

ZONING BOARD OF APPEALS
TUESDAY, APRIL 16, 2013 @ 7:00 P.M.

CALL TO ORDER: 7:05 p.m.

COMMISSIONERS: Chairperson Laurie Slade
Mr. Sam Anderson, Jr.
Mr. Carlos Bueno
Ms. Patricia Hollis
Ms. Debra Monroe
Mr. Ahmad Taylor (Excused)
Mr. Lee Todd

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

MR. SABO: Bueno?

MR. BUENO: Here.

MR. SABO: Todd?

MR. TODD: Here.

MR. SABO: Monroe?

MS. MONROE: Here.

MR. SABO: Hollis?

MS. HOLLIS: Present.

MR. SABO: Anderson?

MR. ANDERSON: Here.

MR. SABO: Slade?

MS. SLADE: Present.

EXCUSED: Taylor.

ABSENT: None.

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

COMMUNICATIONS: None.

ADOPTION OF MINUTES: March 26, 2013.

COMM. BUENO MADE A MOTION FOR APPROVAL OF THE MINUTES FOR MARCH 26, 2013 AND COMM. HOLLIS SUPPORTED.

CHAIRPERSON SLADE: Roll call, please.

VOTE: AYES: Bueno, Hollis, Todd, Anderson, Slade.
NAYS: None.
ABSTAIN: Monroe.

Vote 5-0-1 for approval of the March 26, 2013 Minutes.

OLD BUSINESS: None.

NEW BUSINESS: 6.1 ZBA-13-02

Finding of Facts presented by Mr. Sabo.

MR. SABO: Property Description: 345 Edison, Sidwell# 14-20-426-018.

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

Section 2.203 Permitted Use by District, and Section 2.523 Community Service Facility. The request is to allow a type of use that is not a permitted use in the R-1, One-Family Dwelling residential district. The proposed use is community service facility "to empower individuals with intellectual and developmental disabilities to develop academic and vocational skills." The proposed use is within an enclosed building, Howard Dell, and is intended for a skills training center for the benefit of clients. The privately owned facility is designed to serve as a regional community resource for families and individuals with developmental and intellectual challenges.

Definitions have been provided here to clarify the difference between a community center and community service facility:

Definitions:

C. **Community Center Building.** A building that is controlled by and for the primary use of residents living in the residential development or neighborhood in which it is located and serves.

D. **Community Service Facility.** A privately or publicly operated facility for the benefit of and service to the general public or individual persons. Community service facilities include:

1. Shelters providing temporary housing for abused individuals or the homeless.
2. Halfway Houses which provide assistance to emotionally or mentally disturbed persons, or temporary lodging for persons readjusting to society follow a period of imprisonment, hospitalization or institutionalized treatment.
3. Substance Abuse Rehabilitation Centers. Facilities that provide drug or alcohol rehabilitation. Such uses must hold a Substance Abuse License (or its successor license) issued by the State of Michigan Department of Community Health (or its successor department).
4. Adult foster care facilities are in some cases similar to community service facilities. If a facility is licensed pursuant to Michigan Public Act of 218 of 1979 (as amended), and falls under the definition of one of the types of State Licensed Residential Facility as defined in this Ordinance, the use shall be regulated as a State Licensed Residential Facility. If it is not licensed by PA 218 of 1979, it shall be regulated as a community service facility.

There are specific development standard standards for community service facility uses. The applicant will be required to meet the development standards along with other zoning requirements. Section 2.532 requires separation between a community service facility use and certain other types of uses. In this case, the proposed use will not meet the separation requirements for distance from park or playground. Should the ZBA grant a use variance, the applicant will also require a separation waiver from the City Council as well. The Section 2.523 standards are listed here:

2.523 Community Service Facility.

A. **Purpose.** In the development and execution of this ordinance and this section, it is recognized that there are some uses which because of their very nature, are recognized as having serious or objectionable operational characteristics, particularly when several of them are concentrated within close proximity to each other. Concentrations of such uses often create deleterious effects upon adjacent area of uses, particularly single family residential neighborhoods. Special

regulation of these uses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood or district. These special regulations are itemized in this section. The primary control or regulation is for the purpose of preventing a concentration of these in each one area. Uses subject to these controls are as follows:

1. Shelters.
2. Halfway Houses.
3. Substance Abuse Rehabilitation Centers.
4. Adult Foster Care Facilities that are not licensed pursuant to PA 218 of 1979.

B. **Location.** Community service facilities shall be located on a site with at least 60 feet of frontage on an A or B Street.

C. **Separation Requirements for Community Service Facilities from Other Uses.** The clustering of community service facilities in close proximity single family residential areas and certain other uses tend to devalue surrounding single family neighborhoods. Therefore, except as provided by subsection E, below, it shall be unlawful to hereafter establish a community service facility if the proposed location is located within 250 feet of another community service facility AND is located within 500 feet from the nearest property line of any public, private, or parochial school, library, park, playground or other recreational facility which admits minors, day care center, or nursing school (whether commercial or nonprofit).

D. The measurement used to determine the application of any of the above restrictions shall be made from the nearest boundary line of the proposed community service facility on a plane to the nearest boundary line of a residentially zoned district or applicable use listed above.

E. **Waiver from the Separation Requirements.** The applicant may apply in writing for a waiver from the above regulations by filing an application and nonrefundable fee for waiver with the planning and community renewal divisions, or its successor, of the city which shall place the application on the city council agenda for formal receipt at a city council meeting to be held within 45 days after filing with the division. A date for a public hearing shall be set by the city council upon formal receipt of an application. The city council may waive the separation provisions above for any proposed community service

facility use if the following findings are made after a public hearing:

1. That the proposed use will not be contrary to the public interest, injurious to nearby properties or the community as a whole, and that the spirit and intent of this ordinance will be observed.
2. That the proposed use will not enlarge or encourage the development of an inappropriately large community service facility cluster.
3. That the establishment of the proposed community service facility use in the area will not be contrary to any program or neighborhood conservation.
4. That all applicable regulations of this ordinance will be observed.

F. **Re-establishment of Discontinued Uses that were Granted a Waiver.** A community service facility use granted a waiver pursuant to the terms of subsection E, above, may not be re-established after discontinuance for a period of 90 consecutive days unless a new waiver is granted by the city council.

CLAIMED UNDUE HARDSHIP:

(Use Variance) The site is currently vacant and was the former Howard Dell Community Building. The applicant claims that the undue hardship is that the building has already been used for a very similar use in the past by the City of Pontiac. The applicant claims that if the City of Pontiac still owned the building, Creative Employment Opportunities could have leased the building and there would be no issue related to zoning. They claim that the ownership change is the only issue causing their undue hardship.

The applicant states that the proposed use will restore a vacant, deteriorated and unutilized building. The proposed use is the same type of use that the City carried on in the building. The applicant states that the proposed use is a Monday through Friday 8 a.m. to 4 p.m. operation. They state the use only meets the Community Service Facility use by means of definition and not by means of effect. The applicant states that they completely understand the intent of the Zoning Ordinance to separate uses that have a potential deleterious

effect on the surrounding neighborhood. They believe that the ordinance does not intent to imply that a vocational training center for developmentally disabled persons is similar to a half-way house or a 24/7 adult foster care facility.

STAFF FINDINGS:

1. The subject is zoned R-1. The proposed use does not comply with the Zoning Ordinance as Community Service Facility uses are prohibited in a R-1 zone district.
2. The proposed Creative Employment Opportunity Inc. vocational training center use meets the Zoning Ordinance definition of a Community Service Facility.
3. The proposed Community Service Facility uses does not comply with the minimum separation requirements of the ordinance for Section 2.53.
4. Should the ZBA grant a use variance for the Community Service Facility use in a R-1 zone district, the applicant will be required to obtain a separation waiver from the City Council for Section 2.523(E).

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 (2/3) 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 an 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.

May meet the standard, the zoning ordinance provides limited uses in the R-1 district.

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

Meets the standard, the plight of the property is completely unique as it's a former community center within the existing City of Pontiac Aaron Perry Park property.

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

May meet the standard, the proposed operation is within an enclosed building and the proposed hours of operation are Monday to Friday, 8 a.m. to 4 p.m.

4. The problem is not self-created.

Meets the standard, the problem is not self-created. It is a former City Park building with very limited permitted uses.

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

May meet the standard, the intent of the ordinance is to prohibit the use. However, the proposed use may not possess the same level of potential negative effect that other Community Service Facilities possess.

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

Meets 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 contained in Section 6.303.

N/A, no Special Exception Permit

The proposed use change does not comply with 3 of 7 considerations for findings in the Zoning Ordinance. However, there are several considerations worthy of discussion as it does not appear completely clear with respect to specific compliance or non-compliance with Section 6.408 standards. The ZBA may wish to discuss the use variance standards in greater detail.

RECOMMENDATION:

To approve the use variance request for ZBA-13-02 Sidwell #14-20-426-018 Creative Employment Opportunities Inc. for a community service facility that provides only vocational skills training activities for intellectually and developmentally disabled individuals, as the proposed use variance request meets Section 6.408 (C) Use Variance Unnecessary Hardship Standards numbers 2, 4, 6 and 7, subject to the following conditions:

1. Obtain a Separation Waiver for Section 2.523(E) Community Service Facilities for minimum distance to a residential district and park, playground, or school from the City Council.
2. Compliance with all applicable occupancy requirements and Pontiac business licensing requirements.

Petitioner, Kathy K., Executive Director and Founder since 1993, informed the Commissioners the facility would be used for clients with intellectual and mental disabilities after the age of 26. They will provide educational opportunities for the above individuals and non-profit businesses support them with clients, along with the Macomb and Oakland Regional Centers. All individuals are ambulatory and they meet ADA requirements.

Chairperson Slade inquired if the purpose is more for educational purposes, why is it not allowed under R-1. Mr. Sabo noted it is not a school, college or university.

Comm. Monroe commented this facility is a positive aspect for services to these clients after age 26 and believe it should fall under the education category.

Comm. Bueno commented it is a use variance and concerned with calling it a community service facility. Comm. Bueno also concerned with the parking lot being heavily used by the community especially at night and weekends and it has limited parking.

Petitioner indicated she had a team inspection performed and there will be no usage of the parking during their hours of operation and she has no problem with other using the parking lot.

Comm. Monroe commented special education has IEP goals and this is a continuation of an educational plan.

Comm. Todd inquired of the number of proposed clients and staff on the site. Petitioner indicated 6 or 7 staff and approximately 50 clients.

Comm. Hollis inquired if lunch would be served. Petitioner indicated clients are required to bring their own lunch.

Comm. Hollis inquired if substance abuse sessions would be held at this site. Petitioner indicated not at this site, but other locations, yes.

Comm. Hollis inquired why this proposal did not appear before the Planning Commission. Mr. Sabo indicated an existing site with no changes does not require a special exception permit. Therefore, no appearance before the Planning Commission is required.

Comm. Bueno inquired further of the parking conditions. Mr. Sabo indicated the parking was handled administratively for this site.

COMM. BUENO MADE A MOTION TO APPROVE the use variance request for ZBA-13-02 Sidwell #14-20-426-018 Creative Employment Opportunities Inc. for a **vocational school** that provides only vocational skills training activities for intellectually and developmentally disabled individuals, as the proposed use variance request meets Section 6.408 (C) Use Variance Unnecessary Hardship Standards numbers 2, 4, 6 and 7, AND COMM. MONROE SUPPORTED subject to the following condition:

1. Compliance with all applicable occupancy requirements and Pontiac business licensing requirements.

Comm. Hollis commented the limit for children is six. Petitioner indicated the state can approve up to 12 children, once she acquires the variance.

VOTE: AYES: Bueno, Monroe, Anderson, Todd, Slade.
 NAYS: Hollis.
 ABSTAIN: None.

Vote 5-1-0 for Approval of the Use Variance.

PUBLIC COMMENT: None.

MISCELLANEOUS: Comm. Anderson inquired of the special meeting for the Ewald Center. Mr. Bowdell indicated the property is not sold as of yet.

Comm. Hollis inquired if the first bidder was suing the City of Pontiac. Mr. Bowdell indicated maybe.

ADJOURNMENT: 8:00 p.m.