February 28, 2014

To: Members of the Board of Zoning Appeals

From: Don Phillips, Chief Building Inspector

Subject: Staff Comments for the Meeting of March 6, 2014

B. Items of Public Hearing

1. Temporary Use Permit – Office Trailer – **200 Old Wilson Bridge Rd.** (Harvey Schwager/Worthington Industries) **BZA 05-14**

Findings of fact:

1. The existing 3 story office building is undergoing extensive renovations of the first and second floors. Some of the existing staff will be temporarily relocated. Auditors are to be relocated into a temporary office trailer on this property for approximately 6 months.

2. Staff issued a Temporary Use Permit for the maximum 90 day period allowed by the zoning code. The effective date of this permit will be the date the Certificate of Occupancy is issued for the trailer.

The following conclusion is presented:

1. The owner continues to invest in the community by improving its building on this site. The trailer is very small relative to the existing buildings along this portion of Old Wilson Bridge Road. Granting of a 6 month permit to commence when the staff permit expires offers the owner flexibility should the renovation project experience a delay.

The following motion is recommended:

THAT THE REQUEST BY HARVEY SCHWAGER AND WORTHINGTON INDUSTRIES INC. FOR A TEMPORARY USE PERMIT FOR SIX MONTHS AFTER EXPIRATION OF THE STAFF ISSUED TEMPORARY USE PERMIT TO ALLOW THE USE OF AN OFFICE TRAILER AT 200 OLD WILSON BRIDGE ROAD, AS PER CASE NO. BZA 05-14, DRAWINGS NO. BZA 05-14 DATED JANUARY 29, 2014, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

2. Variance – Side Yard Setback – **6759 Markwood St.** (Tom Spain) **BZA 06-14**

Findings of fact:

1. This property is an existing lot of record in the R-10 district where the minimum side yard requirement is 8 feet and the minimum sum of the 2 side yards is 20 feet.

2. The existing dwelling is approximately 4.7 feet from the north property line.

3. No record was found for any variance requests for the property.

4. The applicant had replaced the existing air conditioner condenser in the north side yard, and there is a second condenser next to the replaced condenser. The requested variance is to allow both condensers to remain in the side yard setback.

5. The Division of Building Regulation has no record of any inquiries regarding either condenser location.

The following conclusions are presented:

1. The essential character of the neighborhood should not be substantially altered.

2. The delivery of governmental services should not be affected.

The following motion is recommended:

THAT THE REQUEST BY THOMASA SPAIN FOR A VARIANCE FROM CODE REQUIREMENTS FOR SIDE YARD SETBACK TO ALLOW TWO CONDENSERS TO REMAIN AT 6759 MARKWOOD STREET, AS PER CASE NO. BZA 06-14, DRAWINGS NO. BZA 06-14 DATED FEBRUARY 11, 2014, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

Reference

Portions of Section 1129.05

(b) Exceptions. In hearing and deciding appeals, the Board shall have the power to grant an exception in the following instances:

(5) Temporary use permits. A temporary use permit may be granted where the temporary use of a structure or premises in any district where such temporary use shall be for a period of more than ninety days is proposed for a purpose or use that does not conform to the regulations prescribed elsewhere in this Zoning Ordinance for the district in which it is located, provided that such use be of a temporary nature and does not involve the erection of a substantial structure. A temporary use permit for such use shall be granted in the form of a temporary and revocable permit, for not more than a six-month period, subject to a six months' renewal and such conditions as will safeguard the public health, safety, convenience and general welfare.

(c) Area Variances. The Board shall have the power to hear and decide appeals and authorize variances from the provisions or requirements of this Zoning Ordinance. In authorizing a variance, the Board may attach conditions and require such guarantee or bond as it may deem necessary to assure compliance with the objective of this Zoning Ordinance. The Board may grant a variance in the application of the provisions of the Zoning Ordinance when it is determined that practical difficulty exists based on the following factors:

(1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

(2) Whether the variance is substantial;

(3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

(4) Whether the variance would adversely affect the delivery of governmental services (e.g. water, sewer, garbage);

(5) Whether the property owner purchased the property with knowledge of the zoning restriction;

(6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and,

(7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.