

ZONING BOARD OF APPEALS
TUESDAY, APRIL 17, 2012 @ 7:00 P.M.

CALL TO ORDER: 7:10 p.m.

ROLL CALL: Chairperson Laurie Slade
Mr. Carlos Bueno
Ms. Debra Monroe
Ms. Doris Taylor-Burks

ABSENT: Sherman Williams.
EXCUSED: Unknown.

ALSO PRESENT: Mr. James Sabo, Professional Planner
Mr. Gordon Bowdell

CHAIRPERSON SLADE: I will call the meeting to order. Roll call, please.

MR. SABO: Bueno?
COMM. BUENO: Here.

MR. SABO: Monroe?
COMM. MONROE: Here.

MR. SABO: Taylor-Burks?
COMM. TAYLOR-BURKS: Here.

MR. SABO: Slade?
CHAIRPERSON SLADE: Here.

Communications: Concerns raised about non-attendance of current members and appointment of new members. Deputy Mayor Glass indicated the process is being worked on presently. Further discussion will be had at the end of the meeting.

Adoption of Minutes: March 20, 2012.

COMM. TAYLOR-BURKS MADE A MOTION FOR APPROVAL OF THE MINUTES FOR MARCH 20, 2012 AND COMM. MONROE SUPPORTED.

CHAIRPERSON SLADE: Roll call, please.

VOTE: AYES: Taylor-Burks, Monroe, Bueno, Slade.
NAYS: None.
ABSTAIN: None.

Vote 4-0-0 for approval of the March 20, 2012 Minutes.

MR. SABO: Property Description: 58 Park Place.

Variance Request: Variance from the use permitted is requested as follows:

Use Variance for Section 2.203 Uses, Home Day Care, to exceed the maximum allowable number of pre-school or school age children of six for a State of Michigan licenses facility. The request is to allow up to 12 pre-school or school aged children for the Group Child Day Care Home at 58 Park Place.

Note: This request was submitted for review as a dimensional variance at the March 20, 2012 ZBA meeting and was reviewed under the provisions of Ordinance #944-2006. At that time, the ZBA discussed ordinance interpretation for the case as it related to use variance or dimensional variance.

The Board requested input by the Planning Department and City Attorney regarding interpretation of the ordinance. We reviewed the ZBA request for interpretation with senior planning and zoning experts in our firm.

Following research, they cited P.A. 110 Zoning Enabling Act and quoted it stating the ZBA "shall be" the interpreting body for the zoning ordinance. However, based on Act 110 and clarifications from the new ordinance #944 2012, it was recommended that a use variance would be the proper request. They stated that the previous zoning ordinance #944 2006 combined with the terms practical difficulties and unnecessary hardship together and used them interchangeably, which could make for cloudy interpretation.

Conversely, Section 6.407 and 6.408 of the new ordinance are closely aligned with the intent of Act 110 and better clarify the differences between dimensional variances, which are related to practical difficulties with the physicality of property and use variances, which are related to unnecessary hardship and economic use of property.

Since no action was taken on March 20th, the application will remain active and the application will be reviewed under the new ordinance because the previous ordinance did not allow use variances. Specifically, Section 13.2(b) of ordinance #944 2006, states "a variance from the type of use permitted by this appendix is not authorized."

Claimed Undue Hardship:

(Use Variance) Currently, the site is an existing child care facility for six children. Nursery Rhymes Child Care states that the existing home can meet all State of Michigan requirements for home day care for 7-12 children, because the site and house are large enough to accommodate up to 12 children. They claim that the Pontiac Zoning Ordinance penalizes the use of larger homes as it relates to maximum number for children for a day care facility.

As stated, their proposed location at 58 Park Place can otherwise meet state requirements. The City of Pontiac Zoning Ordinance use prohibition prevents her from operating. The claimed undue hardship is that they can otherwise meet all State of Michigan standards for day care facilities and the only impediment is the use prohibition in the Zoning ordinance.

Staff Findings:

1. The subject site is zoned R-1. The proposed use does not comply with the Zoning Ordinance as State Licensed Residential Facilities for 7 or more are prohibited (Group Child Day Care Home).
2. The proposed/existing Nursery Rhymes Child Care home meets the zoning requirements for State Licensed Residential Facilities for 1-6 children only (Family Day Care Home).

Authorization:

Section 6.408 Use Variance

Authority: The Zoning Board of Appeals may grant a use variance to authorize a land use which is not otherwise permitted by this ordinance in the district where the property is located, upon the concurring vote of two-thirds of the members of the Zoning Board of Appeals.

Unnecessary Hardship: A use variance shall not be granted unless the Zoning Board of Appeals finds, on the basis of substantial evidence presented by the Applicant, that there is unnecessary hardship in the way of carrying out the strict letter of this ordinance. In determining that an unnecessary hardship exists, the Zoning Board of Appeals must find that:

1. The property in question cannot be reasonably used or cannot yield a reasonable return on a prudent investment if the property would be used only for a purpose allowed in the zoning district.

Does not meet the standard, day care use is permitted for 1-6 children.

2. The plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions.

Does not meet the standard, applies to all R-1.

3. The use to be authorized by the variance will not alter the essential character of the area and locality.

May meet the standard, is small increase in number of children.

4. The problem is not self-created.

Does not meet the standard, self-created.

5. The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.

Does not meet the standard, intent of ordinance is to prohibit the use.

6. There is compliance with the standards set forth in Section 6.401.B.

May meet the standard for supply of light/air, but may not meet standards for comfort or morals.

7. There is compliance with any applicable standards for discretionary decisions as contained in Section 6.303.

N/A, no Special Exception Permit

The proposed use change does not comply with 4 of 7 considerations for findings in the Zoning Ordinance.

Recommendation: To deny the use variance request for ZBA 12-02 Nursery Rhymes Child Care as it does not meet unnecessary hardship standards number 1, 2, 4 and 5.

Chairperson Slade commented a use variance needs 5 members for voting purposes and approval.

Mr. Sabo indicated the ZBA has changed with the interpretation of the Zoning Ordinance, which is a 2/3 vote.

Comm. Bueno indicated a use variance restricts the guidelines and there should be a full ZBA Board for purposes of the vote.

Chairperson Slade inquired if the members wanted to full board to table the matter. Comm. Bueno suggested having a short hearing and then tabling the matter.

Mr. Sabo presented a brief Finding of Facts as outlined above.

Petitioner, Ms. Stephens requested a full board to hear her matter. She indicated she canvassed the neighborhood and received signatures of surrounding neighbors in support of her request.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING OPEN.

Clyde Kemp, indicated he has been in Pontiac for 35 years, has built, remodeled and revitalized homes and he owns the property in question. Mr. Kemp recalled the house used to be drug infested and he refurbished it to its present condition and urged the commissioners to consider infants and young children, also that Ms. Stephens goes to church regularly and he encouraged the board to grant her request.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING CLOSED.

Matter was tabled, no vote taken.

Mr. Sabo will supply applicant with a notice of findings to pertinent entity.

Finding of Facts presented by Mr. Sabo.

Mr. Sabo: Property Description: 1211 Colony Lane 8 Park Place,
Sidwell # 14-15-226-057

Variance Request: Variance for Dimensions is requested as follows:

Dimensional Variance for Section 1.15(3) Maximum Building Height. The allowable maximum building height in the R-3 Multiple Family Dwelling zone district is 35 feet -2 ½ stories. The applicant is requesting a dimensional variance to exceed the maximum height by 3'-10" and ½ story or 38'-10" and 3 stores.

Claimed Hardship or Practical Difficulty: (Dimensional Variance) Currently, the site is vacant. As stated, the applicant appearing before the Planning Commission on March 7, 2012 for Site Plan Approval. The Site Plan application was approved contingent upon a dimensional variance for building height from the Zoning Board of Appeals.

The applicant has stated that the variance request is based on practical difficulty related to several wetland areas at the site. The applicant states that construction to properly avoid wetlands requires a smaller building footprint and a minor increase in overall height. The building height increase will allow them to design a building with minimal environmental impact on wetland areas. The applicant stated that the increased building height permits them to reduce the amount of impervious surface and allows greater natural water drainage at the site.

Additionally, the applicant claims that a smaller building and parking lot footprint reduces the size of their on-site detention pond, which minimizes the impact of storm water runoff on the City's sewer infrastructure system. The applicant further claims that fewer trees will be removed by allowing a smaller building footprint.

Staff Findings: The subject site is zoned R-3. The proposed use complies with the Zoning Ordinance provisions for Multiple Family Dwelling District.

The proposed building meets all the bulk and area requirements of the Zoning Ordinance, with the exception of the requested dimensional variance for building height.

Authorization: Section 13.2 of the Zoning Ordinance enumerates the powers of the Board. The Zoning Board of Appeals is authorized to grant an appeal from the strict application of the provisions of the Zoning Ordinance where, by reason of exceptional narrowness, shallowness, or shape of a specific parcel at the time of enactment of this appendix, or by reason of exceptional topographic conditions or other extraordinary and exceptional conditions of such property, the strict application of regulations enacted under this appendix would result in peculiar and exceptional practical difficulties to or exceptional or undue hardship upon, the owner of such property.

A variance can be allowed by the Board of Appeals in cases involving practical difficulty or unnecessary hardship when evidence on the official record supports the following:

- a. The variance is in harmony with and supports the general intent and purpose of the ordinance. **Meets the standard.**
- b. Allowing the variance will result in substantial justice being done, considering both the public benefits intended and the individual hardships that will be suffered by failure to grant the variance. **May meet the standard.**
- c. The variance, if allowed, will not interfere with or injure the rights of others in the district. **Meets the standard.**
- d. The alleged hardships or practical difficulties are unique and singular to the property of the party requesting the variance. **May meet the standard.**
- e. The alleged hardships or practical difficulties that result from failure to grant the variance request include more than inconvenience and financial hardship to the applicant. **Meets the standard.**

Recommendation: To approve the dimensional variance request for ZBA 12-03 1211 Colony Lane, CSI Support and Development Services as it meets the standards for practical difficulty or undue hardship from Section 13.2(a-e) of the Zoning Ordinance.

Petitioner, Diane Smith, 540 Park Drive, Clawson, presented and indicated this will be affordable senior housing, resident empowered, shopping is walking distance, medical facility close by, transportation is available.

Ms. Smith indicated her company has invested 35 million; she showed drawing of other facilities in Baltimore and two in Detroit; 8 million is allocated for this project building, they will pay 100 percent of property taxes.

Mr. Jim Pappas commented he has worked with CSI for 36 years, the site constraints are the wetlands. He indicated a better design is a three-story, which would reduce the impact on the storm system and wetlands, saves landscaping, increases setbacks. There will be 77 dwelling units.

Comm. Monroe inquired if Colony Lane supports fire and emergency vehicles. Mr. Pappas indicated yes.

Comm. Bueno inquired of a visual effect on the surrounding area. Mr. Pappas indicated the visual effect will remain the same, it will not impact the area.

Chairperson Slade inquired of other three-story buildings in the surrounding area. Ms. Smith indicated yes.

COMM. BUENO MOVED FOR APPROVAL OF A DIMENSIONAL VARIANCE TO EXCEED THE MAXIMUM HEIGHT BY 3'-10" AND ½ STORY OR 38'-10" AND THREE STORIES AND COMM. TAYLOR-BURKS SUPPORTED.

VOTE: AYES: Bueno, Taylor-Burks, Monroe, Slade.
 NAYS: None.
 ABSTAIN: None.

Vote 4-0-0 for approval of the Dimensional Variance.

Finding of Facts presented by Mr. Sabo.

Mr. Sabo: Property Description: 900 Joslyn Road, Sidwell #14-21-201-001.

Variance Request: Variances for Dimensions are requested as follows:

Dimensional Variance for Section 2.535 Drive-Through Facility.

Section 2.535(b) Building Design, which states "Drive-through uses must be built as an integral architectural element of the primary structure and use. Building materials shall be the same as those used in the primary structure. Drive-through facilities and structures separate from the primary structure are prohibited". The applicant is seeking a dimensional variance to locate the drive-through ATM kiosk separate from the primary structure in the front parking area of the credit union building. The distance from the primary structure to the ATM kiosk is 57 feet. A dimensional variance of 57 feet is requested.

Section 2.535(d) Drive-through Setback, which states "Physical elements of the drive-through use that are visible from the exterior of the building, including the drive-through window, speaker or ordering stations, and any canopies shall be setback a minimum of 10 feet from any street-facing building wall of the primary structure." The applicant is seeking a dimensional variance to locate the drive-through ATM kiosk in front of the street facing building wall of the primary structure and not meet the setback requirement of 10 feet for a drive-through facility (Setback requirement is 10 feet from the front wall of the principal building). The distance from the proposed ATM kiosk location to the 10 foot setback line of the building wall is 67 feet. A dimensional variance of 67 feet is requested.

Claimed Hardship or Practical Difficulty: (Dimensional Variance) The applicant has stated that the credit union location is entirely dedicated to drive-through functions. There are no longer retail banking functions at this site. The stated practical difficulty relates to security and functionality at the site.

As stated, the applicant appeared before the Planning Commission on March 7, 2012 for a Special Exception Permit and Site Plan approval. The Special Exception Permit and Site Plan application was approved with the condition that "to the best extent possible," the applicant works with the City Planner to locate the ATM kiosk away from the main parking area. At minimum, it should be located parallel with the front building wall or at the side of the building. On March 12, 2012, the applicant met with the City Planner and several alternate locations were discussed. None of the locations were acceptable to the applicant. They indicated their intention to seek a variance from the Zoning Board of Appeals.

The applicant has stated that security concern for their patrons is the practical difficulty related to the location of the ATM kiosk. Based on the 24/7 nature of the ATM, the applicant believes it is unacceptable for banking customers to access the ATM kiosk from behind the building during night time hours. There are concerns about ATM user safety. They have stated there is no other acceptable location for the ATM. They propose to relocate the ATM to meet nearly all other zoning requirements.

Note: The applicant has revised the original site plan that was presented to the Planning Commission on March 7th. They relocated the ATM kiosk on the site and it more closely meets the provisions to the Planning Commission for reconsideration. The applicant wanted to proceed to the ZBA for consideration.

Staff Findings:

The subject site is zoned C-1. The proposed ATM kiosk use requires Special Exception Permit approval by the Planning Commission in this zone district.

On March 7, 201, the Planning Commission conditionally approved the Special Exception and Site Plan Review for the ATM kiosk location. The condition was that the ATM be located at the front building wall or side of the existing building.

The proposed ATM meets the other bulk and area requirements of the Zoning Ordinance, such as front and side setbacks, height and accessory building standards.

Authorization: The Zoning Board of Appeals may grant a dimensional (non-use) variance to provide relief from a specific standard in this Ordinance relating to an area, a dimension or a construction requirement or limitation, upon the concurring vote of a majority of the members of the Zoning Board of Appeals.

Practical Difficulty: A non-use variance shall not be granted unless the Zoning Board of Appeals finds that there is a practical difficulty in the way of carrying out the strict letter of this ordinance. In determining whether a practical difficulty exists, the Zoning Board of Appeals must find that:

A variance can be allowed by the Board of Appeals in cases involving practical difficulty or unnecessary hardship when evidence on the official record supports the following:

1. Compliance with the strict letter of the restrictions governing area, setback, frontage, height, bulk, lot coverage, density or other dimensional or construction standards will unreasonably prevent the owner from using the property for a permitted purpose or will render the conformity with such restrictions unnecessarily burdensome.
Does not meet the standard.
2. A granting of the variance will do substantial justice to the applicant as well as to other property owners in the district, and a lesser variance will not give substantial relief to the applicant as well as be more consistent with justice to other property owners in the zoning district.
May meet the standard.
3. The variance is in harmony with and supports the general intent and purpose of the ordinance.
Meets the standard.
4. The plight of the applicant is due to the unique circumstances of the property.
May meet the standard, parking lot built on property line.

5. The problem is not self-created.
Does not meet the standard, self-created.
6. The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.
Meets the standard.
7. There is compliance with the standards set forth in Section 6.401.B.
Meets the standard.
8. Compliance with standards for discretionary decisions contained in Section 6.303.
May meet the standard.

Recommendation: To postpone without malice the ZBA application ZBA 12-04, 900 Joslyn Road, Chief Financial Credit Union and request the applicant to return to the Planning Commission for review of the revised Site Plan and Special Exception Permit Request.

Petitioner, Gary Pirelli, 222 East Marilyn, Birmingham, indicated his greatest concern was for the safety of the customers and the rear of the building is isolated. The proposed location is visible from all four directions.

Chairperson Slade commented she views it as no different from any other entity requesting an ATM in the front.

Comm. Taylor-Burks agrees with the applicant concerning safety issues in the rear of the location.

Comm. Bueno commented these discussions may be moot because Planning Approval is needed foremost.

Chairperson Slade suggested approving the request contingent upon approval from the Planning Commission.

Comm. Monroe indicated the proposed property may create a problem with stacking and what is proposed recently is more reasonable.

COMM. TAYLOR BURKS MADE A MOTION TO APPROVE THE DIMENSIONAL VARIANCE CONTINGENT UPON APPROVAL FROM THE PLANNING COMMISSION AND COMM. MONROE SUPPORTED.

VOTE: AYES: Taylor-Burks, Monroe, Bueno, Slade.
 NAYS: None.
 ABSTAIN: None.

Vote 4-0-0 for Contingent approval of the Dimensional Variance upon Approval from the Planning Commission.

Public Comment: None.

Miscellaneous: Comm. Bueno inquired of any e-mails, phone calls made to Comm. Williams. Mr. Sabo indicated he has sent several e-mails and spoke with Comm. Williams approximately a month ago and he was concerned if him being a school board member presented a problem; and Mr. Sabo assured him that was not a problem. Mr. Sabo also telephoned him twice today with no return call.

COMM. BUENO MADE A MOTION TO REMOVE COMM. WILLIAMS FROM THE ZBA BOARD DUE TO LACK OF ABSENTEEISM AND LACK OF COMMUNICATION AND COMM. MONROE SUPPORTED.

VOTE: AYES: Bueno, Monroe, Taylor-Burks, Slade.
 NAYS: None.
 ABSTAIN: None.

Vote 4-0-0 for removal of Comm. Williams from the ZBA Board.

Adjournment: 8:16 p.m.