



**MINUTES BOARD OF ADJUSTMENT
ONE ST. PETERS CENTRE BLVD., ST PETERS, MO 63376
MEETING OF AUGUST 20, 2014
6:00 P.M.**

CALL TO ORDER

Vice Chairman Bill Kendall called the meeting to order at 6:00 p.m.

ATTENDANCE

Those in attendance were Mr. Bill Kendall; Mr. Tom Fann; Mr. Nick Trupiano; Mr. John Shetterly; Mr. William Jaggi; Mr. Ken Braunfeld, Planning Coordinator; and Ms. Melissa Vollmer, Recording Secretary. Mr. Dan Meyer was absent.

MINUTES

Mr. Kendall asked the Board for any comments or questions regarding the minutes of July 16, 2014. Mr. Fann made a motion and Mr. Shetterly seconded to approve the minutes as presented. The motion carried unanimously.

COMMUNICATIONS AND REPORTS OF OFFICERS

Mr. Kendall asked for any reports or communications from the Officers or Staff. Mr. Braunfeld indicated there were none.

PETITION 14-U:

Mr. Kendall stated that the purpose of the meeting was to consider Petition 14-U. Payne Family Homes, LLC requests a variance to allow a structure (house and deck) to encroach into a side yard setback and into an easement in a Planned Urban Development (PUD) District. The property is located on Lot 37A of The Pointe at Heritage Crossing as recorded in book 43 pages 156-157 at the St. Charles County Recorder of Deeds Office, more commonly known as 214 City Gate Lane.

Mr. Kendall declared the public hearing open to consider Petition 14-U. The petitioner or their agent was requested to step forward to present their position. Mr. Jerry Duepner, Payne Family Homes was sworn in as the petitioner. Mr. Duepner explained that Payne Family Homes constructed a home at 214 City Gate Lane. During construction, the house and deck were placed 4.7 feet away from the side property lines. This minor extension into the side yards was not realized until a final survey was done as party of the title work. Due to this minor encroachment, Payne Family Home is requesting the variance as presented.

Mr. Kendall asked if there were any questions of the petitioner. Being none, Mr. Ken Braunfeld was sworn in to present the City's position for Petition 14-U.

Mr. Braunfeld explained the applicant has constructed a home at 214 City Gate Lane in the Pointe at Heritage Crossing subdivision. The subdivision is zoned PUD Planned Urban Development. The agreement for the PUD requires a minimum five foot side yard for each lot.

During construction the house and deck were placed 4.7 feet away from the side property lines – an encroachment of 3/10 of a foot on each side of the lot. This minor extension into the side yards was not

noted until a final survey was done as part of the title work. At that time the applicant was advised by the surveyor of the issue and the City was contacted.

Mr. Braunfeld noted that the variance requested by the applicant is from requirements of the Planned Urban Development (PUD) Agreement for The Pointe at Heritage Crossing subdivision, as approved via Ordinance 4225, states the following:

10. Building setbacks on all single-family lots shall be as follows:
 - a. Side yards shall be a minimum of five (5) feet.

Mr. Braunfeld stated that setbacks are typically required around the perimeter of most lots in the City to establish a yard area for each single family home. The typical setback on standard lots is five – six feet for each side yard, thus creating a ten – twelve foot wide area between structures as a minimum. On the subject lot the residence was constructed before a slight encroachment of 3/10 of a foot was noted. The amount is very slight and not noticeable in the field; it was only detected by a surveyor's instrument.

Therefore, the applicant has requested a variance to encroach into each side yard by 3/10 inch; this would allow the new homeowner to have a clear title of the residence. Staff has field checked the site and notes that the encroachment is not noticeable in the field. Also, staff has checked the utility atlas of the City and notes there are no utilities in easements within either side yard setback.

Staff notes that the encroachment is very small and, as noted, is not noticeable in the field. Given this minor encroachment, staff is of the opinion the modified setback is reasonable.

Mr. Braunfeld stated the code considerations as follows:

1. If the petitioner complied with the provisions of this Zoning Code (does not obtain the variance they are requesting), will they not be able to get a reasonable return from, or make reasonable use of the property?

The home has been constructed on the site; removing the home for a 3/10 of an inch setback variation would create a hardship. By allowing the home to remain the builder and homeowner can make reasonable use of the property.

2. Does the hardship result from the strict application of these regulations?

If the home complies with the code, the home would have to be rebuilt at a significant cost to the builder and the new homeowner; it would have a significant hardship on the owner.

3. Is the hardship suffered by the property in question?

The property suffers a hardship because of the placement of the residence.

4. Is the hardship the result of the applicant's own actions?

The placement of the home was the result of many workers under the supervision of the applicant. However, given the very minor nature of the encroachment, it was very hard to detect without survey equipment. Therefore, the hardship is not a result of the applicant's actions.

5. Is the requested variance in harmony with the general purpose and intent of the zoning regulations and does it preserve the spirit?

If the variance is approved the development will be in harmony with the general purpose and intent of the zoning regulations, since the encroachment is negligible and cannot be detected.

6. If the variance is granted, will the public safety and welfare have been assured and will substantial justice have been done?

The public safety and welfare will have been assured and substantial justice will have been done because the applicant will be able to use their property to the fullest extent and will have no ill effects on surrounding properties or the City as a whole.

Based on this analysis staff recommends approval of a variance to allow a structure to encroach into the side yards for property located on Lot 37A of The Pointe at Heritage Crossing as recorded in plat book 43 page 156 at the St. Charles County Recorder of Deeds Office, more commonly known as 214 City Gate Lane with the following contingency:

1. The house and deck shall not encroach more than ½ of a foot into the side yard setback.

Mr. Kendall asked if any of the board members had questions for Mr. Braunfeld. Mr. Meyer asked if there was anyone in the audience to speak in favor, opposition or in comment of Petition 14-U. Mr. Eddie Powell, 312 Calvert Place had general questions about the variance process and the variance being requested. Mr. Powell did not have any issues with the variance being requested by the applicant. Seeing no one else present to comment, Mr. Kendall closed the public hearing.

Mr. Jaggi made a motion and Mr. Trupiano seconded to approve Petition 14-U.

Mr. Kendall requested Ms. Vollmer call the roll, which resulted in the following votes:

Mr. Fann	Yes
Mr. Kendall	Yes
Mr. Trupiano	Yes
Mr. Shetterly	Yes
Mr. Jaggi	Yes

There being 5 yes and 0 no vote, Mr. Kendall declared that Petition 14-U was approved.

Mr. Trupiano presented the findings of fact as follows:

1. The subject property is located on Lot 37A of The Pointe at Heritage Crossing as recorded in plat book 43 page 156 at the St. Charles County Recorder of Deeds Office, more commonly known as 214 City Gate Lane.

2. The lot is presently zoned PUD Planned Urban Development.
3. The adjacent zoning is PUD Planned Urban Development.

Mr. Fann made a motion and Mr. Jaggi seconded to approve the findings of fact. The motion carried unanimously.

Mr. Fann presented the Conclusions of Law for Petition 14-U as follows:

1. The variance will not impair the supply of light or air to the adjacent properties.
2. The variance will not increase congestion in the public streets.
3. The variance will not impact the safety of the community.
4. The variance will not impact on the general health and welfare of the community.

Mr. Jaggi made a motion and Mr. Trupiano seconded to enact the Conclusions of Law. The motion carried unanimously.

PETITION 14-V:

Mr. Kendall stated that the purpose of the meeting was to consider Petition 14-V. Bridgeton Lodge #80 Temple Board Association c/o Christ the King Lutheran Church requests a variance to amend Section 405.190 (c) (4) to include “Fraternal organization” in addition to public and private schools and churches and related structures in the C-1 Neighborhood Commercial District. The property is located on Lot A of the Resubdivision of South Church Street Subdivision as recorded in book 34 page 38 at the St. Charles County Recorder of Deeds Office, more commonly known as 414 South Church Street.

Mr. Kendall further stated that the evidence and testimony received this evening would be the only record considered by the Board. Title IV Land Use of the Municipal Code, as amended, shall be Exhibit #1 for this petition.

Mr. Kendall declared the public hearing open to consider Petition 14-V. The petitioner or their agent was requested to step forward to present their position. Mr. Donald Routh was sworn in as the petitioners. Mr. Routh explained that Bridgeton Lodge #80 Temple Board Association is potentially purchasing the Christ the King Lutheran Church on South Church Street to use as their fraternal organization hall. Because this is in the C-1 Neighborhood District, a variance is being requested as fraternal organizations are not allowed in this district.

Mr. Kendall asked if there were any questions of the petitioner. Being none, Mr. Ken Braunfeld was sworn in to present the City’s position for Petition 14-V.

Mr. Braunfeld explained that Bridgeton Lodge #80 Temple Board Association c/o Christ the King Lutheran Church requests a variance to amend Section 405.190 (C) (4) to include “fraternal organization” in addition to public and private schools and churches and related structures in the C-1 Neighborhood Commercial District. The property is located on Lot A of the Resubdivision of South Church Street Subdivision as recorded in Book 34 Page 38 at the St. Charles County Recorder of Deeds Office, more commonly known as 414 South Church Street.

The applicant (Bridgeton Lodge #80 Temple Board Association) contacted the City regarding the potential purchase of the Christ the King Lutheran Church building at 414 south Church Street. The

applicant indicated the property was for sale and that they were interested in purchasing the property for use by their fraternal organization.

A review of the site found that the property is located in the C-1 Neighborhood Commercial District. The property currently contains a 6,800 +/- square foot church with offices, meeting rooms, and ample parking on a 3.376 +/- acre parcel.

Currently the City Code does not include a specific reference to fraternal organizations in any of the standard commercial zoning districts. The only reference to fraternal organizations is within the Special District which lists “civic, social, and fraternal organizations” as a special use. Staff also notes that the other commercial districts within the City Code reference similar intensity uses, but do not specifically include civic, social, and fraternal organizations.

Noting this, staff is proposing adding civic, social, and fraternal organizations as a special use in all commercial zoning districts at the upcoming joint work session. However, the church and the applicant desire to complete the purchase more quickly.

Therefore, the applicant has requested an amendment to Section 405.190 (C) (4) to include “fraternal organization” in addition to public and private schools and churches and related structures in the C-1 Neighborhood Commercial District, applicable only to this property. The property is located on Lot A of the Resubdivision of South Church Street Subdivision as recorded in book 34 page 38 at the St. Charles County Recorder of Deeds Office, more commonly known as 414 South Church Street.

Mr. Braunfeld noted that the variance requested by the applicant is from requirements of the Zoning and Subdivision Regulations (Title IV Land Use Chapter 405 as amended) it states:

Section 405.1630: C-1 Neighborhood Commercial District

C. Special Use Permit Required

4. Public and private schools and churches and related structures.

Mr. Braunfeld noted, the applicant is seeking to purchase and use the existing Christ the King Lutheran Church for their fraternal organization.

A review of the City Code only found a specific reference to civic, social, and fraternal organizations in the Special District but not the standard commercial districts where this property is located. Staff found that the City Code references similar intensity uses such as public and private schools and churches and related structures area special use in the C-1 Neighborhood Commercial District. Indoor fitness and entertainment activities are a special use in the C-2 Community Commercial District. Union halls are a permitted use and specialty entertainment (move theatres, bowling, etc.) are a special use in the C-3 General Commercial District. Therefore, staff has proposed adding fraternal organizations as a Special Use in all commercial zoning districts, noting it will be consistent with other code language.

Updates to the City Code are typically reviewed or implemented annually after a joint work session with the Board of Aldermen, Planning and Zoning Commission, and the Board of Adjustment. This review by the Board of Adjustment – to include “fraternal organization” in addition to public and private schools and churches and related structures in the C-1 Neighborhood Commercial District – for this property will be consistent with the goals and objectives of the future special use permit requirements. This

consistency in approach includes notification of nearby property owners, posting of the site, and publication in a newspaper. In addition, as part of the variance, the site can be reviewed for its appropriateness based on the intensity of the use.

An assessment of the activities of this specific fraternal organization and of fraternal organizations in general finds that they function in much the same way as a church. Fraternal organizations have weekly meetings, fund raisers, or other activities, similar to churches. Also, all these activities must have sufficient parking and must be in areas that can handle the occasional associated peak traffic flow. In general, churches, fraternal organizations, and other such uses are typically good neighbors since the majority of time there is limited or generally quiet activities.

A review of the site finds that traffic and parking has been and can continue to be successfully accommodated. The property fronts to South Church Street that connects to McMenemy Road to the north and Mexico Road to the south at a stop light. In addition, the church building was designed for group events with ample parking.

Mr. Braunfeld stated the code considerations as follows:

1. If the petitioner complied with the provisions of this Zoning Code (does not obtain the variance they are requesting), will they not be able to get a reasonable return from, or make reasonable use of the property?

The applicant and owner would be subject to an unnecessary delay in the sale and re-use of the property for a use that is consistent with, but not specified in the zoning ordinance. Therefore, the variance will allow timely full and reasonable use of the property by the property owner (seller) and applicant (purchaser).

2. Does the hardship result from the strict application of these regulations?

To comply with the code, the applicant and owner would have to delay the sale and re-use of the property until such time as this code change is reviewed and approved. Such a delay would place a significant hardship on the applicant and owner.

3. Is the hardship suffered by the property in question?

The City Code references similar intensity uses such as public and private schools and churches and related structures. However, the property suffers a hardship because the City Codes does not make a specific reference to fraternal organizations in standard commercial zoning districts.

4. Is the hardship the result of the applicant's own actions?

The specific omission of fraternal organizations in the commercial zoning districts is not due to the applicant's own actions.

5. Is the requested variance in harmony with the general purpose and intent of the zoning regulations and does it preserve the spirit?

If the variance is approved the development will be in harmony with the general purpose and intent of the zoning regulations, since the reuse of the church building from a church to a fraternal organization will be indistinguishable.

6. If the variance is granted, will the public safety and welfare have been assured and will substantial justice have been done?

The public safety and welfare will have been assured and substantial justice will have been done because the owner and applicant will have been able to use their property to the fullest extent; there will be no ill effects on surrounding properties or the City as a whole.

Based on this analysis, staff recommends approval of a variance to include “fraternal organizations” in addition to public and private schools and churches and related structures in the C-1 Neighborhood Commercial District at this location.

Mr. Kendall asked if any of the board members had questions for Mr. Braunfeld. Mr. Kendall asked if there was anyone in the audience to speak in favor, opposition or in comment of Petition 14-V. Seeing no one present to comment, Mr. Kendall closed the public hearing.

Mr. Fann made a motion and Mr. Shetterly seconded to approve Petition 14-V as presented by staff with the recommended contingencies.

Mr. Kendall requested Ms. Vollmer call the roll, which resulted in the following votes:

Mr. Shetterly	Yes
Mr. Kendall	Yes
Mr. Trupiano	Yes
Mr. Fann	Yes
Mr. Jaggi	Yes

There being 5 yes and 0 no vote, Mr. Kendall declared that Petition 14-V was approved.

Mr. Jaggi presented the findings of fact as follows:

1. The subject property is located on Lot A of the Resubdivision of South Church Street Subdivision as recorded in book 34 page 38 at the St. Charles County Recorder of Deeds Office, more commonly known as 414 South Church Street.
2. The lot is presently zoned C-1 Neighborhood Commercial District.
3. The adjacent zoning to the north is R-3 Multiple Family Residential District, to the east C-1 Neighborhood Commercial District, to the south C-2 Community Commercial District, and South Church Street to the west.

Mr. Fann made a motion and Mr. Trupiano seconded to approve the findings of fact. The motion carried unanimously.

Mr. Fann presented the Conclusions of Law for Petition 14-V as follows:

1. The variance will not impair the supply of light or air to the adjacent properties.
2. The variance will not increase congestion in the public streets.
3. The variance will not impact the safety of the community.

4. The variance will not impact on the general health and welfare of the community.

Mr. Jaggi a motion and Mr. Shetterly seconded to enact the Conclusions of Law. The motion carried unanimously.

Mr. Jaggi made a motion and Mr. Shetterly seconded to adjourn the meeting at 6:40 p.m. The motion carried unanimously.

Respectfully submitted:

Melissa Vollmer
Recording Secretary

William Kendall
Vice-Chairman