

STAFF REPORT ON VARIANCES REQUESTED FROM PLANNING COMMISSION

PLN-MAR-16-00019: COWGILL PARTNERS, LP

REQUESTED VARIANCES

1. Increase the maximum height from a 4:1 height-to-yard ratio to 50'
2. Reduce the minimum front yard from 20' to 5' along Blackburn Avenue
3. Reduce the minimum side yard from 10' to 5'
4. Reduce the minimum open space from 20% to 15%

ZONING ORDINANCE

Article 6-4(c) states: "The Planning Commission may hear and act upon requested conditional uses and variances associated with a zone change. If the Planning Commission should choose to hear a conditional use or variance request, the Planning Commission shall have all of the powers and responsibilities of the Board of Adjustment, as defined in Articles 7-6(a) and 7-6(b) of the Zoning Ordinance. All conditional use and variance applications shall be acted upon by the Planning Commission within ninety (90) days of the application, unless postponed further by the applicant."

Article 8-14(h) states that the minimum front yard in the R-5 zone is 20'.

Article 8-14(i) states that the minimum side yard in the R-5 zone is 10'.

Article 8-14(k) states that the minimum useable open space in the R-5 zone is 20%.

CASE REVIEW OF VARIANCE REQUESTS

The applicant wishes to gain approval of several variances to allow them to "create a commercially viable, attractive development that functions internally and with the neighborhood" for their proposed high density residential development near the corner of West Fourth Street and Blackburn Avenue. The subject property is an abandoned light industrial/warehouse site, almost across West Fourth Street from Transylvania University's athletic fields. The university owns a narrow strip of land (25' - 35') between the West Fourth Street right-of-way and the subject property, but with their permission, is included in the proposed zone change to R-5 for this residential development proposal.

The *Fourth Street Zoning Study*, which was completed in May, 2014, made a recommendation for "an urban mixed-use" zone for this existing industrial area. According to the *Study*, the issues that are to be considered in industrial areas including the subject property, include "building height transitions, setback distances, building frontage standards, parking location standards, 'community focused' uses," and to permit "more intense development along major arterials." The requested variances are directly related to a number of these issues, and will be addressed by the staff in this report.

1. Height increase from a 4:1 height-to-yard ratio to 50' – The applicant seeks approval of a height variance to permit a three or four story apartment building at this corner. They wish to develop 72 units, with half one bedroom and the other half two-bedroom units. The R-5 zone can certainly accommodate this level of density, but it is designed to allow buildings in the center of the property, and off-street parking between the building and the property edges. Thus, the 4:1 height-to-yard ratio exists to permit this type of development.

The proposed building would not be as tall as the Blue Grass Grain building one block to the west on Henry Street, but it would be significantly taller than other buildings in this general area, if this variance is granted. As a practical matter, the narrow strip of land owned by the University will function as the building setback from West Fourth Street – provided it is not proposed for future development. This is a circumstance unique to the applicant's property that is not applicable to most others in an R-5 zone.

2. Reduce the minimum front yard from 20' to 5' along Blackburn Avenue – This variance is requested because "urban environments typically have smaller building setbacks." This is also requested in an effort to help "with economic viability by maximizing the density and buildable area," according to the applicant.

This property has only one street frontage, but a 10' setback along Blackburn Avenue would still be generally closer to the street than almost any other structure on that street. Given the *Fourth Street Zoning Study* recommendations, the staff cannot support a setback closer to the street than 10' along Blackburn, which has far less traffic on it than West Fourth Street.

3. Reduce the minimum side yard from 10' to 5' - The applicant intends to maximize their off-street parking for the proposed residential building. Their justification for this variance is the same as for the one above. In this variance, the abandoned railroad spur can provide an effective setback of closer to 30' from West Fourth Street – again, if that property is not developed in the future. That open space area is not considered part of the project's exterior yard.

This variance, as proposed, will not have any impact on the health, safety or welfare of neighborhood residents or those in the new residential building. The subject property's frontage along Blackburn Avenue will be improved with new curb, gutter and sidewalk – all as part of the development of this new building, and should be safer as a result. Reducing this setback to a minimum of 5' is not an unreasonable circumvention of the Zoning Ordinance, given the open space area separating the proposed building from the Fourth Street right-of-way.

4. Reduce the minimum open space from 20% to 15% – This variance is also justified, according to the applicant, by the existence of the adjacent open space area. Since it is on another lot, it does not count toward meeting the 20% open space requirement for this residential development. The applicant proposes this variance, in part, due to the larger open space areas of Coolavin Park (northeast of this site) and the new BCTC campus (north of this location).

Still, the usability of the open space areas on the subject site is not well defined on the corollary zoning development plan. For instance, the areas proposed between the building and the off-street parking lots are not identified as either pavement or grass areas. It would seem that, at a 13'-15' dimension, it would have some outdoor utility for new residents of this building. Also, a small amount of balconies or useable rooftop space would easily allow this development to meet the minimum 20% open space requirement of the Zoning Ordinance, should the property be rezoned to R-5. In requesting such a reduction, it does not appear that the applicant has not considered the 30% tree canopy standard and having adequate open space to accommodate such trees.

This leads the staff to be supportive of two of the four requested variances, and cautious about the other two. Additional information or slight revisions to the submitted development plan might provide clarification or better explanation of the applicant's vision and hopes for the redevelopment of this site.

The Staff Recommends: Postponement of the requested front yard variance from 20' to 5', and for a reduction of required open space from 20% to 15%, for the following reasons:

- a. The open space areas proposed are not defined as to their purpose or usability, which is needed prior to a substantive recommendation on the granting of a variance to this minimum requirement of the R-5 zone.
- b. The proposed building near the corner of West Fourth Street and Blackburn Avenue might be able to provide some balconies or a small rooftop area, which could permit the development to meet the minimum 20% requirement for useable open space. Required open space also provides room for the 30% required tree canopy for the site.
- c. The new Building, as proposed, can be redesigned on the site to meet a 10' front yard along Blackburn Avenue.

The Staff Recommends: Approval of a height variance to 50', and approval of the requested side yard variance from 10' to 5', for the following reasons:

- a. There will be no adverse health, safety or welfare impact to the adjoining neighborhood from these variances. The height variance is reasonable, given the applicant's hope to maximize the provision of off-street parking for their 72-unit development.
- b. The unusual circumstance surrounding the proposed R-5 property is that it is bordered by an open space parcel, formerly a railroad spur, now controlled by Transylvania University. That open space lot requires no meaningful separation from the proposed residential building on the subject site.
- c. Strict application of the Zoning Ordinance would deprive the applicant from a reasonable use of this formerly industrial site, since the former railroad spur separating this location from West Fourth Street results in a much greater setback from the street. The applicant believes that this project is infeasible without the granting of these variances.
- d. Approval of these variances would not result in an unreasonable circumvention of the Zoning Ordinance, as the

height and orientation of this building will not be unlike the Blue Grass Grain building located one block to the west of this location on Henry Street.

- e. The variances have been requested prior to construction and development of the property, and thus, there is no willful violation of any existing zoning regulation by the applicant.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property R-5; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property [under Article 6-4(c) of the Zoning Ordinance].
4. The parking lot shall be screened and landscaped as required by Article 18 of the Zoning Ordinance.

WLS/TLW

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