February 23, 2017 @ 5:30 p.m. - Summary Minutes

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The Board of Zoning Appeals (BZA) met in the Council Chambers at 5:30 p.m.. members present: Aquila, Hoffmann, Klapper, Stewart Gulyas, and Throckmorton (Darryl Neher absent).

**APPROVAL OF MINUTES:** December 15, 2016

\*\*Klapper moved to approve. Hoffmann seconded. Motion carried unanimously.

# REPORTS, RESOLUTIONS AND COMMUNICATIONS:

James Roach, Development Services Manager, said there is a Conflict of Interest questionnaire for board members to complete and return to Planning staff.

Roach also introduced Amelia Lewis (Long-Range Zoning Planner) to the BZA. Amelia has been with the Planning and Transportation Department for approximately 4 months but this is her first BZA meeting.

# **ELECTION OF OFFICERS - 2017:**

\*\*Hoffmann nominated Sue Aquila to serve as president. Klapper seconded. Motion carried.

\*\*Hoffmann nominated Barre Klapper to serve as vice-president. Throckmorton seconded. Motion carried.

# **PETITIONS:**

V-01-17 Abbott & Co., LLC

3901 E. 3<sup>rd</sup> St.

Request: Variance from maximum parking standards. Also requested is a variance from sidewalk requirements.

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Case Manager: Amelia Lewis

Amelia Lewis (Long-Range Zoning Planner) presented the staff report. The property is located at 3901 E. 3rd Street and zoned Commercial General (CG). Surrounding land uses consist of commercial and single-family residential. The site is located at the northeast intersection of E. 3rd Street and S. Smith Road. The site itself is comprised of three parcels with entrances on both streets; approximately one acre in size. It's currently developed with a single story office building with parking around it. The

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petitioner is proposing to move their music and retail center for harps into this location. The shop will include lessons, small recitals and a testing center. The change in use from a previously used medical office to a music center requires that the site come into limited compliance with current zoning regulations. All of the other standards will be met with the exception of the two variances that the petitioner is requesting. The first variance being requested is a determinate sidewalk variance, which would require the petitioner to construct a sidewalk along the south edge of the site along 3rd Street. The second variance is from maximum parking standards. The petitioner is requesting to leave the parking lot as it stands today. Regarding the determinate sidewalk variance; there is currently existing sidewalk along the west side of the property. However, there is no sidewalk along the south edge. The petitioner is requesting a determinate sidewalk variance which requires them to construct it at a later date when it's determined that it's needed at that location. There are existing sidewalks along most of the properties in the neighborhood. The purpose of requiring them to install a sidewalk with changes of use is that eventually there will be better sidewalk connections throughout the City and it will increase the sidewalk network at a gradual rate. The second variance is for a maximum parking variance. There are currently 35 parking spaces on-site. The maximum amount of parking allowed by current standards is 14 parking spaces. The petitioner would like to keep the parking lot exactly as it is today with the 35 spaces. They have identified a need for 7-10 parking spaces for staff; training sessions that could range from 10-15 people, and small recitals that would require more than 14 parking spaces. Staff acknowledges that 14 parking spaces is not very many and that there is likely a need for more. However; Staff would recommend the removal of 7 spaces; 5 spaces along 3rd Street in order to meet the setback and 2 spaces to install a landscape island. This would bring the site closer to compliance while still allowing 28 spaces to exist on-site. Staff recommends denial of the sidewalk variance. Staff recommends approval of the variance from maximum parking standards based on the written findings, including the following conditions:

- 1. The site shall not exceed 28 parking spaces unless the square footage of the building is increased at a later period in which case the regulations at that time will determine the parking.
- 2. The parking shall meet the parking setback requirements along 3rd Street and shall include the creation of a landscaped island.

Anna Michelle Abbott, petitioner, asked if Chris Cockerham could speak on her behalf since she wasn't comfortable doing so.

Chris Cockerham, petitioner's representative, I would ask that you approve the determinate sidewalk variance. When we look at the sidewalk; notice on the south side of the street there are sidewalks that run all the way along there. And there is a crosswalk to come across SR 46/or 3rd Street. When there is a demand and need for one, we could put in a sidewalk at that time. If we put one in now it's a sidewalk to nowhere along 3<sup>rd</sup> Street. There is a drainage ditch. You will see there is a gap between the "yellow" and where this property lies. The petitioner is open to putting a sidewalk in,

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here in town.

they would just prefer to wait until there is a demand and a need for a sidewalk. I also have bids on what it would cost-approximately \$13,000. She plans to upgrade the building with a new roof. Putting in a sidewalk now would just take away from the dollars that she would need to renovate the building. We would like to keep the parking as-is. We're not asking for additional parking. It is under the impervious surface amount, so all we're really talking about is a number. I do have a bid included in your packet in terms of what it would cost to remove that parking and to make it into grass areas. It was around \$8,500. The total to do both of these upgrades is \$21,000. I would ask that you not go with Staff's recommendation in removing 7 parking spaces and just leave the parking asis. Again, those dollars could be used to upgrade the building. It's expensive for a small business to relocate. She could use the dollars to hire more employees. There are a lot of places that she could put those funds and it would definitely help a small business

Lucinda Bastin, owner of the property, said what is the red square at the top?

Lewis said the red square represents two parking spaces for a landscaped island.

Bastin said I practiced there for 11 years. Thinking about snow removal and the functionality of things, I think the landscape island would be very difficult. Also, my nephew is in construction and he reviewed this. My parking spaces are actually 16 feet but I think the code is now 18 feet so they're 2 feet too short. I think if you lengthen them, people will actually back into that landscape island. We had several instances of people backing into other cars that were parked along the back of the Lot. There are two entrances to the building and It looks like you're only leaving three parking spaces for that one entrance and no parking spaces whatsoever to the entrance on the back of the building, which is the entrance that is used by repairmen working on the furnace, air conditioning, plumbing, etc. Having occupied that space and knowing what goes on there, I think those changes are very inconvenient. Removing those other parking spaces are not going to help for furnace repair. If you wanted her to have fewer spaces, I would just restripe them.

Jo Throckmorton: Chris, it's your understanding looking at the picture on the right side where there is a sidewalk for the building (leading to the back door, I'm assuming), that's not going to be taken out under any request is it?

Cockerham: No. When I met the contractor on-site he suggested removing it and I suggested just leaving it because when the time comes to put the sidewalk in, I think we could connect the sidewalk along the road to the existing sidewalk.

Throckmorton: So it will still be there so repair people could still use that outside sidewalk to access the rear part?

Cockerham: Yes. But the plan was; ultimately Michelle will have to decide if she wants to keep that sidewalk or not, but my suggestion was to keep it.

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Throckmorton said the idea of "when it's determined that a sidewalk is needed", would you agree that's maybe a chicken and egg question?

Cockerham said it's interesting. I was fortunate enough to hear the president of a university speak. Before he put sidewalks in, he looked to see where paths were worn, and he determined that's where sidewalks should go. When I was walking along that area, I don't see people using that and walking. And I did not see the area worn. It doesn't look like people are just walking on the yard right now.

Throckmorton said it's an interesting thought. I think it's the difference between 45,000 students walking across everyday as opposed to a more pedestrian use of a street. I was just wondering how you would decide that there is a determinate—by the wear of a pathway? Or is the City going to tell you?

Cockerham: I don't know.

James Roach, Development Services Manager, said with determinate sidewalk variances the City would decide when it was an appropriate time for the sidewalk to be built.

Barre Klapper asked for clarification. The drive is going to remain, the curb-cut is going to remain, and it's just the parking spaces that are going to go away?

Lewis: Yes.

Klapper: They still have the access off of 3<sup>rd</sup>?

Lewis: They still have the access but it would just be the number of parking spaces that would be taken away.

Klapper: We're only talking about the parking lane to the west side that's going to be removed?

Lewis: Yes.

Klapper said if a sidewalk were to go in along 3<sup>rd</sup> Street, the property line looks to be set back significantly from the edge of pavement. Would the sidewalk be attached to that property line? So we would get a nice tree plot. It wouldn't be adjacent to the road?

Roach: Correct. The minimum standard is 5 feet off the edge of pavement so there is a separation, unless there is a situation where it just isn't feasible because of what's on the ground—large trees in the way, utility lines, etc. The ideal location is at least 5 feet off the curb.

Klapper: If not more?

Roach: Yes.

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Klapper asked if the ADA compliance spots are currently striped and designated.

Lewis: I believe there is currently one handicap space. I counted one when I was out there.

Klapper: Would the petitioner like to add something?

Bastin said I felt fairly certain there were more than one but maybe I'll have to look again. Maybe the painting is gone.

Joe Hoffmann said have a question for Staff. So the motivation for the removal of the parking spaces appears to be that it would bring them more into compliance with some current code items. Correct?

Roach said the code requires strict compliance. With a change in use-strict compliance. So those 35 spaces per code would need to be reduced down to 14.

Hoffmann said that part I understand. It's the part about the 24.

Roach said it's 21. We looked at it two fold. Yes, there is probably a need for more than the 14 spaces, so we looked at where were some opportunities that some parking spaces could be removed and also meet other code requirements. In this case, two code requirements that removing the 7 spaces would meet would be the landscape island requirement and then 5 spaces off of the front (3rd Street) to also meet the front parking setback

Hoffmann: I understand that but when it comes to the landscaped island and the front parking setback, if they were currently at the allowable amount of parking, would those be requirements that they would have to meet with this change in use?

Roach: No.

Hoffmann: So there is some kind of rule about which requirements have to be met when there is a change of ownership and use like this and which ones don't?

Roach: Yes. It depends whether it's an expansion of use or a change in use. With a change in use, the parking maximum is a must. You cannot exceed the parking maximum. If we were dealing with an addition, it's a push and pull with the setbacks, landscaped islands, and impervious surface coverage. They would need to meet setbacks, impervious surface coverage, landscape islands-begin to meet them, until they hit the parking maximum. The parking maximum is that overarching requirement.

Hoffmann: And that's why the original request didn't have to ask for a variance from either the parking setback or the landscape island, because those wouldn't have required variances in this situation.

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Roach: Right.

Hoffmann: And you're just working those up then as a kind of discretionary thing that can be accomplished?

Roach: Correct. If the Board was to approve a parking variance tonight for 28 spaces, that would become the new maximum for the property and they are at the maximum, so they wouldn't be expected to do things like meet other setbacks or meet additional landscaping island requirements.

Hoffmann: But also if we granted a parking variance for 35, then they wouldn't have to meet those requirements either because they would already be within that limit?

Roach: Correct.

Sue Aquila said let's say that someone previously jammed in as many parking spaces as possible, do we look at that in terms of the measurement of the overall Lot to code? So if it's mis-striped how do we allow for that?

Roach: Excellent question. I haven't had to deal with that in quite some time. In think in a situation where there was room to meet those minimums; let's say you've got space on either side of a parking lot and the spaces are 2 feet short, paving that extra 2 feet to meet those minimums would be feasible and would be required. In this case, there isn't a whole lot of space between the building and the north property line to even meet those requirements. In this case, we would look at that as an existing condition that can't be changed and can stay.

### Public Comment:

Kathleen Boggess lives is Parkridge East. We've had issues in our neighborhood with sidewalks for many years. We finally got one rectified recently, and it was what I would call intermittent sidewalks which is what I think is happening on 3<sup>rd</sup> Street. You have a sidewalk—no sidewalk—sidewalk—no sidewalk. I think that creates a potential safety feature for the area. I have grandchildren. I don't know how much biking is being done on the sidewalks on Smith Road, but if a sidewalk were put in at the time of ownership now as you've requested and it leads to a ditch, I see that as a potential hazard. I've walked from Parkridge Road to the west and at some point you have this drainage ditch, and you have to walk up some steps, over a little bridge, walk down some steps, and then get into the parking lot of one of those buildings (maybe the Gentle Dental building) then this property starts. If you're requesting that a sidewalk be put there at this time on the north side of 3<sup>rd</sup> Street, and it goes to that ditch without any other continuous sidewalk, it could be a potentially dangerous situation.

Bastin said Mr. Throckmorton mentioned that the repair people could access along that sidewalk if there were not parking, but it you have employees parked there then you

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wouldn't have any parking access. Maybe they could park way around on the other side and come around but I don't know. I think it would be a much more convenient operation if you let them keep those few parking spaces there. Also, there are people in the community that use those parking spaces.

\*\*Hoffmann moved denial of the sidewalk variance and approval of the parking variance from maximum allowable parking standards based on the following conditions:

- 1) Existing condition #1 modified to state the following: "The site shall not exceed 35 parking spaces unless the square footage of the building is increased at a later period, in which case the regulations at that time will determine the parking."
- 2) Existing condition #2 to be deleted.
- 2) New condition #2 added to state the following: "Staff will exercise their discretion to determine the safety of the eastern terminus of the sidewalk and may modify the location of the eastern terminus to avoid any safety hazards."

Motion died for lack of second.

\*\*Throckmorton moved to deny the sidewalk variance and to deny the parking variance, per staff recommendation.

#### No second.

Hoffmann: So you want to do what the staff says?

Throckmorton: Yes.

\*\*Hoffmann said since the first motion died for lack of a second, the new motion is that based on the written report the motion is to deny the sidewalk variance and to approve the variance from the maximum allowable parking based on the two conditions stated in the staff report.

Throckmorton: That's correct. I misstated it by saying to deny it. Thank you for that.

### Klapper seconded the motion.

Klapper: I have a question for Staff. Where the parking spaces are deleted; that's not really specified, right? So that would be up to the petitioner?

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Roach explained that the landscape island is certainly flexible. The five spaces along the south side (along 3<sup>rd</sup> Street), that is pretty much set because it would need to meet the 20-foot parking setback.

Klapper: Okay, so it's embedded in here that that's where they would come off.

Roach: I believe so, yes.

Roach: If the Board chooses it might be prudent to split the two issues. You could vote on the two variances separately.

Hoffmann said I am absolutely in favor of denying the sidewalk variance. I walk this location and Staff is exactly correct in that crossing 3<sup>rd</sup> Street is just a non-starter in the middle of the block, and there are businesses that people can walk to along this stretch. There is actually a path if you look closely enough on the photos you will see it. I walked it in the snow once and there was clearly a path through the snow as well. The parking variance; all of the arguments that Staff makes for why there is a hardship and why it's peculiar to the property and so forth, are all arguments that work whether we allow 28 spaces of 35 spaces. The difference being 28 and 35 is applying code requirements that technically don't have to be met by this development at this time but the parking is all there. Actually removing parking is not supported by the findings in the staff report. I understand the Staff wanting to exercise discretion to get more landscaping and to bring the front part of the parking back further away from the street, but those are not things that are actually required by code of this development. That's the only reason why I made the motion the way that I did. I'm happy with whatever people decide.

Aguila offered a friendly amendment to split the issue.

Hoffmann: We would need for Jo (Throckmorton) to withdraw his motion and then we can start over and break it into two pieces.

### Throckmorton agreed to withdraw his motion.

Aguila: Thank you, that's appreciated.

# \*\*Hoffmann moved to deny the sidewalk variance. Throckmorton seconded.

Aquila: I also run in this area and its great frustration—the intermittent sidewalks. It's not very safe so I think it's important to add sidewalks to that area.

Roll Call: Motion carried 5:0---Sidewalk variance is denied.

Klapper said we've heard several cases where there is this negotiation about how many parking spaces are appropriate, and I know we've asked folks in the past to do parking counts and all that sort of stuff. I don't know if I see that more categorically different than this type of case. Could you shine some light on that issue?

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Roach: I don't believe it's different at all. The petitioner has provided some information on that and some information about the number of employees, the number of people they might expect for training and for recitals. We believe that it's probably more than 14 at any given time. Exactly the total or maximum at any time? We don't know. But using our discretion and using the other code requirements that exist, we came up with removing these seven. The petitioner might be able to speak a little more about the actual parking needs. How many people will be there at any one time? It might be a piece of information that you might use in your decision making.

Klapper: As I understand it, a change in use is an opportunity to then look at older developed properties and to try and bring them into closer alignment. I mean that's sort of the City's planning tool, correct?

Roach: Correct.

Klapper: Parking is a big one. Often when we hear these cases, the petitioner is trying to justify a certain reasonable number beyond the minimum, which we often know is on the low side. For this particular use it does not work very well. You've indicated that you are in agreement with that?

Roach: Yes.

\*\*Hoffmann moved to approve the variance from the maximum allowable parking on a single condition of approval that, "The site shall not exceed the current 35 parking spaces unless the square footage of the building is increased at a later period in which case the regulations at that time will determine the parking. Aguila seconded.

Throckmorton: I want to explain why I wanted to deny the variances. I think that the recommendations put forth by the Staff were very reasonable in terms of trying to help us return that property more to what it should be based on our overall vision. I think the small removal of spaces isn't going to be an undue hardship, but it's also going to move that building further along. If they're going to be making improvements, I think that we need as a community to stress that the improvements are both inside and outside. So if you make improvements to the building inside, the outside is still just as important because that's what the people who aren't inside the building are experiencing and interacting with. I do think it's important for us to follow the recommendations of Staff so therefore I will not vote in favor of the parking variance.

Hoffmann said I'm not saying that Staff's position is unreasonable. I'm concerned about bringing in code requirements that are not technically ones that they need variances from.

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Throckmorton said there are many times when we have discretionary discussions, and just because it's not technically required doesn't mean it's not something that's valuable to the overall community. I'm sorry if it sounded that way.

Hoffmann: We're on the same page.

Roll Call: 3:2—Parking variance approved (Klapper and Throckmorton opposed).

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Meeting adjourned @ 6:15 p.m.

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