

ZONING BOARD OF APPEALS
TUESDAY, JUNE 18, 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

Mr. Lee Todd

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

MR. BOWDELL: Hollis?

MS. HOLLIS: Present.

MR. BOWDELL: Taylor?

MR. TAYLOR: Here.

MR. BOWDELL: Bueno?

MR. BUENO: Here.

MR. BOWDELL: Monroe?

MS. MONROE: Present.

MR. BOWDELL: Todd

MR. TODD: Here.

MR. BOWDELL: Anderson?

MR. ANDERSON: Here.

MR. BOWDELL: Slade?

MS. SLADE: Present.

EXCUSED: None.

ABSENT: None.

ALSO PRESENT: Mr. Gordon Bowdell

COMMUNICATIONS: None.

ADOPTION OF MINUTES: April 16, 2013.

COMM. BUENO MADE A MOTION FOR APPROVAL OF THE MINUTES FOR APRIL 16, 2013 AND COMM. HOLLIS SUPPORTED.

CHAIRPERSON SLADE: Roll call, please.

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

Vote 6-0-1 for approval of the April 16, 2013 Minutes.

OLD BUSINESS: None.

NEW BUSINESS: 6.1 ZBA-13-04

Finding of Facts presented by Mr. Bowdell.

MR. BOWDELL: Property Description: 888 Enterprise Drive.

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

Section 2.203 Permitted Use by District. The request is to allow a type of use that is not a principal permitted use in the C-4 Suburban Business zone district. The proposed use is a public charter school; Arts and Technology Academy of Pontiac. It is identified in the zoning ordinance as a primary and secondary school facility.

The applicant intends to occupy and convert a former office building space into classroom space, school offices, and a new gymnasium space. The proposed school use is within an enclosed building. However, they are proposing several outdoor improvements to the site.

Specifically, they intend to build an outdoor basketball court, outdoor tennis court and some playground amenities like 4-square.

Claimed Undue Hardship: Use Variance. The site is currently vacant and was a former information technology office administration building. The applicant claims that the undue

hardship is that they have outgrown their current location along Woodward Avenue in the downtown district. Additionally, they have attempted to purchase other former school buildings from the School Board and they have not been able to negotiate a mutually acceptable agreement to purchase a former school building.

The applicant further states that their current location is not conducive to academic activities. They are located in the downtown commercial district and the surrounding activities sometimes conflict with their academic activities, such as noise from neighboring uses. The applicant believes that the 888 Enterprise Drive location is a more appropriate location for their school building. They claim that it is more of a campus style atmosphere and more suited to their intended use.

The applicant states that their proposed primary and secondary school use will reoccupy a vacant and underutilized building. The applicant states that they understand the intent of the Zoning Ordinance to separate uses, such as suburban business types uses from other uses. However, the applicant believes that the ordinance does not intent to imply that a primary or secondary school in this location with these circumstances is not an appropriate use.

Staff Findings:

1. The subject site is zoned C-4 Suburban Business. The proposed uses do not comply with the Zoning Ordinance as a Primary and Secondary School is not a principal permitted use in the C-4 zone district.
2. The proposed Arts and Technology Academy of Pontiac Charter School use meets the Zoning Ordinance definition of a Primary and Secondary School use.
3. The Arts and Technology Academy school use is a principal permitted use at its existing location in the C-3 Commercial Corridor zone district.

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.

Does not meet the standard, the zoning ordinance provides several viable uses for the subject property in the C-4 zone district.

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

Does not meet the standard, the plight of the property is not particularly peculiar or unique. It is a vacant office building that has several options for permitted principal uses other than a primary or secondary school

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

Meets the standard, the proposed school operation is not substantially different than an office type use as it occurs mostly indoors. Additionally, a school use is mostly a Monday to Friday, 7 a.m. to 4 p.m. operation. However, recess time and other outdoor recreation activities will occur outdoors if a use variance is granted. Such activities will not likely alter the essential character of the neighborhood.

4. The problem is not self-created.

Does not meet the standard, the problem is self-created. The subject property does not create any specific problems for the applicant. The problem is the result of a request for a non-conforming use.

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

Does not meet the standard, the intent of the ordinance is to prohibit primary and secondary school use in the C-4 zone district. However, the proposed use does not appear to have negative effects on public safety or welfare.

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 appear to comply with 4 of 7 considerations for findings in the Zoning Ordinance. However, the decision for a use variance lies with the Zoning Board of Appeals and the ZBA may wish to discuss use variance details in greater detail when making a determination for a use variance.

RECOMMENDATION: To consider under what circumstances a use variance request may be appropriate for zba-13-04 sidwell #14-35-453-011, Arts and Technology Academy of Pontiac for a primary and secondary school use.

Petitioner, September Williams, currently director of school for 11 years, wish to expand their operations in education, currently have grades K-8 with extra curriculum activities, looking to expand further in the near future.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING OPEN.

Doris Taylor, 314 Nelson, in support of the proposal and commented they have outgrown their current building and also there is a bar and lots of traffic and speeding at their current location.

George Dearing commented the proposed building has been vacant for five years and is in support of the proposal and welcomes the school into the neighborhood.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING CLOSED.

Comm. Bueno commented a newer subdivision was developed in the area and he is not sure a use variable is applicable to the area.

Comm. Monroe inquired of sufficient buffering for play area. Ms. Williams indicated it will be fenced in the rear, because minimum traffic in area.

Comm. Anderson commented he is in favor of the proposal and GM has a school also in the same area.

Comm. Hollis in support of proposal and glad other commissioners are supporting the proposal.

Chairperson Slade inquired of the changes to the building exterior and interior. Petitioner indicated the interior will change only. Chairperson Slade commented that it is a big project and the commissioners have a tough decision to make and it is not this Board's role to change zoning.

Comm. Hollies inquired if the proposal is approved, how will it affect the use variance ordinance. Mr. Bowdell indicated the board needs to establish a hardship from the seven criteria and include it in a motion.

Chairperson Slade commented their training covered these issues. Comm. Hollis indicated she has attended the training and suggested the board take a vote.

Comm. Monroe commented that a use variance could attract or distract potential businesses.

Comm. Taylor suggested that the Board think out of the box, experience something new and commit to business friendly agenda.

Comm. Todd indicated he could argue contrary to staff findings on most of the seven criteria.

- c. Extended, enlarged, relocated, or structurally altered.

Claimed Practical Difficulty:

The applicant has stated the following: "The location of the store in question is one block before the start of M-59. The speed of drivers escalates as they approach the location. Therefore, a larger sign is necessary to allow people to read what the store has to offer and what they have in inventory.

An additional 2 feet of signage will make a difference in the wording and spacing of the text on the face of the sign. We find it necessary to modify the sign for these reasons, in addition to the fact that the store has spent a significant amount of money for a facelift on the front of the store.

For the interest of the City of Pontiac, this remodeled business benefits the City and the community, thriving to employ citizens and provide necessities to those in need, especially those who have EBT and WIC benefits."

Staff Findings:

1. The subject parcel is zoned (C-1) Local Business District. Pole signs are not permitted in this district or in any other zoning district within the City of Pontiac.
2. The currently sign is legal nonconforming and a variance would be required for expansion.
3. Permitted ground signs in this district would have a maximum area of 80 square feet.
4. The property is located on East Huron which is a four lane one-way street that becomes an entrance to M-59, post marked speed limit - 40 MPH.
5. In 2012, Huron Liquor Shop was issued a permit for updated façade replacement and new canopy.

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 standards will unreasonably prevent the owner from using the property for a permitted purpose or will render conformity with such restrictions unnecessarily burdensome.

Does not meet this standard - the pole sign is an existing nonconforming sign and restricting the expansion of the sign would not create an unnecessary burdensome on the applicant.

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.

Does not appear to meet this standard - This variance would not do substantial justice. The sign is already existing and nonconforming. A lesser variance that does not include expansion would appear to be more appropriate.

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

May meet the standard - The property is located on a major thoroughfare that leads to the entrance of M-59. However, this is not a "new" circumstance or hardship for the property. The site has been in existence with the existing sign, and does not appear that any unique circumstances have changed to result in a larger sign.

4. The problem is not self-created.

Does not meet the standard - Applicant is requesting for a larger sing.

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

Does not meet the standard - The intent of the ordinance is to reduce/eliminate pole signs, not to expand upon them.

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

~~Meets the standard:~~

7. Compliance with any standards for discretionary decisions contained in Section 6.303.

N/A

RECOMMENDATION: To deny the variance request for Section 5.108(A)(3) to structurally alter and expand a legal nonconforming sign as it does not appear to meet the standards of approval from Section 6.407 of the Zoning Ordinance

Or

To approve a lesser variance for Section 5.108(A)(3) to structurally alter without expansion of a legal nonconforming sign, so to allow structural alterations and updates to the existing nonconforming sign without expansion (sign area to remain at 80 square feet).

Representative from Sign Company - Joe Hajjar, believes a two foot expansion on the sign is needed and does not interfere or block any other businesses in the area. He also believes the sign will enhance the business along with the other renovations at the store.

Petitioner, Sam Kizy, indicated his business has been there since 1999, and they have serviced the community very well and has provided good service through all his years at the location. He indicated he has done renovations interior and exterior at his business for beautification purposes. Mr. Kizy indicated the sign is needed so motorist can better identify his location.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING OPEN.

Mike McGinnis, 26 Union Street, indicated he is familiar with the property and appreciates the notification that was mailed. Mr. McGinnis commented that the sign already exists under unique circumstances and complimented the owners on the great renovations interiorly and exteriorly. He feels the sign should

Vote 7-0-0 for Approval of the Dimensional Variance.

PUBLIC COMMENT: None.

MISCELLANEOUS: Mr. Gordon discussed the One Stop Ready meetings included in packet.

ADJOURNMENT: 8:35 p.m.