

MINUTES OF THE ZONING BOARD OF APPEALS
January 14, 2013

The regular meeting of the Zoning Board of Appeals was called to order by Chairman William Cotey at 7:03 p.m. at the Village Hall.

Members present: Chairman William Cotey, Scott Adams, Dan Donahue, Walter Oakley, David Semmelman, and Kurt Schultz.

Members absent: Mark Moore.

A quorum was established.

Village Staff present: John Spoden, Director of Community Development; and David Smith, Senior Planner.

Board Member Oakley moved, seconded by Board Member Schultz, to approve the December 10, 2012, Zoning Board of Appeals meeting minutes.

Motion carried 6 - 0.

OLD BUSINESS:

ZBA 12-24 PNC Bank, Applicant
325 N. Milwaukee Avenue

Request is for variation(s) for signage for property in a C-2, Downtown Community Commercial District.

The applicant requested that this item be continued to the February 11, 2013, Zoning Board of Appeals meeting.

In the matter of ZBA 12-24, Board Member Semmelman moved, seconded by Board Member Adams, to continue this item to the February 11, 2013, Zoning Board of Appeals meeting.

Motion carried 6 - 0.

NEW BUSINESS:

ZBA 13-01 Heritage Court Libertyville, LLC, Applicant
339 North Milwaukee Avenue

Request is for a variation a variation to permit an encroachment into the front 35 feet of the first floor space within a building with street frontage on Milwaukee Avenue within the C-1, Downtown Core Commercial District with an office use.

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ZBA 13-02 Heritage Court Libertyville, LLC, Applicant
339 North Milwaukee Avenue

Request is for a variation to permit an office use to occupy more than 25% to approximately 51% of the gross first floor area of a building with street frontage on Milwaukee Avenue within the C-1, Downtown Core Commercial District.

Mr. David Smith, Senior Planner, introduced the variation requests. Mr. Smith stated that the petitioner is seeking variations in order to permit his place of business, an office use, in the front tenant space of a building that fronts Milwaukee Avenue located in the C-1, Downtown Core Commercial District. He stated that the two variations include a variation to permit an encroachment into the front 35 feet of the first floor space within a building with street frontage on Milwaukee Avenue within the C-1, Downtown Core Commercial District with an office use and the second is a variation to permit an office use to occupy more than 25% of the gross first floor area of a building with street frontage on Milwaukee Avenue within the C-1, Downtown Core Commercial District.

Commissioner Semmelman requested clarification of the Staff recommendation in the DRC Staff report regarding the three recommendations.

Mr. Smith stated that it was intended as an alternative Staff recommendation to the petitioner's request.

Mr. Ray Gerard, attorney for the petitioner, stated that the petitioner had previously applied for the same two variations, but then withdrew those variation requests in order to request a Zoning Map amendment as they thought that the subject property was better suited as an office building to allow office use in the front tenant space. He stated that the Village Board decided that the property should stay in the C-1 District. He stated that they have returned to the Zoning Board of Appeals to make the same two original variation requests.

Mr. Gerard stated that the two variation requests include a variation to permit an encroachment into the front 35 feet of the first floor space within a building with street frontage on Milwaukee Avenue within the C-1, Downtown Core Commercial District with an office use and the second is a variation to permit an office use to occupy more than 25% of the gross first floor area of a building with street frontage on Milwaukee Avenue within the C-1, Downtown Core Commercial District. He stated that the petitioner's office use occupies about 49% of the ground floor area and the first 34 feet of the front tenant space.

Mr. Gerard stated that the reason why the petitioner should be accorded the approval for the variation requests is because in 1980 this building was designed as an office building and the Village issued an occupancy permit for it as an office building. He stated that the office use was its original purpose and has functioned with office uses for most of its existence up to this point.

Mr. Gerard stated that while the subject tenant space was occupied with an office use in 2005, an amendment was passed that regulated the 35 setback and 25% maximum for office shall apply to

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office uses in the C-1 District. Mr. Gerard stated that it should not have affected this property under Article 14 of the Zoning Code as it was established approximately 25 years ago. However, in 2006, the petitioner, not being aware of the 2005 code amendment, allowed a non-office use to occupy the front portion of the first floor of the building. He stated that the occupancy was inadvertent and unintentional. He stated that if the change in occupancy had not had happened, they would not need to be before the Zoning Board of Appeals asking for the variations.

Mr. Gerard stated that the petitioner's use is not that much different from some of the other office uses in close proximity. He stated that the Edward Jones office is part of the same row of buildings. He stated that across the street from the subject site there is the BMO Harris Bank.

Mr. Gerard stated that the subject site has been used almost continuously since 1980 as an office use except for one exception. He stated that the subject building has bay windows in the front which does not look like a retail facade, but more so like an office facade.

Mr. Gerard stated that the Zoning Board of Appeals is being asked to grant variations from the strict reading of the Zoning Code so that the unintended event can be remedied and so that the subject property can be afforded the same right as the other properties previously mentioned have.

Mr. Gerard stated that the granting of the variations is reasonable and fair. He stated that the petitioner is also offering that if the variations are granted that they only be applied to Mr. Tosto's insurance agency. He stated the building was built by Mr. Tosto in 1980 as an office building. He stated that Mr. Tosto has been in the Village for 40 years. He stated that he has 7,000 customers, that he brings a lot of business into the Village and that he is well known, well liked, and well respected in the Village. He stated that it would be a tragedy if Mr. Tosto cannot continue to use his building as he currently does.

Board Member Oakley asked Mr. Gerard if he had read the Staff recommendation in the DRC Staff Report. Mr. Gerard stated that he had read the Staff recommendations.

Board Member Oakley stated that it is a tough case. He stated that the petitioner should have understood the law.

Mr. Gerard stated that when the petitioner allowed the non-office use in 2006 to occupy the front tenant space, he was not aware of the 2005 change in the law. He stated that if the petitioner had known the law and had known what the repercussion would have been, he would not have allowed the change in use when he did.

Board Member Oakley stated that the petitioner's wife was aware of the law.

Mr. Gerard stated that the petitioner's wife was made aware in 2011, but the real pertinent event occurred in 2006 when the petitioner allowed his wife to move in as a non-office use. He stated that at that time it was a legitimate business and they had every intention of making it successful, but it did not work out.

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Board Member Adams stated that there will be a change in the block once Mickey Finn's moves to 345 South Milwaukee Avenue, immediately adjacent to the subject site. He stated that Edward Jones will be relocated off of Milwaukee Avenue. He stated that BMO Harris has been in its current location since before the ordinance changed and if they ever decided to move out, the owner of their building would have to comply with the ordinance and allow the first floor to become retail. He stated that the circumstance that the petitioner finds himself in was not created by the Village, but it was created by the petitioner. He stated that he is in support of the ordinance and the petitioner should abide by it.

Board Member Schultz stated that he is sympathetic to the petitioner, but the petitioner is not meeting the Standards for the Variation.

Chairman Cotey stated that it is difficult to contradict the evidence provided. He stated that it appears that the petitioner was made aware of the ordinance before he took occupancy of the front tenant space at 339 North Milwaukee Avenue. He stated that although it is a hardship for Mr. Tosto, there is no remedy for ignorance of the law.

Chairman Cotey asked the petitioner what action they would like for the Zoning Board of Appeals to take tonight. Mr. Gerard stated that they would like for the Zoning Board of Appeals to proceed with their recommendation.

Chairman Cotey stated that ZBA Case No. 13-01(1) was predicated on the petitioner willing to move his office use to the back of the building from the front tenant space to the rear tenant space.

Mr. John Spoden, Director of Community Development, stated that for clarification the petitioner is only requesting the two variations which include a variation to permit an encroachment into the front 35 feet of the first floor space within a building with street frontage on Milwaukee Avenue within the C-1, Downtown Core Commercial District with an office use and the second is a variation to permit an office use to occupy more than 25% of the gross first floor area of a building with street frontage on Milwaukee Avenue within the C-1, Downtown Core Commercial District. He stated that it was Staff recommendation to break apart the first variation into two (2) parts in order to allow the Zoning Board of Appeals and the petitioner to consider relocating his office use into the rear tenant space. He stated that the petitioner is seeking approval for the original requests, not the Staff recommendation.

Mr. David Pardys, Village Attorney, stated that the alternative Staff recommendation was intended to allow the petitioner to move into the rear tenant space while still needing the variation of a one (1) foot encroachment into the front 35 feet without the need to move the demising wall located between the two tenant spaces. He stated that he is uncertain as to whether or not the petitioner would like for the Zoning Board of Appeals to consider the alternative Staff recommendation or consider the original petition requests.

Mr. Gerard stated that he would like for the Zoning Board of Appeals to give their recommendation on the original variation requests, not the alternative Staff recommendation.

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In the matter of ZBA 13-01, Board Member Adams moved, seconded by Board Member Donahue, to recommend the Village Board of Trustees approve a variation to permit an encroachment into the front 35 feet of the first floor space within a building with street frontage on Milwaukee Avenue within the C-1, Downtown Core Commercial District with an office use, in accordance with the plans submitted.

Motion failed 0 - 6.

Ayes: None
Nays: Cotey, Adams, Donahue, Oakley, Semmelman, Schultz
Absent: Moore

In the matter of ZBA 13-02, Board Member Schultz moved, seconded by Board Member Donahue, to recommend the Village Board of Trustees approve a variation to permit an office use to occupy more than 25% to approximately 51% of the gross first floor area of a building with street frontage on Milwaukee Avenue within the C-1, Downtown Core Commercial District, in accordance with the plans submitted.

Motion failed 0 - 6.

Ayes: None
Nays: Cotey, Adams, Donahue, Oakley, Semmelman, Schultz
Absent: Moore

COMMUNICATIONS AND DISCUSSION:

Board Member Oakley moved, seconded by Board Member Donahue, to adjourn the Zoning Board of Appeals meeting.

Motion carried 6 - 0.

Meeting adjourned at 7:20 p.m.