

ZONING BOARD OF APPEALS
TUESDAY, MARCH 26, 2013 @ 7:00 P.M.

CALL TO ORDER: 7:07 p.m.

COMMISSIONERS: Chairperson Laurie Slade
Mr. Sam Anderson, Jr.
Mr. Carlos Bueno
Ms. Patricia Hollis
Ms. Debra Monroe (excused)
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: Taylor?

MR. TODD: Here.

MR. SABO: Todd?

MR. TODD: Here.

MR. SABO: Monroe is excused.

MR. SABO: Hollis?

MS. HOLLIS: Present.

MR. SABO: Anderson?

MR. ANDERSON: Here.

MR. SABO: Slade?

MS. SLADE: Present.

EXCUSED: Monroe

ABSENT: None.

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

COMMUNICATIONS: None.

ADOPTION OF MINUTES: December 18, 2012.

COMM. BUENO MADE A MOTION FOR APPROVAL OF THE MINUTES FOR DECEMBER 18, 2012 AND COMM. HOLLIS SUPPORTED.

CHAIRPERSON SLADE: Roll call, please.

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

Vote 6-0-0 for approval of the December 18, 2012 Minutes.

OLD BUSINESS: None.

NEW BUSINESS: 6.1 ZBA-13-01

Finding of Facts presented by Mr. Sabo.

MR. SABO: Property Description: 1460 North Perry Street, South Paddock, Sidwell# 14-15-451-001.

Variance Request: Dimensional Variance related to the lot split. Variance for Dimensions is requested as follows:

Dimension Variance for Section 2.301 Required Rear Yard Setback for the existing structure on the newly created lot. The minimum required rear yard setback is 30 feet in the R-1, One Family Dwelling District. The applicant is requesting a dimensional variance to decrease the minimum rear setback from the required 30 feet to 24 feet. A variance of 6 feet is requested.

Dimensional Variance for Section 4.305(A)(E) Parking Lot Layout and Design Standards. An adequate ingress and egress to the parking lot by means of clearly limited and defined drives of at least 20 feet in width shall be provided. The applicant is requesting a dimensional variance to reduce the ingress and egress width to 0.0 feet.

Dimensional Variance for Section 4.303 Parking Requirements, Minimum Parking Required. The minimum number of required off-street parking spaces shall be determined in accordance with Section 4.303 Table 8. The applicant is requesting a dimensional variance to reduce the number of required parking spaces on Table 8 to 0.0 spaces.

Claimed Practical Difficulty: (Dimensional Variance) Currently the site is part of the city owned Galloway Park along North Perry Street.

The applicant has stated that the variance request is based on practical difficulty related to requirements of the State of Michigan Department of Natural Resources. The State DNR Trust Fund Grant encumbrances require that any portion of Galloway Park that was enhanced or funded with MDNR Trust Funds monies shall remain for public use in perpetuity. The City of Pontiac determined that a small area of the park, including the David Ewalt Center Building has not been funded by any MDNR Trust Fund grant money. The small lot and Ewalt building could be made available for sale at market value. The lot would have to be split from the remainder of the parcel.

An application for lot split for the David Ewalt Center Building was reviewed and approved with conditions at the February 6, 2013 meeting of the Planning Commission. The lot split was conditioned upon obtaining 3 variances from the Zoning Board of Appeals.

The applicant has stated that the practical difficulty related to all 3 variances requested is directly related to specific Michigan DNR Trust Fund Grant encumbrances. The State requires that all trust fund financed by Galloway Park improvements and land must be dedicated for public use in perpetuity. That public use encumbrance creates the practical difficulty for all the requested variances.

As a result, the required ingress/egress access to an off-street parking lot cannot be provided. The required off-street parking spaces cannot be provided via a shared parking agreement or an on-site parking lot area. Additionally, the required rear yard setback cannot be provided because the proposed lot dimensions are the maximum allowable by the Trust Fund encumbrances. As we stated, the Michigan DNR Trust Fund grant requirements impose a practical difficulty with respect to the Ewalt Center-Galloway Park lot split.

Staff Findings:

1. The subject site is zoned R-1.
2. The proposed David Ewalt Community Center building does not comply with the Zoning Ordinance provisions for rear

setback, ingress/egress access, or the minimum parking space requirements for off-street parking.

3. The proposed lot split is subject to the encumbrances of the State of Michigan DNR Trust Fund Grant.

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.

Meets the standard, without a variance property cannot be split or divided.

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 the 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 the standard, there are unique circumstances related to the property.

4. The problem is not self-created.

Meets the standard, encumbrances not self-created.

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

Meets the standard, spirit of the ordinance will be observed.

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

Meets the standard for supply of light/air, traffic, safety, welfare.

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

N/A.

RECOMMENDATION: To approve the dimensional variance request for ZBA 13-01, 1460 North Perry Street for Section 2.301 Required Rear Yard Setback to decrease the minimum rear setback from the required 30 feet to 24 feet, a variance of 6 feet; Section 4.305 (A) (E) Parking Lot Layout and Design Standards to reduce the ingress and egress access drive width from 20 feet to 0.0 feet, a variance of 20 feet; Section 4.303 Parking Requirements, Minimum Parking Required to reduce the number of required parking spaces on Table 8 to 0.0 spaces, a variance to eliminate required off-street parking; as the request appears to meet the standards for practical difficulty from Section 6.407 of the Zoning Ordinance.

Petitioner Joseph Sobota, M.P.A, City of Pontiac Community Development; appeared and indicated the city has received three grants totaling \$325,000 and these funds would be used for road improvements and parking areas on public and community projects only. The process is a long endeavor. Interested parties are willing to purchase and open up community centers, but the city is unable to meet restrictions set by ZBA. This lot split was granted from the Planning Commission conditioned on the variances outlined tonight.

Chairperson Slade indicated they need documentation to support the grant requirements. Petitioner agreed to provide documentation.

Comm. Anderson inquired if the property was sold. Petitioner indicated the city has received a substantial offer and failed to establish a parking agreement. City is now working with a second offer. Petitioner is unsure of the plans of the new owners.

Comm. Anderson suggested the potential owners meet with Galloway Lake Estates Community and enlighten the residents of their proposed plans. Petitioner indicated once property is sold, he will forward that information to the new owner.

Comm. Hollis inquired if they were selling the building without the parking. Petitioner indicated there is available parking, not exclusively for the new property owners.

Chairperson Slade inquired if the new owners could enter into an agreement for shared use of the parking lot. Petitioner indicated yes, but it must remain open for public use.

Comm. Bueno indicated there are too many contingencies and unknowns and liability issues regarding the parking. Petitioner indicated the city is liable and cannot be excused.

Comm. Bueno inquired if it was gravel or paved, who will maintain it. Petitioner indicated it is both gravel and paved portions and the city would maintain the parking lot.

Comm. Bueno inquired of the Planning Commission's input. Chairperson read PF-13-11 into the record from the Planning Commission meeting. Comm. Hollis recalls the discussions at the Planning Commission, but was unsure if the use was discussed.

Comm. Todd commented there are not many uses other than a community center and inquired if it was non-profit or for profit. Comm. Todd was also uncomfortable with the parking issues.

Comm. Bueno inquired how the city was marketing the property. Petitioner indicated it is not being actively marketed, received several calls and the property is being shown to potential buyers, who are aware of the parking issues.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING OPEN.

Dorothy Lacoby, commented she received a letter and was unsure how it would affect her property and the surrounding area, but from the comments she feels it may not affect her.

Nicholas P, commented it might pass at this level, but not at other levels and there are a lot of available properties around Pontiac and wished the City good luck on selling the proposed property.

Ms. Kirkendorf inquired if anything would change around the area such as fishing and baseball.

CHAIRPERSON SLADE DECLARED PUBLIC HEARING CLOSED.

Chairperson Slade indicated the variance goes with the property and from her reading of the Planning Commission minutes, they were not recommending a variance.

Comm. Anderson still concerned with the use of the building.

COMM. HOLLIS MADE A MOTION FOR APPROVAL To approve the dimensional variance request for ZBA 13-01, 1460 North Perry Street for Section 2.301 Required Rear Yard Setback to decrease the minimum rear setback from the required 30 feet to 24 feet, a variance of 6 feet; Section 4.305 (A)(E) Parking Lot Layout and Design Standards to reduce the ingress and egress access drive width from 20 feet to 0.0 feet, a variance of 20 feet; Section 4.303 Parking Requirements, Minimum Parking Required to reduce the number of required parking spaces on Table 8 to 0.0 spaces, a variance to eliminate required off-street parking; as the request appears to meet the standards for practical difficulty from Section 6.407 of the Zoning Ordinance AND COMM. TODD SUPPORTED.

Question on the motion - Comm. Anderson inquired if there were other options. Chairperson Slade indicated yes. Comm. Bueno indicated whatever is decided, guidelines would have to follow.

CHAIRPERSON SLADE: Roll call, please.

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

Vote 6-1-0 for approval of the Dimensional Variance.

PUBLIC COMMENT: Mr. Sobota thanked the Board for their consideration this evening.

Ms. Kirkendorf, property manager for Greater Perry Place, reported that the pond is leaking onto the property and made a

complaint to Building and Safety and was directed to attend this meeting for information. Mr. Sabo will direct her to the proper person.

MISCELLANEOUS: None.

ADJOURNMENT: 8:06 p.m.