

ZONING BOARD OF APPEALS
TUESDAY, JUNE 21, 2011 @ 7:09 p.m.

CALL TO ORDER: 7:10 p.m.

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

ABSENT: Mr. Davis
 Mr. Ron Harmon

EXCUSED: None.

Also Present: James Sabo, Professional Planner
 Mark Hotz, City Attorney

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

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

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

MR. SABO: Davis?
(Not present)

MR. SABO: Harmon?
(Not present)

MR. SABO: Patton?
COMM. PATTON: Here.

MR. SABO: Slade?
COMM. SLADE: Here.

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

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

MR. SABO: You have a quorum.

COMMUNICATIONS: None.

ADOPTION OF MINUTES: August 3, 2010 and September 21, 2010.

COMM. BUENO MADE A MOTION TO APPROVE THE MINUTES FOR AUGUST 3, 2011 AND SEPTEMBER 21, 2011 AND COMM. MONROE SUPPORTED.

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

Vote 5-0-0 for approval of the 8-3-2011 and 9-21-2011 minutes.

MR. SABO: Property Description: 11-01 - 44405 Woodward Avenue.

Variance Request: Four separate variances are requested for this site as follows:

1. Temporary variance for Section 10.2(i) off-street parking within 300 feet of the site and not crossing a major thoroughfare. The request is for the proposed staff parking lot at 44428 Woodward Avenue, which will be temporarily non-compliant by crossing a major thoroughfare while the pedestrian bridge is being constructed across the Woodward Avenue right-of-way.
2. Variance for Section 7.38(1) required front yard setback along the east side of Woodward Avenue. The request is to allow the pedestrian bridge structure and support to occupy the entire front setback at 44428 Woodward Staff Parking Lot.
3. Variance for Section 7.38(1) required front yard setback along the west side of Woodward. The request is to allow the pedestrian bridge structure and support to occupy the entire front setback at 44405 Woodward Main Hospital Campus.
4. Variance for Section 7.38(6) Maximum allowable building height of 35 feet. The request is to exceed the maximum building height to allow construction of the new south patient tower building at 7-stories 202 feet.

Claimed Hardship or Practical Difficulty: Variance 1.) St. Joseph Mercy Oakland must demolish the existing parking deck to make room for the new patient tower. To replace the parking deck, St. Joseph is building a new staff parking lot across Woodward Avenue from St. Joseph that will be connected to the hospital by a new pedestrian bridge constructed over Woodward. A temporary variance is needed during construction because parkers will use a temporary pedestrian crosswalk to traverse Woodward Avenue to reach the hospital while the bridge is constructed.

Variance 2. & 3.) To construct a pedestrian bridge across the Woodward right-of-way that addresses the requirements of Section 10.2(i), the structure must occupy the entire front yard setback on both sides of Woodward Avenue east and west.

Variance 4.) The existing hospital site is land-locked and the existing parking deck at the south side of the site must be demolished to make room for the patient tower expansion. The new tower square footage requirement exceeds the space available after demolishing the parking deck. The only way to meet the new square footage requirements is to build vertically.

Staff Findings:

1. The subject site is zoned C-0. The existing and proposed use and conditions at St. Joseph Mercy Oakland are in compliance with the Zoning Ordinance, with the exception of the variance requests listed below.
2. The proposed hospital expansion has met or exceeded all other zoning requirements at the site, including parking, circulation, bulk and area requirements, setbacks, and landscaping.
3. The Future Land Use Map from Chapter 8 of the Pontiac Master Plan identifies the St. Joseph site as Office/Hospital/Healthcare. The Development Standards list "no maximum building height" and state that building height should be determined by location and design.

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.
- 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.
- c. The variance, if allowed, will not interfere with or injure the rights of others in the district.
- d. The alleged hardships or practical difficulties are unique and singular to the property of the party requesting the variance.
- 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.

Recommendation: To approve the variance request for ZBA 11-01 St Joseph Mercy Oakland Hospital as it meets the standards from Section 13.2(b) as noted above.

Applicant: Shannon Strevack, Vice President, had no additional comments.

Architect, Mr. Carpenter indicated they are seeking 116 feet correction and it is existing.

Jim Salas, Director of Services also present.

Comm. Patton inquired of the additional beds. Mr. Carpenter indicated there will be 136 beds, plus an additional 72 rooms added to the existing hospital.

Chairperson Slade inquired of MDOT discussions regarding overpass. Mr. Carpenter indicated he has a review meeting on July 13 and a final review will be scheduled and, thereafter, will apply for permits.

Comm. Monroe inquired of the demolition and staff access to the hospital. Mr. Carpenter indicated there will be a new parking area on the eastside of Woodward which has to be completed before demolition. There is a temporary crosswalk approved by MDOT and shuttles will be in place for the safety of the staff.

Comm. Bueno inquired of the mandates in place for the employees to utilize the bridge. Mr. Carpenter indicated the parking design will guide the staff to the bridge and there are barriers in place making it impossible to bypass the bridge. Comm. Bueno inquired of the design of the new parking are. Ms. Strevack indicated it will be parking for visitors also and it will be a new surface lot. The parking deck is being demolished.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING OPEN.

Walter Moore feels this is a no-brainer and will be very positive for the community and he also inquired of the construction phase and job openings for Pontiac residents and the process for applying. Ms. Strevack indicated a couple new positions will open with the new tower and will be posted on the hospital's website and open to any qualified applicants to apply.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING CLOSED.

COMM. PATTON MADE A MOTION TO APPROVE THE FOUR VARIANCES AS REQUESTED AND COMM. TAYLOR-BURKS SUPPORTED.

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

Vote 5-0-0 for approval of the four variances.

MR. SABO: Property Description: 11-02 - 791 Baldwin Avenue.

Variance Request: One variance is requested for this site as follows:

Variance for Section 7.44(1) Schedule of Regulations for required rear yard setback of 20 feet. The request is to allow the proposed Family Dollar building to encroach the rear yard set by 3 feet or to allow a 17 foot rear setback.

Claimed Hardship or Practical Difficulty: Variance 1.) Family Dollar Stores states that the existing parcel is irregularly shaped creating a situation that causes a standard rectangular building to encroach the rear setback at an angle along the southeast corner of the property line.

Staff Findings:

1. The subject site is zoned C-1. The proposed use complies with the Zoning Ordinance, with the exception of the variance requested.
2. The proposed Family Dollar Store meets or exceeded all other zoning requirements at the site, including circulation, bulk, setbacks, area provisions and landscaping.
3. If the applicant were to reduce the useable floor area of the proposed commercial building by as much as 2,000 square feet, it would be difficult to meet the off-street parking requirements based on the available space.

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.
- 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.
- c. The variance, if allowed, will not interfere with or injure the rights of others in the district.

- d. The alleged hardships or practical difficulties are unique and singular to the property of the party requesting the variance.
- 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.

Applicant - Jim Card, 6170 Rosedale Road, Indiana identified the small area of the encroachment on the overhead drawing.

No questions from the Board.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING OPEN.

None.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING CLOSED.

COMM. TAYLOR-BURKS MADE A MOTION TO APPROVE THE VARIANCE AS REQUESTED AND COMM. MONROE SUPPORTED.

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

Vote 5-0-0 for approval of the variance.

MR. SABO: Property Description: 11-03 - 37 Ottawa Drive.

Variance Request: One variance is requested for the site as follows:

1. Variance for Section 7.13(11) Maximum allowable fence height is four feet, non-opaque. The request is for permission to exceed the maximum allowable fence height by two feet and install a new fence in the front yard at six feet in height.

Claimed Hardship or Practical Difficulty: Variance 1.) The applicant states that the reason for a six foot fence is a matter of safety and security. Recently, the home was invaded by burglars and a four foot fence is very easy to penetrate. He states that he can show examples in the subdivision and city-wide where the zoning is flexible to accommodate the homeowners' needs.

Staff Findings:

1. The subject site is zoned R-1. The fence as proposed does not comply with the Zoning Ordinance provisions for fences in the front yard.
2. The current zoning does not prohibit a fence in the front yard. However, it does limit the height of the front yard fence to a four foot maximum.
3. The proposed fence otherwise complies with the provisions of the Zoning Ordinance regarding opaqueness.
4. The property and fence are within the Seminole Hills Historic District. Section 74-55 of the Preservation Ordinance requires review by the Historic District Commission.

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.
- 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.
- c. The variance, if allowed, will not interfere with or injure the rights of others in the district.
- d. The alleged hardships or practical difficulties are unique and singular to the property of the party requesting the variance.

- 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.

Recommendation: To deny the variance request for ZBA 11-03 37 Ottawa Drive as it does not appear to meet the standards for consideration from Section 13.2(b) as noted above.

Applicant - Walter Moore, has resided at present address for 25 years, and believes a four foot fence is insufficient for today's population and the neighborhood is changing. His home and other homes in the neighborhood have been burglarized, and the fence is a security issue for his property.

Mr. Moore stated that six foot fences are inundated in his neighborhood. Mr. Moore presented a photograph of the proposed fence and indicated his home is larger and it sits on two lots, and demonstrated on the overhead drawing the specifications of the fence.

Mr. Moore also indicated the fence would enhance their property value and indicated he is unsure of where the negativity arises and offended by the recommendation of the denial. Mr. Sabo clarified the reasoning for the denial per the ordinance.

Comm. Monroe commented the type of fence is very nice, but it may be prohibited for various reasons and inquired if his home was in the historical district. Mr. Sabo indicated he will be required to appear before the Historic Commission.

Comm. Bueno previously reviewed the material concerning this variance and indicated he lives on the same street and Mr. Moore is a good neighbor, and has a beautiful home. Mr. Bueno cited other homes with fences in the neighborhood, but does not believe the fencing will be approved by the Historic Commission. Comm. Bueno added that the six foot fence would block a neighbor in the rear and he is unsure how a six foot fence would look in that area.

Chairperson Slade also lives in the same historic district and visited the home several times to envision a fence in the proposed location and feels part of the fence that would be six feet is not visible. Esthetically it seems reasonable and there are other six foot fences in the area that are not well maintained. Also, Chairperson Slade feels the rear fence might create an obstruction for their next door neighbor.

Comm. Taylor-Burk inquired if they were putting a blockade fence across the front of their residence. Applicants indicated no.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING OPEN.

Daisy Moore reported that people walk on their property at all times and she does not feel comfortable in her own property. Ms. Moore feels that a fence would alleviate the trespassing on their property.

Mr. Moore urged the board to reach out to the residences, instead of the businesses and indicated his house was recently appraised at 60,000 and he refuses to let someone else dictate the value of his property. Mr. Sabo notified Mr. Moore that the Historic Commission meets on July 12, 2011.

Jeff, 198 East Iroquois, commented the next door neighbor's hedges go directly to the street. He appeared this evening to view the proposed fence and is in support of the variance. He believes it will be an improvement to the neighborhood.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING CLOSED.

TAYLOR-BURK MADE A MOTION TO APPROVE THE VARIANCE AS REQUESTED AND THE APPLICANT PRESENT BEFORE THE HISTORIC COMMISSION FOR THEIR APPROVAL ALSO AND COMM. MONROE SUPPORTED.

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

Vote 4-1-0 for approval of the variance and presentation before the Historic Commission for their approval.

PUBLIC COMMENT: None.

MISCELLANEOUS: Comm. Patton announced his resignation because he will be moving out of the area and thanked the members for a chance to serve the community. His resignation was accepted by Chairperson Slade and she thanked him for his services and wished him well, as did the other commissioners.

Chairperson Slade noted election for a vice-chairperson and one new member needs to be added on the next agenda. There also needs to be a review of the procedures for absent board members.

ADJOURNMENT: 8:16 p.m.