

STAFF REPORT ON VARIANCES REQUESTED FROM PLANNING COMMISSION

PLN-MAR-16-00007: COMMUNITY VENTURES PROPERTIES, LLC

REQUESTED VARIANCES

1. Increase the maximum height from 35' to 50' (in the B-1 zone)
2. Reduce the minimum front yard from 10' to 5' along Withrow Way
3. Reduce the minimum off-street parking from 28 spaces to 16 spaces (in the B-1 zone)
4. Reduce the minimum front yard from 10' to 0' (in the B-2A zone)

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 8-16(h)a states that the minimum front yard in the B-1 zone is 10'.

Article 8-16(m) states that the maximum height of a building in a B-1 zone is 35' (in most circumstances).

Article 8-16(n) states that the minimum off-street parking for a retail use is "one (1) space for every 400 square feet of floor area, with a minimum of three spaces." That same section requires "one (1) space for each dwelling unit."

Article 8-18(h) states that the minimum front yard in the B-2A zone is 10'.

CASE REVIEW OF VARIANCE REQUESTS

The applicant wishes to gain approval of "a few minor variances" to their mixed-use project on either side of East Third Street, most of which is in a proposed B-2A zone, and some of which is proposed to be rezoned B-1. The subject site is located between Midland Avenue and Lewis Street, and this project has frontage along those streets, East Third Street, Nelson Avenue and Withrow Way.

1. Height increase from 35' to 50' – The applicant seeks approval of a height variance to permit a three-story building with tall ceilings and a pitched roof. They wish to emulate the roof pitches on the existing buildings in the East End, and they do not contemplate any additional residential density as a result of this height variance. The taller ceilings in the commercial space will make that space more marketable, in the view of the applicant.

The staff has had a difficult time understanding the extent of and the need for the height variance requested. The corollary development plan submitted with this zone change anticipates a B-1 building height of 44', which is about the limit that the staff can support. This would allow a tall commercial level on the first floor, and two 12' residential floors, which should be sufficient for nearly any development. A 9' height variance would not result in an unreasonable circumvention of the Zoning Ordinance, even though it would be one of the most liberal relaxations of this limitation in recent history. Matching the rooflines of area buildings in the East End is a worthy justification for this variance, and should help this new B-1 building better fit in with the neighborhood's current character, despite its added height.

2. Reduce the minimum front yard from 10' to 5' along Withrow Way – This variance is requested "due to the size of the site," according to the applicant. This property has three street frontages, but only a 10' setback requirement along each. Modification is only desired along the frontage of Withrow Way, which carries the least amount of traffic of the three streets. It is also the narrowest of the three, and does not provide direct access to any properties that border it, with the exception of the new building at the corner of East Third Street. The subject site will access that street for its rear-oriented parking lot, and will be improved with a new sidewalk on the applicant's lot frontage.

The variance, as proposed, will not have any impact on the health, safety or welfare of neighborhood residents or

those in the new proposed mixed-use building. Withrow Way will be improved along the subject property's frontage, with curb, gutter and sidewalk – all as part of the development of this B-1 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.

3. Reduce the minimum off-street parking from 28 spaces to 16 spaces (in the B-1 zone) - The applicant intends to provide off-street parking for the B-1 mixed-use building. Sixteen (16) parking spaces are proposed behind the building, and that parking area is to be accessed from both Withrow Way and Nelson Avenue, across the street from the Isaac Murphy Memorial Garden (and park). The applicant proposes to provide the additional parking for this building across the street (in the B-2A zone) from the building. However, because this B-1 building is planned to be completed and occupied prior to the parking garage for the larger B-2A building being completed, this variance is required, due to the construction timing.

The applicant anticipates that East End residents will frequent this B-1 development, reducing the need for off-street parking. They also believe that the availability of on-street parking on Nelson Avenue and East Third Street will allow their on-site businesses to have their parking needs met. The staff agrees that a strict application of the Zoning Ordinance provisions would result in an unnecessary hardship to the applicant, since there are more than enough spaces proposed throughout the entire development, without the use of on-street parking spaces in this vicinity. Thus, this variance will not result in an impact to health, safety or welfare, since there is more than sufficient parking to satisfy the legal parking requirements, in time.

4. Reduce the minimum front yard from 10' to 0' (in the B-2A zone) – This variance, to the larger portion of the development to the south of East Third Street, west of Midland Avenue, is requested in order to allow a more “urban style development” for this mixed-use project. The existing Community Ventures building located at the corner of Midland and East Third is at a 0' setback from East Third, and about a 2' setback from Midland Avenue. This building is to be retained, but may be increased in height, according to the corollary zoning development plan. The staff supports incorporating this building into the rest of the new development proposed on this block.

The new building on this lot is to be setback 7.7'-10.7' from East Third Street, more than 10' along the entire frontage of Lewis Street (across from the historic Charles Young Center), but constructed on the right-of-way line (at 0') of Midland Avenue. Their justification is that the Town Branch Commons and Town Branch Trail project is anticipated to use the space in the right-of-way of Midland Avenue, and will serve as the actual front yard of the development. They believe that the loss of their required building setback “will not be noticed by patrons or residents of the development.”

To the contrary, the staff is unsure that this is true. Funding for the Town Branch Trail project was just announced this past week, and there have been no designs created as of yet, to identify, for certain, exactly what the spatial needs might be for construction of the trail. Even if the trail is anticipated to be entirely within the existing right-of-way of Midland Avenue, the entity constructing it might need a “construction easement” or to access the existing utilities along this right-of-way line. Approval of the requested variance would preclude this from occurring. Thus, it is the staff's conclusion that the setback variance to Midland Avenue (but not necessarily to East Third Street) is premature in terms of its timing. In the alternative, the staff would recommend that this variance be postponed for consideration by the Board of Adjustment, once at least preliminary plans are available for the Town Branch Trail project, so that construction of the new mixed-use building can be done in a manner that will not impair the trail project.

In summary, the staff does recommend approval of most of the requested variances. Again, some variances for the B-2A building may be appropriate, but not to the extent that are currently proposed by the applicant.

The Staff Recommends: Postponement of the requested front yard variance from 10' to 0' in a B-2A zone, for the following reasons:

- a. Approval of this variance could compromise the integrity of the Town Branch Trail project, since no detailed construction plans have been created for that work. Building setbacks from property are justified through Zoning Ordinances to protect private property from work in public rights-of-way, and vice versa.
- b. The existing building at the corner is justified in seeking a variance to these setback requirements, but the extent of the variances requested exceeds the applicant's request.
- c. A variance to the required Midland Avenue setback could be sought in the near future from the Board of Adjustment, once more information is known about the extent of the Town Branch Trail project.
- d. The two new B-2A buildings, as proposed, can be redesigned on the site to meet the required 10' front yard.

The Staff Recommends: Approval of a height variance from 35' to 44', and approval of the other two requested variances in a B-1 zone, 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 necessary to add a roof feature on the proposed building, and to allow it to have a pitched roof, as have others in the East End neighborhood. Parking will be available on the street and across the street in the future, and Withrow Way will be improved with curb, gutter and sidewalk once the B-1 building is completed. There will be no adverse impact to the Isaac Murphy Memorial Garden, directly across Nelson Avenue from this location.
- b. The unusual circumstance surrounding the proposed B-1 property is that it is encumbered by three (out of four) front yard requirements, which is rare for a single building, even in and near the downtown area.
- c. Strict application of the Zoning Ordinance would make the B-1 building less interesting and diverse from other (smaller) buildings in the general vicinity, with the exception of the applicant's building directly across East Third Street from this location. The applicant firmly 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 other commercial and mixed use buildings within ¼ mile of this location are similarly situated and/or deficient in off-street parking on their lots.
- 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 B-1; 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. Prior to obtaining an Occupancy Permit, the applicant shall obtain a Zoning Compliance Permit from the Division of Planning.
5. The parking lot shall be screened and landscaped as required by Article 18 of the Zoning Ordinance.
6. A pedestrian crosswalk shall be installed by the applicant across Withrow Way at the corner of East Third Street, to the approval of the Division of Traffic Engineering.

WLS/TLW

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