

**MINUTES**  
**ZONING BOARD OF APPEALS**  
**REGULAR MEETING**  
**Wednesday, February 17, 2016, 4:03 P.M.**  
**Council Chambers, City Hall**  
**109 East Olive Street, Bloomington, Illinois**

Members present: Chairman Ireland, Mr. Briggs, Mr. Bullington, Mr. Kearney, Mr. Simeone  
Members absent: Mr. Brown, Ms. Meek

Also present: Mr. Tom Dabareiner, Community Development Director  
Mr. George Boyle, Assistant Corporation Counsel  
Ms. Katie Simpson, City Planner

Mr. Dabareiner opened the meeting at 4:03 p.m. and called the roll. With five in attendance, a quorum was present.

PUBLIC COMMENT: None

Mr. Briggs motioned to move Agenda Item 4 “Election of Chair” after “Other Business”; seconded by Mr. Bullington. The motion passed by a 5-0 vote with the following votes cast: Mr. Briggs—aye; Mr. Bullington—aye; Mr. Kearney—aye; Mr. Simeone—aye; Chairman Ireland—aye.

The Board reviewed the minutes from January 20, 2016 and the minutes were **approved** unanimously.

Chairman Ireland explained the meeting procedures. Mr. Dabareiner stated all items were properly published.

**REGULAR AGENDA:**

**SP-01-16. Consideration, review and approval of the petition submitted by Bloomington Public Schools District 87 for (1) a Special Use for a noncommercial parking lot under the Municipal Code 44.10-4. All for the property located at 900 N. Roosevelt Avenue and 901 N. Roosevelt Avenue.**

Chairman Ireland noted that SP-01-16 and Z-04-16 are related to the same properties and the presentations may consider both, but the actual vote by the Board members will treat them separately.

John Pratt, counsel for District 87, was sworn in. He introduced Dr. Barry Reilly, District 87 Superintendent, Mr. Cole Monahan, Facilities Director, and Jack Geringer, Principal of Bent Elementary School. Don Adams, from the Farnsworth Group was introduced as their engineer. Several members of the audience were also identified. Mr. Pratt noted appreciation for the City staff’s guidance through this process. He added that one staff recommendation is for “denial” but staff agrees that should have read “approval” as the rest of the text indicates.

Mr. Pratt explained District 87 operates Bent School, and the neighborhood has become more congested. One reason he offered was that a number of single family residences have been converted to multi-family residences. He added that the surrounding roads are very busy during the school year, with busses, cars and pedestrians. He believes that purchasing the two properties and converting them to a parking lot would be good for the school and the neighborhood. He reminded ZBA members of similar action taken a few years ago for one of their schools along Washington Street. Mr. Pratt noted the very poor conditions of the houses at both 900 and 901 Roosevelt. He added that District 87 conducted a neighborhood meeting and reviewed the plans; he believes the consensus was this would be a good decision to add off-street parking. He mentioned several supportive conclusions found in the City staff report and staff's positive recommendations.

Mr. Someone asked how many parking spaces could be added without the variance; Mr. Pratt replied 16, but noted the school's desire to get as many cars off the street as possible. Mr. Briggs noted he was an itinerant teacher at this school several years ago and can understand the concerns behind this request; he asked Mr. Geringer, who was sworn in by the Chairman, if itinerant staff were still serving the school. Mr. Geringer affirmed that the school continues to have instructors that work different schools depending on the day; he added that reserving one or two spaces for those travelling staff members would be helpful.

Dr. John Lewis, 911 North Roosevelt, was sworn in. He noted his residence's location as it relates to the school's cafeteria and the common entrance used for evening events. He indicated that parking patterns of visitors make it very difficult to get in and out of his driveway. He supports any steps that will help resolve his concern and encouraged District 87 to buy even more land for off-site parking.

Ms. Simpson presented the City staff report. She stated that staff is in favor of the Special Use as recommended for a noncommercial parking lot. Ms. Simpson provided an overview of the area uses and zoning; she described the concern that the Special Use would address. She provided a copy of the parking lot site plan and described the fencing and landscaping intended to screen its impact from neighbors. She reviewed the standards for approval of a Special Use leading to staff's positive recommendation for the Special Use. Ms. Simpson also indicated City staff is in favor of the variances as requested. The setback requested is in line with existing structures along the block, she reported; also, by its nature, parking should be allowed in the front yard. She reviewed the Findings of Fact which led to staff's recommendation of support.

Mr. Briggs asked if the parking lot would be available to the public when otherwise not in use. Dr. Reilly was sworn in and indicated that the parking lot will not be gated off; the intention is to make the lot available for staff and by guests for school functions. He added signage will be placed on the parking lot with wording along these lines.

Chairman Ireland noted the receipt of an email for the Board members indicating "subtle opposition" to the parking lot from Andy Streenz. A second email in support was noted from Martin Rumbold.

Chairman Ireland requested a roll call vote on the Special Use Case SP-01-16, which was **approved** by a 5-0 vote as follows: Mr. Briggs—aye; Mr. Bullington—aye; Mr. Kearney—aye;

Mr. Simeone—aye; Chairman Ireland—aye. A positive recommendation will be sent to Council, reported Chairman Ireland.

**Z-04-16. Consideration, review and approval of the petition submitted by Bloomington Public Schools, District 87 for: 1) A variance to allow parking in the front yard of a residential property under the Municipal Code 44.7-2.C.3(b). All for the property located at 900 N. Roosevelt Ave and 901 N. Roosevelt Ave. Zoned R-2, Mixed Residential District 2) A variance for a front yard setback of seven (7) feet in lieu of the required thirteen (13) feet under the Municipal Code 44.4-5.D. All for the property located at 900 N. Roosevelt Ave and 901 N. Roosevelt Ave. Zoned R-2, Mixed Residential District**

Because the variance requests were discussed at the same time as the special use, and there being no further comments or questions, Chairman Ireland requested a roll call vote on the variance request Case Z-04-16, which was **approved** by a 5-0 vote as follows: Mr. Briggs—aye; Mr. Bullington—aye; Mr. Kearney—aye; Mr. Simeone—aye; Chairman Ireland—aye.

**Z-05-16. Consideration, review and approval of the petition submitted by Farnsworth Group, on behalf of CEFCU for: 1) A variance to allow a front yard setback of twelve (12) feet in lieu of the required twenty (20) foot setback under the Municipal Code 44.4-5.F.1(a). All for the property located at 1114 S Veterans Parkway Zoned B-1, Highway Business District**

Chairman Ireland introduced the next case. Laura Tobben of the Farnsworth Group, representing CEFCU, was sworn in to describe the variance request. Ms. Tobben described the proposed project along Veterans Parkway, which included a P.U.D. amendment in 2015. She noted that City staff recommends in favor of the variance, even though there was an error in the staff's report. Ms. Tobben explained that this was an oversight, that because the CEFCU property zoning is adjacent to the residential district, a 20 foot setback is required. She presented several consistency points in favor of the variance.

Mr. Dabareiner noted that this is a technicality in the code and the request is simply a need to make something legal that we all would agree is a unique circumstance. Ms. Simpson provided the City staff report, noting staff is in favor of the variance. She identified the abutting commercial and residential zoning districts which triggers the larger setback, even though significant right of way exists along that line. She provided the context for the property and recommendation. Ms. Simpson reviewed the Findings of Fact, which favored the affirmative recommendation. Mr. Briggs clarified where the setback line is placed; Mr. Dabareiner explained that the setback starts at the property line but the trigger is the abutting zoning districts.

Chairman Ireland requested a roll call vote on the variance request Case Z-05-16, which was **approved** by a 5-0 vote as follows: Mr. Briggs—aye; Mr. Bullington—aye; Mr. Kearney—aye; Mr. Simeone—aye; Chairman Ireland—aye.

#### OTHER BUSINESS:

##### **Discussion of Role of City Attorney**

Chairman Ireland noted this has been a topic to a minimal degree during a few meetings and added that the city attorney was sitting at the end of the dais today. He noted that a couple of

members were invited to discuss this with the mayor the next day, but suggested additional conversation during this meeting. Mr. Kearney indicated he did not have much more to add to his prior comments already on the record. He also mentioned his invitation to meet with the mayor and desire to put that on the record, explaining that the meeting appears to concern the Board and staff support to the Board, including potentially the city attorney, which should be of interest to all Board members. He asked if other Board members objected to his attendance. Mr. Bullington stated his belief that the location of the city attorney during these meetings is irrelevant because he does not get a vote. Mr. Briggs agreed that the city attorney cannot vote but the question is, should he participate in the discussion? Mr. Briggs believes the questions should come from Board members and noted the Board's unique role among other citizen boards and commission in the City.

Chairman Ireland reminded everyone that at the city attorney's first meeting last year, the petitioner wanted to call Mr. Boyle to testify, which was confusing for the Board. Mr. Someone noted that he has brought cases before City departments and committees and believes there is an assumption that the City is biased in these cases; he said it was important to avoid the appearance of bias. Mr. Bullington provided an analogy that a judge is going to have a legal clerk who will advise the judge, and the city attorney should be here to respond to questions of city law; he added that the city attorney gains more information by being present than he will merely listening to the audio afterwards, through the verbal given and take process. Mr. Bullington feels that it is easier for everyone to have the city attorney present, than to send for him and re-explaining the issues. Mr. Briggs agreed that the city attorney can give advice if the Chairman requests, but that he not volunteer advice or questions; Mr. Bullington replied that he would rather have the city attorney provide the advice before the Board takes steps which would make the Board's decision subject to a court challenge. Mr. Briggs agrees that the city attorney should interject in that scenario, but he should not offer up contradictory opinions on text interpretation unless asked.

Mr. Boyle stated that he saw the role as an advisor to the Board on legal matters. He agrees that he represents the City and noted that the ZBA is an extension of the City. He referenced a court case citation from 2013 which he had provided to Mr. Kearney, noting that someone appeared before the Board with a conflict of interest and the municipal attorney was recognized as being an extension of the that municipality. Mr. Boyle indicated he is sensitive to the need for a second attorney representing the City for a zoning case if there is a prosecutorial relationship between the original city attorney and the petitioner, but added this is a rare situation. He continued with several reasons why a City would want its attorney present during board and commission meetings: that it is important for the public interest to have an attorney able to consider procedural and due process concerns; that the attorney be present to understand the context for the advice being requested; and, to reduce the chance for litigation due to actions of the board or commission. Mr. Boyle stated that he believes his role is not to provide opinions, except on legal matters. He asked a question in one case because he felt it was germane to a due process issue and there had been sufficient pause in conversation among Board members that he thought the time was right to ask.

Mr. Briggs expressed concern about having the city attorney sitting next to the Chairman and the perception of giving quiet advice to the Chairman. Mr. Kearney indicated he needed to leave the meeting for another commitment, but reiterated his position on the meeting with the mayor before he left and asked if anyone objected to his meeting with the mayor.

Chairman Ireland stated that he does occasionally rely on staff for direction. The positive side is if the question is a legal one, the Chairman can rely on the attorney rather than the city planner. He believes most of the concerns expressed relate to perception concerns. Mr. Briggs feels that the nonvoting members and their roles should be revealed at the start of the meeting. Mr. Simeone believes the concerns could be resolved by having the city attorney in the room but not at the dais. Mr. Bullington does not see the difference between having the city planner or the city attorney sitting at the dais from a perception standpoint. Mr. Boyle indicated it is easier if he has access to a microphone, which is available at the dais. Chairman Ireland suggested allowing the new Chairman to decide where the attorney should sit.

### **Election of Chairman**

Chairman Ireland noted that the Board asked for the election at the last meeting. Mr. Kearney nominated Mr. Simeone, who declined the nomination. Mr. Briggs noted that his term expires next year. Mr. Kearney nominated Mr. Briggs for Chairman; seconded by Chairman Ireland. Mr. Simeone nominated Mr. Bullington for Chairman; which failed for lack of a second. Chairman Ireland requested a roll call vote for Chairman which was **approved** by a 3-1-1 vote as follows: Mr. Briggs—present; Mr. Bullington—no; Mr. Kearney—aye; Mr. Simeone—aye; Chairman Ireland—aye. Mr. Briggs will take over the chairmanship at the March meeting.

NEW BUSINESS:

None.

ADJOURNMENT: 5:26PM

Respectfully,

Tom Dabareiner AICP