

ZONING BOARD OF APPEALS
TUESDAY, SEPTEMBER 17, 2013 @ 7:00 P.M.

CALL TO ORDER: 7:10 p.m.

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

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

MR. SABO: Bueno?

MR. BUENO: Here.

MR. SABO: Todd?

(Not present for roll call)

MR. SABO: Monroe?

MS. MONROE: Here.

MR. SABO: Hollis?

MS. HOLLIS: Present.

MR. SABO: Anderson is excused.

Taylor?

MR. TAYLOR: Here.

MR. SABO: Slade?

MS. SLADE: Present.

EXCUSED: Anderson.

ABSENT: None.

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

COMMUNICATIONS: None.

ADOPTION OF MINUTES: August 20, 2013.

Correction on page 2, under Vote, delete "Monroe" under abstain.

COMM. HOLLIS MADE A MOTION FOR APPROVAL OF THE MINUTES FOR AUGUST 20, 2013 AND COMM. BUENO SUPPORTED.

CHAIRPERSON SLADE: Roll call, please.

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

Vote 4-0-1 for approval of the October 20, 2013 Minutes.

OLD BUSINESS: None.

NEW BUSINESS: **6.1 ZBA-13-08**

Finding of Facts presented by Mr. Bowdell.

(Comm. Todd entered during presentation)

MR. BOWDELL: **Property Description:** 1425 Giddings Road,
Sidwell# 14-15-126-028.

Variance Request: A Dimensional Variance Request is as follows:

Section 4.103(A)(1)(a) Fence or Wall Height in residential district. Applicant is seeking to construct a six foot fence within the front setback of the property.

Claimed Practical Difficulty:

The applicant stated that: "The fence type and height that is being proposed in front of the subject property is the same type and height of fence that exists along the frontage of the main campus property located at 1300 Giddings Road. This fence will also be consistent in height with the fence that exists across the street from the subject property which is also within a residential district."

It appears that the ordinance inadvertently penalizes the applicant. Although the property is located in a residential zoning district, the use of the property is not being used for a residential purpose. It appears that the intent of this section

of the ordinance is to help control the front and side yard fence height in residential neighborhoods and does not necessarily apply to larger permitted/special exception uses within the zoning district.

Staff Findings:

1. The property is currently zoned R1A, Medium Lot One Family Dwelling District.
2. Maximum fence height in the front yard of a residentially zoned property is four feet.
3. The proposed fence type and height is consistent to the applicant's existing main campus.

Authorization:

Section 6.407 Dimensional Variance

Authority. 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:

1. Compliance with the strict letter of the restrictions governing area, setback, frontage, height, bulk, lot coverage, density or other dimensional or construction standard will unreasonably prevent the owner from using the property for a permitted purpose or will render conformity with such restrictions unnecessarily burdensome.

May meet the standard. Although the applicant could reduce the fence height to meet the zoning ordinance regulations, it would not match the exiting fence height and type at the main campus. The applicant is seeking a cohesive look between the main campus and their new preparatory school.

2. A grant 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.

Meets this standard. The proposed six foot fence would provide the applicant with a cohesive look that would match their existing main campus fence. In the immediate surrounding area there are other properties with fences at a six foot height. The proposed fence appears to be consistent to the surrounding area and would not be detrimental.

3. The plight of the applicant is due to the unique circumstances of the property.

May meet this standard. The plight of the applicant is unique due to the fact that the use of the property is not a residence, it is a school. This school is an expansion of a larger main campus that has an approved site plant and six foot fence height.

4. The problem is not self-created.

May meet this standard. The problem is self-created from the standpoint that the applicant is requesting a six foot fence. However, being consistent to their existing campus, the fact that a six foot fence is already constructed is not self-created.

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

Meets this standard. It appears that the spirit of the ordinance will be observed. Although the proposal meets the definition and classification of a fence, the proposal appears to be more comparable to a landscape element/decorative feature. The proposed fence does not appear to negatively affect public safety or welfare.

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

Meets this standard.

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

Meets this standard. On Jul 10, 2013, the Planning Commission approved the Special Exception Permit use of a "school" for this property.

Recommendation:

To approve the proposed two foot dimensional variance request (ZBA-13-08) for Section 4.103(A)(1)(a) of the Pontiac Zoning Ordinance, as it appears to meet the approval standards for practical difficulty described in Section 6.407 of the Zoning Ordinance.

Applicant not present.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING OPEN.

None.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING CLOSED.

COMM. BUENO MADE A MOTION TO APPROVE THE PROPOSED TWO FOOT DIMENSIONAL VARIANCE REQUEST (ZBA-13-08) FOR SECTION 4.103(A)(1)(A) OF THE PONTIAC ZONING ORDINANCE, AS IT APPEARS TO MEET THE APPROVAL STANDARDS FOR PRACTICAL DIFFICULTY DESCRIBED IN SECTION 6.407 OF THE ZONING ORDINANCE AND COMM. HOLLIS SUPPORTED.

CHAIRPERSON SLADE: Roll call, please.

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

Vote 6-0-0 for approval of the Dimensional Variance (ZBA 13-08)

6.1 ZBA-13-09; ZBA 13-12; ZBA 13-13; ZBA 13-14

Finding of Facts presented by Mr. Sabo.

Chairperson Slade inquired why there was no address of Jessie Street. Mr. Sabo indicated once a building is removed, the address is removed.

Mr. Sabo indicated the following properties all have the same finding of facts with differences only in numbers and the Staff finding #4 is different for each case.

MR. SABO: **Property Description:** 000 S. Jessie, Sidwell# 14-33-133-013; 289 South Paddock, Sidwell# 14-33-137-007; 123 Perkins Street, Sidwell #14-33-135-004; 270 South Paddock, Sidwell #14-33-137-005, respectively.

Variance Request: A Dimensional Variance Request is as follows:

(000 S. Jessie Street) Dimensional variances for Section 2.304(b) Dimension and Design Standards: Minimum Lot Width and Minimum Lot Area. The minimum required lot width is 60 feet in the R-1 One-Family Dwelling District. The existing lot width along S. Jessie Street is 44.0 feet. The applicant is requesting a dimensional variance to decrease the minimum lot width from the required 60 feet to 44 feet. A variance of 16 feet is requested.

(289 S. Paddock) Dimensional variances for Section 2.304(b) Dimension and Design Standards: Minimum Lot Width and Minimum Lot Area. The minimum required lot width for a corner lot in the R-1 One-Family Dwelling District is 75 feet. The existing lot width along S. Paddock Street is 42.0 feet. The applicant is requesting a dimensional variance to decrease the minimum corner lot width from the required 75 feet to 42 feet. A variance of 33 feet is requested.

(123 Perkins Street) Dimensional variances for Section 2.304(b) Dimension and Design Standards: Minimum Lot Width and Minimum Lot Area. The minimum required lot width is 60 feet in the R-1 One-Family Dwelling District. The existing lot width along 123 Perkins Street is 40.0 feet. The applicant is requesting a dimensional variance to decrease the minimum lot width from the required 60 feet to 40 feet. A variance of 20 feet is requested.

(279 S. Paddock Street) Dimensional Variances for Section 2.304(b) Dimension and Design Standards: Minimum Lot Width and Minimum Lot Area. The minimum required lot width is 60 feet in the R-1 One-Family Dwelling District. The existing lot width along S. Paddock Street is 42.0 feet. The applicant is requesting a dimensional variance to decrease the minimum lot width from the required 60 feet to 42 feet. A variance of 18 feet is requested.

Claimed Practical Difficulty:

(000 S. Jessie, 289 S. Paddock 123 Perkins Street, 279 S. Paddock) Currently the site is a vacant existing legal non-conforming lot on S. Paddock Street.

Additionally, the applicant states they are not able to acquire sufficient adjacent land to meet the ordinance lot area standards. The applicant also states that while the lot is now non-conforming (legally), it was created in the past and at some point in time was a legal and legitimate buildable lot. For those reasons, the applicant requests that the Zoning Board of Appeals grants the dimensional variance requests for lot width and lot area standards.

Staff Findings:

1. The subject site is zoned R-1.
2. The proposed construction of a single family house on the existing non-conforming lot would meet all other zoning ordinance standards for setbacks, design, appearance, floor area, building size and height.
3. The existing non-conformance lot does not meet the zoning ordinance provisions for minimum lot width and minimum lot area for Section 2.304(b) or Section 6.506(c) for construction of a single family house.
4. The lot was legally created with a lot width of 44 feet and lot area of 4,400 square feet.(000 S. Jessie)
The lot was legally created with a lot width of 42 feet and lot area of 4,410 square feet.(289 S. Paddock)
The lot was legally created with a lot width of 40 feet and lot area of 4,650 square feet.(123 Perkins)
The lot was legally created with a lot width of 42 feet and lot area of 4,410 square feet.(279 S. Paddock)
5. There are other similar sized lot sin the immediate neighborhood.

6. Without a variance from the Zoning Board of Appeals, it will be difficult for the applicant/property owner to acquire sufficient land to meet the current zoning ordinance provisions for lot area and lot width.

Section 6.407 Dimensional Variance

Authority. 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:

1. Compliance with the strict letter of the restrictions governing area, setback, frontage, height, bulk, lot coverage, density or other dimensional or construction standard will unreasonably prevent the owner from using the property for a permitted purpose or will render conformity with such restrictions unnecessarily burdensome.

Meets the standard. Without a variance, a single family dwelling cannot be built.

2. A grant 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.

Meets this standard. A variance provides substantial justice and a lesser variance provides no relief.

3. The plight of the applicant is due to the unique circumstances of the property.

Meets this standard. There are specific unique circumstances related to the property.

4. The problem is not self-created.

Meets this standard. The lot size and lot dimensions are not self-created.

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

Meets this standard. Spirit of the ordinance will be observed.

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

Meets this standard. For supply of light/air, traffic, safety, welfare.

7. Compliance with standards for discretionary decisions as contained in Section 6.303. N/A.

Recommendation:

(000 S. Jessie) To approve the dimensional variance request for ZBA-13-09, No address (000 S. Jessie Street for Section 2.304(b) Dimension and Design Standards to decrease the required minimum lot width from 60 feet to 44 feet; a variance of 16 feet; And, to approve the dimensional variance request for Section 6.506(c) Application to Lots of Record to decrease the required minimum lot area from 4,800 square feet to 4,400 square feet; a variance of 400 square feet; as the request appears to meet the standards for practical difficulty from Sectional 6.407 of the Zoning Ordinance.

(289 S. Paddock) To approve the dimensional variance request for ZBA-13-12, 289 S. Paddock Street for Section 2.304(b) Dimension and Design Standards to decrease the required minimum corner lot width from 75 feet to 42 feet; a variance of 33 feet; And, to approve the dimensional variance request for Section 6.506(c) Application to Lots of Record to decrease the required minimum lot area from 4,800 square feet to 4,410 square feet; a variance of 390 square feet; as the request appears to meet the standards for practical difficulty from Sectional 6.407 of the Zoning Ordinance.

(123 Perkins) To approve the dimensional variance request for ZBA-13-13, 123 Perkins Street for Section 2.304(b) Dimension and

Design Standards to decrease the required minimum lot width from 60 feet to 40 feet; a variance of 20 feet; And, to approve the dimensional variance request for Section 6.506(c) Application to Lots of Record to decrease the required minimum lot area from 4,800 square feet to 4,650 square feet; a variance of 150 square feet; as the request appears to meet the standards for practical difficulty from Sectional 6.407 of the Zoning Ordinance.

(279 S. Paddock) To approve the dimensional variance request for ZBA-13-14, 270 S. Paddock Street for Section 2.304(b) Dimension and Design Standards to decrease the required minimum lot width from 60 feet to 42 feet; a variance of 18 feet; And, to approve the dimensional variance request for Section 6.506(c) Application to Lots of Record to decrease the required minimum lot area from 4,800 square feet to 4,410 square feet; a variance of 390 square feet; as the request appears to meet the standards for practical difficulty from Sectional 6.407 of the Zoning Ordinance.

Representative for Petitioner, Jeff Brady, 79 Oakland Avenue, Pontiac, had no additional comments.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING OPEN.

Nicole Clark, 285 S. Paddock commented on 279 S. Paddock there is not a lot of land between the two houses and her fence was damaged in the demolition and she had to repair it herself. Mr. Brady assured her that her fence would not be damaged any further and presented her with his pertinent information for any concerns she may have in the future.

Mr. Brady agreed the area was small, but it was the allowable building space according to the code.

Chairperson Slade inquired if this was a smaller footprint. Mr. Brady indicated yes, a room will be over the garage.

Paula Dexter, had concerns about the east side of the street. Mr. Brady indicated the house would be on the west side. It was misprint. It should have indicated the west side.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING CLOSED.

Comm. Hollis agreed with the frustrations of Ms. Clark concerning her fence and apologized for the misinformation that

was given to Ms. Clark concerning how to address the property party for this issue.

Comm. Todd commented new housing hopefully will raise the value and conditions of the neighborhood.

Comm. Taylor suggested that the developer work with the building before issues arise.

COMM. BUENO MADE A MOTION TO APPROVE THE FOLLOWING VARIANCES AND COMM. TODD SUPPORTED.

(000 S. Jessie) To approve the dimensional variance request for ZBA-13-09, No address (000 S. Jessie Street for Section 2.304(b) Dimension and Design Standards to decrease the required minimum lot width from 60 feet to 44 feet; a variance of 16 feet; And, to approve the dimensional variance request for Section 6.506(c) Application to Lots of Record to decrease the required minimum lot area from 4,800 square feet to 4,400 square feet; a variance of 400 square feet; as the request appears to meet the standards for practical difficulty from Sectional 6.407 of the Zoning Ordinance.

(289 S. Paddock) To approve the dimensional variance request for ZBA-13-12, 289 S. Paddock Street for Section 2.304(b) Dimension and Design Standards to decrease the required minimum corner lot width from 75 feet to 42 feet; a variance of 33 feet; And, to approve the dimensional variance request for Section 6.506(c) Application to Lots of Record to decrease the required minimum lot area from 4,800 square feet to 4,410 square feet; a variance of 390 square feet; as the request appears to meet the standards for practical difficulty from Sectional 6.407 of the Zoning Ordinance.

(123 Perkins) To approve the dimensional variance request for ZBA-13-13, 123 Perkins Street for Section 2.304(b) Dimension and Design Standards to decrease the required minimum lot width from 60 feet to 40 feet; a variance of 20 feet; And, to approve the dimensional variance request for Section 6.506(c) Application to Lots of Record to decrease the required minimum lot area from 4,800 square feet to 4,650 square feet; a variance of 150 square feet; as the request appears to meet the standards for practical difficulty from Sectional 6.407 of the Zoning Ordinance.

(279 S. Paddock) To approve the dimensional variance request for ZBA-13-14, 270 S. Paddock Street for Section 2.304(b) Dimension and Design Standards to decrease the required minimum lot width

from 60 feet to 42 feet; a variance of 18 feet; And, to approve the dimensional variance request for Section 6.506(c) Application to Lots of Record to decrease the required minimum lot area from 4,800 square feet to 4,410 square feet; a variance of 390 square feet; as the request appears to meet the standards for practical difficulty from Sectional 6.407 of the Zoning Ordinance.

CHAIRPERSON SLADE: Roll call, please.

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

Vote 6-0-0 for approval of the Dimensional Variance (ZBA 13-09, ZBA-13-12; ZBA 13-13; ZBA 13-14)

Public Comment: None.

Miscellaneous: None.

Adjournment: 7:45 p.m.