



**MINUTES OF MISSION WOODS BOARD OF ZONING APPEALS
SEPTEMBER 3, 2014
4:00 p.m.**

Members present: Chairman Ryan Bowden, Darrell Franklin, Joni Cobb, David Immenschuh

Others present: City Atty Heather Zerger, Steve Karbank, Jennifer Cattano, Neil Karbank, Mike Paxton, John Renner, Bob Wessel, John Wind, Mayor Tietze, Spencer Thomas, Prairie Village Post representative.

Chairman Bowden called the meeting of the Board of Zoning Appeals to order at 4:01 p.m.

Chairman Bowden then moved to convene in executive session to obtain legal advice regarding the amended permit application and objections lodged thereto, which communications are protected by the attorney-client privilege. The motion was seconded by David Immenschuh. All voted in favor of the motion and Chairman Bowden indicated the meeting would resume in open session in approximately 15 minutes. The BZA members and legal counsel excused themselves to convene in an adjacent room.

Executive session took place.

The Board members and legal counsel returned and the Board reconvened in open session at 4:22 p.m.

Chairman Bowden turned the floor over to Mr. Steven Karbank to present the information related to the amended permit his company was seeking related to renovations at 1900 Shawnee Mission Parkway and the proposal for a new building.

Mr. Karbank reminded the BZA members that they had previously approved adding a 3rd floor to 1900 SMP. He has also previously received approval to build on top of the existing parking structure on the north side of the existing lot. Following those approvals, Mr. Karbank was inspired to try and reduce the amount of pavement in the plan and to add greenspace. By adding parking under the existing lot and including a ramp down into new lot he discovered he may also

be able to add an additional structure. The newly proposed plan reduces the amount of pavement that exists currently. It also provides direct ADA handicapped access to the lower level of the 1900 building, as well as ADA access to the proposed new building. Mr. Karbank noted that there are challenges to this particular site, as there is a 15 ft. fall from 51st street to the south end of the property line. Mr. Karbank showed renderings of the various views. He noted that parking will be shared between the two buildings. The greenspace depicted around the building does not presently exist; right now it is parking lot. As part of his proposal, he is requesting 3 variances: height, setback, and parking.

Mr. Karbank first addressed setback and height. First, he showed the Board members the plan as it has currently been approved. All parking is blacktop asphalt with impervious pavement. Reference was then made to the proposed plan. The amount of greenspace on overall property is currently 23.3%. The plan Mr. Karbank is presently has approval for took the greenspace to 23.5%. However, the new proposed plan would include greenspace at 28%. The setback variance is being requested in order to set the building at an angle and provide additional greenspace on the south by the neighboring 1968 property. Mr. Karbank stated they could have taken a different approach by filling all the setback that was allowed, but they wanted to balance the green aspect (LEED certified is the goal), and have a smaller footprint instead. So they are substituting height for setback as well. Thus, there should be less drainage off the entire site than what currently exists and what has already been approved. Also, covered ADA access to both buildings is in the public interest.

Mr. Karbank then showed a cross-section of his 3 proposed buildings – the two existing and the proposed 1957 building. The 2000 building had a story added to it; before it was 36’ and 3 stories now it is 56’ and 4 stories. The 1900 building was 28’ and 2 stories and will be 44’ and 3 stories. The proposed 1957 building will be 45’ and 3 stories--so 1 ft. higher than 1900.

Mr. Karbank then addressed parking. 1900 now is at 3.26 per 1000. The 3 combined buildings are 3.34 per 1000 SF. Mr. Karbank noted that this plan adds a total of 16 parking spaces to the site (while also adding more office space).

Board member Joni Cobb asked what is across 51st street from the proposed 1957 building. Pembroke Hill has a storage yard where they store items. Above that are the tennis courts, some parking and then soccer fields. The parking as previously approved went all the way to the cul de sac. It was asked whether the proposed changes will alter where people turn into the property. Mr. Karbank noted there will still be two curb cuts – one to the upper level and one to lower level. The elevation of the parking garage as approved before and as being sought now was requested: a rendition was shown of the parking deck for 1900. The deck would stick up out of the ground on the upper portion of the lot and the top level accessed from crown of 51st street but would have been elevated above ground around the sides. A rendition of the approved plan was shown. The plan currently being requested would place everything at the existing grade or

below. All additional parking that was previously approved will go underground if the current request is approved.

Board member Darrell Franklin asked whether Mr. Karbank has concern about not having enough parking as landlord of the buildings. Mr. Karbank indicated that the 2000 building was built at 4.24 per 1000. The tenants they have leased have been financial services companies that have lower parking requirements than other conventional office space users. Thus, at this point, they have more space than needed based on leases signed so far. 2000 SMP is not fully occupied – now 70% occupied. Mr. Karbank thinks the ratio right now is about 3 per 1000 but is not certain. Some discussion also ensued about emergency services access to the buildings and Mr. Karbank reported that he had met with the Fire Chief and that access to the buildings is adequate.

Board member Joni Cobb inquired about the hardship the permit applicant would suffer if the requested variance were not granted, which is one of the criteria required for granting the variance. Mr. Neil Karbank addressed this question. He noted that the City's Ordinance setting forth the height, set back and parking restrictions was passed a long time ago and includes standards which are rather arbitrary. 2000 SMP required variances and it is now the best building in area. He also noted that are drainage complaints related to the 1968 building, but with the proposed inclusion of greenspace in the new proposed plan and construction of the new parking garage with controlled drainage and the ability to pipe water away, those drainage issues could be resolved. He also noted that they have elected to build up (requiring a variance) instead of filling the entire space allowed under existing ordinance. Mr. Karbank then noted that the 1968 property has been neglected for years and their goal is to try to mask the 1968 building and the hardship it creates in the area by creating visual mass by building upward. Mr. Karbank stated their proposed plan would increase property values and the tax base. Mr. Karbank stated that police officers check regularly on 1968 to avoid squatters and adding even more high quality buildings around 1968 will add overall improvement to the area. The plan approved at 1900 has ADA access to the entry floor of the building. The new plan will allow the public to get covered ADA access to first floor of building and also allow ADA access to all levels of new building. 2000 SMP is also entirely ADA accessible. 1968 has no ADA accessibility. While the 1968 owners are complaining about the proposed plan, they do have the 1968 building listed for sale at a list price in excess of a million dollars.

Some additional discussion ensued concerning the height variance requested. The height facing 51st street is within code; the height variance being requested is from the back side. The southwest corner is tallest point. 1957 will be the tallest building by about 7 feet.

Chairman Bowden asked about setbacks. Renderings were shown. The NW corner is approximately 7 ft. in front of 30 ft. set back. From the south the building will be about 35 feet from south property line and at the SE corner roughly 60 feet back from south property line. Thus, the only set-back being requested is on north side of 1957.

The Board then opened the floor to members of the audience with questions or comments regarding the requested variances. Mr. Spencer Thomson introduced himself as legal counsel for the owners of the 1968 Shawnee Mission Parkway building, Grandview II, LLC. Mr. Thomas reminded the Board that the 1968 owners threatened to fight an “unlawful” condemnation effort begun by the City and that they have concerns about these requested variances that, if not addressed, would be appealed to the District Court. Mr. Thomson told the BZA they are not meant to be a rubber stamp; rather they have to represent the citizens of the City and have to verify facts and understand the law. He stated that he believes there are instances in the past where the Board merely rubber stamped the variances requested by this applicant. He claims his clients are not opposed to good development. In fact, he admitted his clients did not oppose the redevelopment of 2000 SMP or 1900 SMP. But at some point he and his client have to stand up and say “enough is enough.”

Mr. Thomson stated he does not know whether his client is seeking to sell the 1968 SMP property or not. He also noted that all buildings in that area have been difficult to look at for quite some time. He applauded what the Karbank group has done with the 2000 building and what they propose to do with the 1900 building, noting they will be assets to the community. He then stated that the new plan as proposed is all driven by economics of additional office space at 1957. He stated that in the “normal course of development,” there would have been a neighborhood meeting with the property owners in neighborhood but that 1968 was never invited to participate in a neighborhood meeting for either 2000 or 1900 SMP. He also noted that this applicant just wants to add more density of office space and parking to what they already have. He stated that the property owners new the layout of the property and applicable code requirements when the property was purchased. He also stated that each individual parcel has to comply and that they cannot take their property as a whole to justify compliance with the code.

He also stated the proposed plan adversely affects the rights of 1968 SMP. He claims they “don’t want to fight for the sake of fighting.” However, there has been no neighborhood study and that he learned things about the plan for the first time today because there was no effort at outreach by the City or the applicant. He also stated he believes the record does not reflect the necessary facts to support unnecessary hardship; rather, the motivation is simply economic and they want more building space than allowed under the code. He then reminded the BZA that 1968 did not stand in the way of the earlier efforts. However, here there has been no traffic study and with a school across the street, such a study should be considered. He claims that the proposal under consideration as opposed to the proposal already approved actually reduces the parking ratio because of the addition of 1957. Water run-off is a concern for 1968 and no engineering report has been done to demonstrate the impact. Mr. Thomson claimed that objective, professional reports need to be prepared and produced.

Bob Wessell, engineer for the applicant, noted that an engineering report has been prepared. The current proposal actually decreases the impervious area. And while there is no record of problems with the drainage system being overloaded, they have gone to great lengths to make

sure no downstream properties are adversely affected. In fact, the drainage problems experienced by 1968 are a result of underground drainage as opposed to surface drainage. By putting the garage underground, they are cutting off the flow of underground water to the building and diverting it away from 1968 through pipes. So the proposal actually fixes the underground drainage issues for the neighboring property owner.

Mr. Thomson noted that if this is true, and he has no reason to doubt it, then that's a good conversation for engineers to have. He reiterated that no traffic study has been performed. While the 1968 owners did not want to be unreasonable, they believe the development has gone too far. They want to study, with help of applicant, the traffic and storm water ramifications. They would like to come back within a month after some of these items can be addressed. Thus, they requested the Board deny the applicant request as presented or continue it to allow time for meaningful dialogue about what the proposal really does to his client's property. He stated he is the first to admit the improvements done to 2000 raise values and create a better environment for all. They may well decide there is no need to object to the present requests if sufficient information is provided. John Wind also mentioned there should be some discussion about what other ideas might be considered.

David Immenschuh noted in response to Mr. Thomson's statement that no notification had been provided that proper notice pursuant to City Code of all meetings had been given. The 1968 owners also had opportunity to review all plans on file with the City. Board member Joni Cobb asked how the 1968 owner will be adversely impacted by the proposed plan. Mr. Thomson stated that the creation of such density within the land area will become unmanageable. He reiterated again traffic and safety concerns. If a professionally prepared traffic study were provided, it would help. He claimed the issue is not enough information – not that there are per se objections right now. While in some cases there is an argument about the precedent being set, given that these are the only commercial properties in the City, that concern is not present.

Chairman Bowden asked for any other questions or concerns from the public and none were raised.

Mr. Steve Karbank responded by showing first a marketing brochure showing that 1968 SMP is listed for sale. He also cited the drainage issues and the improvement for the whole community that the new plan offers. He also noted that the non-1968 buildings were leased for all of the last 30 years and only 1968 was not. The applicant's vision is to create a higher-end product than what is even anticipated in the original code for purposes of parking. They have thought long and hard about how to redesign this property and have studied it in many ways with lots of people who know what they are doing and are the best at what they do. They feel this is the best solution. They believe it is a very good design for this site and this property. Mr. Karbank also noted that they never received any inquiry from the 1968 owner about the proposed plans even though information about the development has been out and available for months.

Board member Immenschuh moved that all three requested variances be tabled in order to allow the City Council time to request a traffic study and information about the drainage issues. His motion was seconded by Ryan Bowden. Chairman Bowden then asked if there was any further discussion on the motion. Mr. Immenschuh noted that these issues were brought up to the ARB but that Board did not have the authority to request such reports, nor is it within the purview of their review. Mr. Karbank asked about the need for a traffic study. The BZA noted that the addition of office space may necessitate the concern. Mr. Wessell noted that he is currently in discussion with the City regarding improvements to the intersection of 51st and State Line – any traffic study that may occur will require further control of the intersection to eliminate sight concerns. Mr. Karbank then asked if there is a way to move forward based on, at permit level, satisfying the requirements of city staff as part of issuance of a building permit. Board member Joni Cobb noted that she did not have sufficient information to approve anything at this time and Chairman Bowden agreed. Board member Franklin noted that storm water is always a concern, so if the work on that has been done already, the BZA would like to see the report as documentation for the decision. Mr. Immenschuh withdrew his prior motion and instead moved to table the requested variances and to reconvene in approximately 45 days or as soon thereafter as possible, once the information about storm water and traffic has been compiled. Chairman Bowden seconded the motion. All voted in favor and the motion carried unanimously.

Adjourn meeting at 6:04 p.m.