



Mission Woods Board of Zoning Appeals
December 16, 2015 at 4:00 p.m. Westwood City Hall

Members present: Ryan Bowden, David Immenschuh, Darrell Franklin, Richard Ahsmuhs,
Jay Sadie

Others present: Jessica James, City Attorney;
John Wind, Piper-Wind Architects
Spencer Thomson
Mimi Ahsmuhs
Steve Karbank and Jennifer Catano
Mike Paxton, Architect

Chairman Bowden called the meeting to order at 4:00 p.m. A quorum was present to do business. Chairman Bowden introduced himself and the other members.

The only item on the agenda was the application for a variance for 1968 Shawnee Mission Parkway ("1968 SMP"). The proposed variance sought a reduction in the setback requirements on both the East and West sides of the property.

Mr. Wind introduced the proposed variance by reviewing the current layout and access to the existing parking lot. Mr. Wind presented a blowup of the current parking lot, which showed the twenty-five (25) parking spaces that currently exist. These 25 spots include the handicap parking space required by law. The current Mission Woods Ordinance requires a building of this size to have fifty (50) parking spaces. Mr. Wind stated that the current proposal increases the parking lot by approximately 540 square feet and will allow for thirty-two (32) parking spaces, which will include the necessary handicap space and van accessible space. This equates to 3.1 parking spaces for every 1000 square foot of office space, which is comparable to the neighboring property which provides for 3.2/1000 square feet. The current ratio is 2.5 parking spots for 1000 square feet of office space.

Mr. Wind stated that the parking spaces will be 8 feet 6 in in width, 8 feet long, with 24 feet to back up, which are standard dimensions to accommodate modern vehicles. Board member Immenschuh asked whether the dimensions of the new spaces were comparable to the existing

spaces. Mr. Wind stated the dimensions are the same. Board member Immenschuh also inquired whether the requested additional parking spaces were to bring the parking lot in compliance with the City Code or if it was more desirable to obtain occupancy of the building. Mr. Wind stated that the owners would like to be in compliance with the City Code but the driving force was to provide necessary parking for its tenants.

Mr. Wind stated that the ARB expressed some concerns over the fact that the proposed new parking lot includes a change where cars will now face the street. To address these concerns, Mr. Wind stated that the applicants altered the proposed landscaping to include five (5) to six (6) feet high vegetation that will create a barrier between the cul-de-sac and the parking spaces. In making this design change the applicants worked with Audrie Seeley, a landscaping architect.

Board member Franklin asked if the building was fully leased. Mr. Wind stated that at this point seventy-five percent (75%) of the building is leased. Board member Franklin asked whether another variance request would be made to add additional parking if the remainder of the building is occupied. Mr. Wind stated that no additional parking would be contemplated to accommodate additional tenants.

Chairman Bowden asked whether the applicants considered alternate designs that would not require a variance. Mr. Wind stated that they tried a number of different configurations but unfortunately nothing worked. Board member Franklin asked why they were seeking the variance for these changes at this time. Mr. Wind stated that more spaces are required to accommodate the tenants and the City removed the on-street parking that was previously available.

Chairman Bowden then drew the Board's attention to a letter the Board received from the owner of the neighboring properties. The Board then gave Steve Karbank an opportunity to address the proposed variance. Mr. Karbank stated he believed the letter the Board received outlined the legal issues. Mr. Karbank stated that these same arguments were made by the applicants when Karbank was applying for variances for its properties, some of which were denied. Mr. Karbank stated that he withdrew applications for variances after the BZA requested traffic and storm drain studies. According to Mr. Karbank, the applicants have not provided a storm drain study and as is the storm drains are inadequate and flooded earlier this year. Mr. Karbank stated that the proposed variance requests a zero (0) setback from the Karbank property line which would mean the applicants would be required to use the Karbank property for construction. Mr. Karbank stated he would not give the applicants an easement to use the Karbank property for this purpose. Mr. Karbank also stated he had concerns that the variance would negatively impact vegetation on the Karbank property, including a tree that has already been damaged by the applicants. The setback from the cul-de-sac would be two (2) to four (4) feet at the smallest sections and that the cars will now be facing the street. Mr. Karbank stated that he had invested a lot of money into improving neighboring buildings and that he did not believe "shoehorning" the proposed parking lot while diminishing the green space was appropriate.

Mr. Wind then responded to Mr. Karbank's concerns. Mr. Wind stated that both of the neighboring Karbank properties received variances, including a variance on the 2000 SMP building which has a zero (0) setback. According to Mr. Wind the applicants are not changing the storm drainage system in any way. Mr. Wind stated that the applicants are just asking to receive the same treatment that the neighboring properties have received in requesting this variance. Mr. Wind concluded by stating this is a reasonable adjustment to get to the same parking standard as the neighboring building.

Chairman Bowden then asked if there were any questions or comments from anyone in the audience or the Board.

Board member Immenschuh asked about the drains on the property. Mr. Wind clarified the location of the drains and again stated that there would not be a change to the storm drains. Board member Immenschuh asked whether the applicants would agree to increase the parking spaces by something less than six (6) spaces. Mr. Wind stated that 6 additional spaces was what the alterations would allow and that 6 was not necessarily a magic number. Board member Immenschuh asked if the applicants included four (4) spots in the middle instead of the eight (8) proposed then the setback would not need to be changed. Mr. Wind stated the applicants considered this option but because of the current layout of the parking lot it would result in virtually no additional parking spots.

Chairman Bowden then asked for a motion on the proposed variance. Board member Immenschuh stated he was not willing to make a motion because he was concerned about the impact on the neighboring properties. Board member Immenschuh also stated he was concerned about the possible traffic issues with the setback on the cul-de-sac side.

Chairman Bowden made a motion to approve the variance as requested. Board member Franklin seconded the motion.

Spencer Thompson, representing the applicants, then addressed the Board. Mr. Thompson stated he believed the Board was going to deny the variance. Mr. Thompson stated that a denial would be arbitrary and capricious and that the applicants will raise the issue with the court if necessary. Mr. Thompson stated it was shocking the Board would deny the variance after granting variances for the Karbank properties. According to Mr. Thompson, the City first tried to take the building through eminent domain and is now illegally denying the variance.

Board member Ahsmuhs asked about comments regarding the legality of the proposed variance. At that point the City Attorney stated if the Board felt it needed legal advice someone needed to make a motion to go into closed session. Chairman Bowden made a motion to convene in executive session in order to obtain legal advice from the City's attorney that would be protected by the attorney-client privilege and to reconvene in open session at the same location in approximately fifteen (15) minutes. Board member Immenschuh seconded the motion. The Board went into closed session at 4:40.

The meeting was reconvened in open session at 4:55.

Chairman Bowden asked about Mr. Wind's previous statement that the Board granted variances to the neighboring properties. Mr. Thompson stated that similar variances were granted to the Karbank properties, including a zero setback variance. Chairman Bowden asked if there was an easement on the Eastside of the property. Mr. Wind stated there is not. Chairman Bowden also stated he believed there is an easement on the KU property where Karbank received a variance. Mr. Karbank stated that the difference in the variance Karbank requested and this variance is that the neighboring property owner did not object to Karbank's requested variance. Chairman Bowden then asked about the proposed setback on the East side of the parking lot. Mr. Wind stated it would be a zero (0) setback but that it currently has a six (6) foot setback.

Chairman Bowden asked for a motion. None was made. Chairman Bowden then made a motion to approve the variance. Board member Franklin seconded the motion. Chairman Bowden asked for a vote. Board member Immenschuh voted in favor of approving the variance. The remaining Board members voted against approving the ordinance. The motion did not pass.

Chairman Bowden asked how the applicants appeal the decision if they think it is necessary. The City attorney stated they would file a case with the District Court.

Meeting adjourned at 5:02 p.m.

Immediately after the meeting was formally adjourned, but while the Board, the applicants and audience members were still present, Mr. Wind asked the Board to explain why it denied the variance. Before the Board could respond, Mr. Thompson interjected himself and stated that the applicants did not want to give the Board an opportunity to explain their decision, and instead would take the issue up with the District Court.