

Board of Adjustment
Minutes
November 28, 2016

Meeting was called to order at 6:00 p.m. by Chairperson Moe Richardson. Those in attendance: Board members Moe Richardson, Lori Boren, Gary Ulch and Roch Player. Also in attendance: Zoning Administrator, Matt Siders, Robert Hatala, attorney for staff, Megan Dimitt, attorney representing the Board of Adjustment, applicant Jim Moore and resident Jay Delancey.

1. Approval of Agenda. Motion made by Boren, seconded by Ulch to approve agenda. Carried all.
2. Approval of minutes from July 5, 2016. Motion made by Ulch, seconded by Player to approve minutes. Carried all.
3. Public Hearing and discussion and possible action on an appeal of the Zoning Administrator's decision regarding use of the property located at 616 1st Ave NE. Richardson opened the public hearing. Attorney Hatala stated that he had spoken with Megan Dimitt earlier today and they felt the process should go as follows: Siders would explain the reasons for his decision, Mr. Moore will have an opportunity to tell the board why he thinks that decision was incorrect and Siders will have a chance to respond to those comments and the board can proceed from there. Megan Dimitt said that way the board has a context to put this appeal in and they can hear from all parties and make their decision on the evidence presented.

Siders began by saying that he and Mr. Moore had several conversations about the use of his property at 616 1st Avenue NE. Siders received a formal complaint filed by a citizen for the City to look into the use of the property. Back on October 25, 2016, a letter was sent to Mr. Moore in regards to the use of the property. When Siders visited the property on October 7, 2016, in his opinion it had a retail aspect to it from the definition of retail services in the Mount Vernon Code. He noticed that there were specialty items within the property, handcrafted items, jewelry items and arts and antiques items specifically for sale inside the facility itself. There was a cash register present and items for sale. In his opinion, based on those findings, Siders made a decision that he felt it was a retail use of the property. At that point he sent Mr. Moore a letter stating that the use needed to cease and desist but he had an opportunity to appeal his decision, which is what is being discussed tonight. This property is located in the LI district (Limited Industrial). Siders then read the definition of the LI district: "This district is intended to reserve sites appropriate for the location of industrial uses with relatively limited

environmental effects. The district is designed to provide appropriate space and regulations to encourage good quality industrial development, while assuring that facilities are served with adequate parking and loading facilities". Siders does not dispute that the property is well kept and Mr. Moore has done a great job of updating and improving the site but "retail use" under Table 4-2 is not permitted in the LI district and the City is asking that the store no longer exist at the property. Attorney Hatala asked Siders if there were items other than specialty items, handcrafted items, jewelry and arts and antiques for sale at the property. Siders stated that there were possibly some home furnishings, art supplies and framing but the most prominent were the items Siders indicated.

Mr. Moore was then given an opportunity to speak. He began by saying that no one told him that there was going to be an attorney present. His attorney is not in attendance because he was not told that attorneys would be present. Moore stated that Siders did not indicate who he was when he came into the property and did not have a badge on indicating who he was. The owner of the business had no idea who he was and had no idea he was ever there. Moore stated that the owner of the business came to him and asked for the spot. The only other place available in Mount Vernon was the old BP gas station which was more expensive than his property. Moore rented the property to her without a contract because she wasn't sure how long she would stay. The board that Moore went to initially was Planning and Zoning and a couple of members were not in agreement with the business in his building. His property has one of the best parking lots in town and there are no costs to the City to maintain the property and parking. The owner of the business has indicated that if she is forced to move, she is not staying in Mount Vernon. Moore also had a brewery that came to him about the property but he told them to take the issue up with the City. The latest inquiry he has had is a cosmetic company. Moore stated that he has over \$500,000 in the building and has done a lot to fix it up and if he isn't allowed to keep businesses in there it will end up at the scrap yard.

Roch Player said the issue at hand is that the property is zoned for one thing and is being used for something else and it is up to the Board of Adjustment to decide whether to uphold the Zoning Administrators decision. Megan Dimitt stated that the purpose of the meeting is to hear the appeal decision by the Zoning Administrator notifying the property owner that the property is not in compliance. Player asked what the next step would be. Megan Dimitt stated that the only action that Board of Adjustment can take tonight is to either uphold the decision of the Zoning Administrator or overturn the decision. At that point it would go back into the property owner's court to take whatever steps he and his legal counsel feel are appropriate. Player asked Moore if Siders assessment of the business was accurate. Moore stated it was pretty close but 99% of her business is done on the internet. Ulch asked Moore if he

was disputing the fact that there was retail business going on in the building. Moore said he was not.

Richardson then asked if the board members were ready to make a decision and asked for a motion. Megan Dimitt stated that for clarification, someone should make a motion either upholding the appeal which would overturn the Zoning Administrator's decision or deny the appeal, which would uphold the Zoning Administrator's decision. That way there is clarity for the records. Player then made a motion to deny the appeal of the Zoning Administrator's decision concerning the property located at 616 1st Avenue NE. Player's motion seconded by Ulch. All members voted in favor of the motion. The Zoning Administrator's decision stands as is. Moore asked how long the tenant has to move from the property. Megan Dimitt stated that this board does not have the power to give the tenant the amount of time and would recommend that Moore work with Siders on the issue and get something in writing.

Meeting adjourned at 6:27 p.m. with a motion from Player, seconded by Boren on November 28, 2016.

Respectfully submitted,
Marsha Dewell
Deputy Clerk