

BLUE ASH BOARD OF ZONING APPEALS

June 11, 2012

Page 1

ITEM 1. – Meeting Called to Order and Roll Call

Chairman Paul Collett called the regular meeting of the Board of Zoning Appeals to order at 7:03 p.m. on Monday, June 11, 2012 and requested a roll call.

MEMBERS PRESENT: Paul Collett, Jr., Julie Brook, Mark Kirby and Marc Sirkin

MEMBERS NOT PRESENT: Terry Peck

ALSO PRESENT: Assistant City Manager Kelly Harrington, Deputy Solicitor Bryan Pacheco, Community Development Director Dan Johnson and Administrative Clerk Traci Smith

ITEM 2. – Approval of Minutes

The Board waived the reading and approved the minutes of the Board of Zoning Appeals regular meeting of May 14, 2012.

ITEM 3. – New Hearings

a. 4900 Hunt Road – Timothy Lomison

Appeal of Downtown Design Review Committee decision to approve a proposed multi-family residential development and an existing commercial building at 4900 Hunt Road

PRESENT: Timothy Lomison, 9490 Wynnecrest Dr. - Appellant

Chairman Paul Collett swore in those wishing to testify and gave a brief overview of the Board of Zoning Appeals.

Mr. Lomison summarized his appeal and explained the alleged errors made by the Downtown Design Review Committee in its approval of the proposed Hills development at 4900 Hunt Road, including the following:

Regarding the DDRC meeting:

- The original DDRC meeting date was rescheduled with less than 24-hours notice, which meant that some interested residents were not able to speak at the meeting
- The 4:45 meeting time of the DDRC discourages resident participation and input
- A time limit was put on the residents who wanted to speak at the DDRC meeting, but there was no time limit for the developer
- Procedures described by City Staff and the DDRC Chair in advance of the meeting were not followed
- Ian Guttman of Hills was allowed to submit documentation to a member of the DDRC after public comments were closed and the same opportunity was not afforded to anyone else present

Regarding the DDRC itself:

- There is no documentation stating what constitutes a quorum for the DDRC, so how do we know that the five members present at the meeting was a quorum?
- There is nothing that states that the DDRC can approve a plan with conditions like it did
- There is nothing that states that a simple majority vote is sufficient to approve a plan (instead of a super-majority or a unanimous vote)

BLUE ASH BOARD OF ZONING APPEALS

June 11, 2012

Page 2

- The DDRC approval was on a “concept” plan, which leaves the final version subject to changes not considered by the DDRC

Regarding conflicts of interest:

- As the City Engineer, John Eisenmann has an interest in seeing development occur in Blue Ash and if he votes to deny proposals or somehow discourages developments, he risks losing money for his firm. He voted to approve the project.
- Dan Johnson works in the Economic and Community Development Department and a part of his role is to recruit businesses to Blue Ash; if he votes to deny proposals or somehow discourages developments, he is working against his role in the City. It is clear that the other DDRC members look to him for assistance in interpreting the D-1 Code which is problematic because of potential conflict already identified. He voted to approve the project.

Regarding interpretation of the Code and the 2005 Master Plan:

- 1159.02(b) allows the DDRC to approve plans that do not satisfy stated design requirements, but the DDRC did so incorrectly because the proposed changes are not to an existing building and because the plans are detrimental to the health, safety, and general welfare of others
- 1133.05(a) requires the BZA to ensure compatibility with surrounding uses in its approvals, which this approved project does not do. He referred to a shading study that described reduced sunlight on adjacent properties, described the building wall that affects wind and air, and alleged that property values would be reduced because of the development. He also said that the visual and noise impact of the building will negatively impact the comfort of nearby residents.
- 1159.02(a) requires the DDRC to ensure consistency with the Downtown Master Plan. He alleged that the DDRC did not ensure consistency in its approval.
- The DDRC misinterpreted the call for high-density residential in Downtown. The Master Plan specifically calls for a density of 14-18 units per acre at the “Thriftway” site. The proposed plan calls for 44.5 units per acre.
- The proposed plan has a floor area ratio of 1.6, which far exceeds the Master Plan goal of a 0.5 floor area ratio.
- The Master Plan states that developments should have “broad community support,” which this development does not have.
- The Master Plan calls for partnerships with developers who will redevelop properties in conformance with the Concept Plan; this developer does not appear to have an interest in following the plan.
- A written comment submitted by Mike LeVally questioned whether the Master Plan would be realized if the DDRC considered the existing retail building in allowing the greater setback as shown on the plan.

Regarding the 1982 Master Plan:

- The Plan stated that development in Downtown should not present a visual intrusion to the adjacent neighborhood, which this proposed development does.

Regarding the Code:

- 1159.05(b) requires a zero setback along this section of Hunt Road and the DDRC wrongly waived this requirement in its approval, partly because the visibility of the existing commercial building would not be impaired if the proposed building was built to the right-of-way as required.
- 1159.01(e) calls for development that ensures compatibility with surrounding neighborhoods; this development is not compatible
- 1159.06(e) says that primary entrances should not be oriented towards off-street parking lots and 1159.07(g) states that surface parking is prohibited in front and side yards; this development does not satisfy these limitations.

BLUE ASH BOARD OF ZONING APPEALS

June 11, 2012

Page 3

- 1159.06(e) requires all buildings to have four front elevations. The plans show compliance with the height limitation on the west elevation, but not on the other sides.
- 1159.07(f) specifies lighting requirements; the approved plans did not satisfy the minimum requirements. The Code also requires that site lighting be compatible with street lighting, which is LED in this area. The developer knew this but specified metal halide instead because it is less expensive up-front.
- 1159.05(d) says there is no maximum density as long as other requirements are satisfied; since not all requirements are being met, particularly the front setback, then the DDRC should have applied a maximum density and the maximum range in the Master Plan is 18 units per acre.

Mr. Lomison summarized his appeal and asked the BZA to overturn the decision of the DDRC.

Mr. Collett said that the BZA does not have jurisdiction over the procedures of the DDRC. In answer to a question, Mr. Pacheco summarized the authority of the BZA.

In answer to a question, Mr. Johnson explained that it would be the responsibility of the developer to design around the stormwater structure on the site in a way that had no impact on the structure and that the City Engineer would review it for accuracy and effectiveness. If the design could not protect the structure, then the development could not move forward.

Likewise, any design elements that do not satisfy the Fire or Police Departments would have to be adequately resolved or, if that was not possible, the development could not move forward.

Mr. Johnson noted that there is an approved landscaping plan for the site and that the developer is bound by that approved plan. Ms Brook stated that it would be hard to buffer a large building with small, newly planted trees.

Mr. Johnson explained that the approval is a Final Plan, even though it has been referred to as a Concept Plan. If a permit application for the development substantially matches the plans approved by the DDRC, then the City will issue permits. If a permit application does not substantially match the DDRC approved plans, then the developer would need to highlight any changes and go back to the DDRC for a revision to the approval. He explained that the conditions imposed by the DDRC in its approval are also binding on the development.

Mr. Lomison reiterated his concern that subjective oversight on permits is potentially problematic because John Eisenmann and Dan Johnson are both voting members of the DDRC and City Staff. Mr. Collett stated that he did not share that concern.

Mr. Collett asked Mr. Lomison for any comments relative to the proposed 40-foot setback on the east side of the property versus the 10-foot required by the Code. Mr. Lomison answered that the increased setback is actually required to accommodate easements and that the larger setback still is insufficient given the size of the proposed building because it negatively affects quality of life of adjacent residents.

Joe Trauth is an attorney representing Hills. He noted that the appeal that was filed was one page and only included some of the items noted by Mr. Lomison in his oral statements this evening and that the matters for the BZA to consider are only those items contained in the appeal. He explained that the 1982 and 2005 Concept Plans are not the law and are recommendations that have no force or effect on the law and that Stan Better correctly stated this in the DDRC approval. He highlighted that the DDRC has the authority to waive requirements and that it chose to do so for valid reasons after much discussion during the

BLUE ASH BOARD OF ZONING APPEALS

June 11, 2012

Page 4

approval meeting and that is what the DDRC did. There is no maximum density, because the requirements were waived and, therefore, it is as if the setback is met by the proposed plan.

The proposed development is setback more than the Code requires on the east side and there is an improvement in the amount of green space on the site over what is there today. The developer has tried to reach out to the residents, but the residents have been unwilling to discuss.

He noted that the same size building could contain different densities by making the units larger or smaller. The DDRC found that the proposed development met all of the requirements and was, therefore, approved.

Ian Guttman explained that the project was designed with the Zoning Code in hand and that it satisfies all of the applicable requirements. He explained that he met with residents and listened to their ideas. He explained that there is already sufficient office and retail space in Downtown. Relative to height, Hills decided to make sure the building would satisfy the 50-foot height limitation rather than to seek a variance for a 3-story height along the east property line and a 5-story height along the Hunt Road frontage. He explained that a 3-story building could be just as high as a 4-story building depending upon the ceiling heights and that the proposed flat roof is not as high as would be permitted with a sloped roof. He explained that the sanitary sewer line could be left in place and the building redesigned to be closer to the east property line and to Hunt Road, which would actually be less expensive. Hills is a major property owner in the Downtown area and has a lot at stake in this project.

Mr. Collett asked for any comments from the public.

Mr. Lomison answered deficiencies expressed by Mr. Trauth:

- He noted that the appeal did specify that there are grounds for the appeal and that the BZA can consider the testimony at the hearing
- He noted that the Master Plan is the law because it is approved by ordinance and is cited in the Code
- The maximum density does apply because there are elements other than the reduced setback that do not satisfy the Code, even if the setback was waived
- The closest setback along Hunt Road is about 65-feet, the rear is about 40-feet
- Relative to communications with the developer, they were not interested in designing the development, just in a plan that meets the Code
- Relative to the shading study, the loss of light becomes worse later in the year

Mr. Collett swore in members of the audience.

Sue Huber, 4984 Doughman Court, stated that Mr. Guttman threatened to cut down all of the trees along the east property line and replace them with the minimum required size trees.

Mr. Pacheco explained that the BZA should not consider deliberations leading up to the application; the BZA should consider the appeal as it relates to the approved plan.

Tim Rahe, 4981 Ridgecrest, said that Mr. Guttman came to his home and met with him to discuss the plans. He noted his concerns about loss of property value, noise from the parking garage, and loss of the buffer.

Joan Johnson, Ridgecrest, stated that she is concerned that this development would be bad for Charleston and that she is concerned about the proposed plans.

BLUE ASH BOARD OF ZONING APPEALS

June 11, 2012

Page 5

Eileen Sharpshair, 4976 Doughman Court, is concerned that this proposed development is just too big. Blue Ash works for businesses but she hopes that it also remembers the concerns of its residents.

Mr. Trauth reiterated several of his previous points.

Mr. Collett asked for a show of hands for the audience in support of the appeal. In answer to a question, Mr. Lomison said there are about 54 homes in the adjacent neighborhood.

Mr. Collett closed the public hearing.

Ms Brook clarified with Mr. Pacheco the procedure and the standards for the BZA to consider in its decision. She stated that she would like to see the subject property redeveloped, but she will take into consideration the concerns of the adjacent residents including their quality of life. Does impaired light and air negatively affect their quality of life?

Mr. Pacheco explained that the BZA can consider whether the appeal met the standard set forth in 1133.03(a) for an appeal as raised by Mr. Trauth. 1133.05(a) then controls how the BZA considers the appeal. He highlighted that the Code does reference the Plans. He also noted that the BZA can decide whether the DDRC had the authority per the Code to waive requirements and whether it correctly did so.

Mr. Sirkin read a statement in the Comprehensive Plan that highlights the need to protect the quality of the residential areas over all other policies. He agreed that the project impairs light and air and agreed with all of the other issues highlighted in the appeal. He stated that the project is too high and too close to multiple residences to satisfy the intent of the Comprehensive Plan, which is not supported by the BZA decision criteria in 1133.05.

Ms Brook agreed that the project is attractive, but agreed with Mr. Sirkin.

Mr. Kirby agreed and added that the setback should not have been waived because the development does not satisfy the "existing building" provision in the Code. He thinks that the DDRC stretched the waiver provision of the Code too far, which means that those items that were waived do not comply with the Code, which then results in the requirement for a maximum density.

Mr. Collett said that the project does not satisfy all of the applicable Code requirements and that the density more than doubles the intended density per the Master Plan. He does not believe that the setback should have been waived and that the parking is in both the front and side yards. The concern that the existing commercial building could be visibly blocked is not sufficient grounds to support the setback waiver. The Master Plan does not support such a waiver.

As there were no further questions Chairman Paul Collett closed the public hearing portion of the meeting.

DECISION: Julie Brook moved, Marc Sirkin seconded to grant the appeal to halt the project. A roll call vote was taken. All members present voted aye. Motion carried.

ITEM 4. – Continued Hearings

None

BLUE ASH BOARD OF ZONING APPEALS

June 11, 2012

Page 6

ITEM 5. – Old Business

There was discussion about the function of DDRC and BZA.

Julie Brook talked about her tenure on the Board.

ITEM 6. – New Business

- a. Membership and Election of Officers will take place next meeting

ITEM 7. – Adjournment

DECISION: There being no further business Marc Sirkin moved, Mark Kirby seconded to adjourn the Board of Zoning Appeals. A voice vote was taken. All members present voted aye. The meeting was adjourned at 9:12 p.m.

Paul Collett, Jr., Chairman

MINUTES RECORDED BY:

Dan Johnson