriction. He spoke with Chris Walter and walked through his apartments. His biggest seller is with single renters. Mr. Leimbach said that his heart is for renting to 55 and older. He just wants to leave his options open and not be mandated to not rent to individuals under the age of 55.

Mr. Palmer said that at the Planning and Zoning Commission, they did do an age restricted presentation. The information they received from Mr. Walter was after the Planning and Zoning meeting. In the pre-development meetings, there was some discussion on Section 8 housing. He said that Town Manager Bynum-King said that in Delmar, housing was housing.

Mayor Houlihan said that age restriction renting and parking are gray areas and should be discussed at a Planning and Zoning meeting. Tonight we are here for the petition re-establishing the non-conforming use at 2 N. Pennsylvania Avenue. The building is an eyesore and he does not want to stop anyone who wants to invest in the property and bring it back to life.

When asked if he had done similar projects, Mr. Leimbach responded that yes, he has redone buildings in Willards and Selbyville. He said that he likes to redo ugly buildings. He did say that in reference to the elevator, he feels that it should be done how he wants to do it and not be told that he has to do it. If it is the case that the Fire Marshal indicates he needs to do things a certain way, then they will be done that way.

Town Attorney Waehler made a motion based on the consensus of the age and condition of the structure and the presentation made this evening and the testimony given, that the Delmar, Delaware Board of Adjustments grant the number of variances specified in this presentation. Those variances are as follows:

1- The minimum lot area- variance needed for a reduction of 494 sq. ft. from the required 5,000 ft. to 4,506 sq. ft.

2- The minimum lot width- variance needed for a reduction of 1.3 ft. from the required 50 ft. to 48.70 ft.

3- The minimum front yard setback – variance needed for the reduction of 18.1 ft. from the required 20 ft. to 1.9 ft.

4- The minimum side yard setback- variance needed for a reduction of 15 ft. from the required 15 ft. to 0 ft.

5- The maximum density of lot area- variance needed for an increase of 43% from the required 25% to 68%.

6- Minimum lot area per dwelling unit- variance needed for a reduction of 2,824 sq. ft. from the required 3,200 sq. ft. to 376 sq. ft.

7- Minimum front or corner setback- variance needed for the reduction of 28.1 ft. from the required 30 ft. to 1.9 ft.

8- Minimum side or rear setback- variance needed for the reduction of 30 ft. from the required 30 ft. to 0 ft.

9- Maximum lot coverage- variance needed for the increase of 43% from the required 25% to 68%.

In the opinion of the Board, the presentation showed that due to the age of the structure and the condition and the necessary hardship would be anywhere without a variance to restrict the building and allow it to exist, even though the grandfather status has expired.

Public Works Director Reid seconded the motion. He said that this is an eye opener for the Town Residents don't want to see buildings destroyed, they want to see the building restored and he wants to be able to do that by granting the variances.

Delmar, Delaware Mayor Houlihan said that the existing building is from the late 1800's. This property has a lot of history and whatever we can do to make the Town better with its history, the better.

The motion was passed with 3 ayes and 0 absent.

Motion for Adjournment

Town Attorney Waehler made a motion for adjournment which was seconded by Public Works Director Reid. The motion passed with 3 ayes and 0 absent.

Submitted by;

Cindy Fisher
Clerk of Council