

City of Dearborn
Zoning Board of Appeals
Thursday, May 22, 2008
Minutes

Called to Order: 5:32 p.m.

Commissioners Present: Susan Binder, Kenneth Gusfa, Donald Hostetler and Roy Van Oast (Acting Chairperson).

Commissioners Absent: Gary Jefferson.

Technical Advisors: Thomas Paison, Zoning Administrator, Steve Guile, Deputy Director, Economic and Community Development, and John Tanner, Corporation Counsel.

Approval of Minutes. Motion by Commissioner Hostetler, supported by Commissioner Gusfa that the minutes of the previous regular meeting of Thursday, April 24, 2008 are approved as recorded. Motion carried unanimously.

Tabled Appeal #07-189

From Yasser Chami, 7835 Steadman, Dearborn, MI requesting to retain a covered patio built without permits or variances. The property size being 36' x 111', in a One-Family Residential (RA) zoning district at:

7835 Steadman

David Ghannam, Attorney, and Yasser Chami, 7835 Steadman, Dearborn were introduced.

Mr. Paison read the staff reported dated May 1, 2008 into the record. Mr. Chami has been before the board several times since November 2007 and has been postponed because of the requests for more than 3 board members be present to rule on this appeal. Mr. Paison's report did not find practical difficulty with this patio because of there were and are existing conforming alternatives to have built a patio that was smaller. Mr. Paison advised that the Board's role is not to punish the applicant for having failed to follow code and apply for permits. The appeal should be reviewed under the same standards as any similar appeal, as if the variances had been applied for prior to construction.

Atty. Ghannam submitted 2 additional before/after photos of the patio and nearby property layout. Atty. Ghannam agreed that the contractor did not follow city ordinance requirements. Atty. Ghannam also stated that there was a 1 car garage but Mr. Chami changed the garage door making it accessible for 2 cars and states that the garage is not used for cars but for storage only. Atty. Ghannam reported difficulty with acquiring the requested 2 feet side yard setback from the neighbor's mortgage company and mentioned that Mr. Chami should not be punished because of the contractor's non-compliance of this patio.

Commissioner Van Oast disagrees with the Atty. Ghannam statement regarding the inability to acquire the 2 feet and stated that he is personally familiar with this being done with regard to other residential lots in his job as a realtor. Mr. Chami was told by his neighbor that his mortgage company will not release the 2 feet unless he paid the mortgage off. Mr. Tanner stated that the mortgage company can use partial release for the requested 2 feet and that the 2 parking spaces must be accessible according to the zoning ordinance.

Mr. Chami noted that the door used to be on the back, accessed from the alley before it was closed. He created the two car garage for storage and access, not to park cars.

Mr. Chami stated that he will fire rate the garage and that the 2 car garage is not an issue since he never parks two cars in it.

Atty. Ghannam argues that the small lot and the shape/size of the paver patio constitute a practical difficulty in this case that warrants the approval of the variances. Atty. Ghannam noted the severe financial hardship that would be involved if the structure had to be removed.

Commissioner Binder said the board cannot base their ruling on the neighbors' opinions and that this appeal is self-created hardship.

Mr. Paison noted the zoning standards were put in place to protect the long term viability of the residential neighborhoods in the City, and therefore future impacts as a result of zoning variance decisions is a valid consideration. He also noted that there are many lots as small or smaller in that part of Dearborn, and that absent a practical difficulty that is particular to the property (not created by the mistakes of the applicant) that there are not grounds for approval.

Amad Webbey (inaudible), 7845 Steadman, Dearborn was introduced. The resident stated that he supports this appeal because it looks very nice. Mr. Tanner asked if the same contractor built his canopy. The resident reported that it was the same contractor by the name of Gabriel. The resident also agreed to sell 2 feet of his property but was instructed not to by his mortgage company; he was told he would have to pay off his mortgage to do this.

Samer Bazy, 7825 Steadman supports this appeal and stated that Mr. Chami does not use the garage for his car; he only uses it for storage. He says that it looks nice and provides a nice place to sit in the yard.

Commissioner Gusfa inquired as to how close the patio is to the garage before modifications. Atty. Ghannam stated that it is the same and has not changed. The uncovered patio was installed by Mr. Chami in 2001.

Commissioner Binder was informed by Mr. Tanner that brick pavement does not require a permit because the brick pavers are at ground level. Brick paver patios do not require a permit, but do have to meet lot coverage.

Commissioner Gusfa was informed that there will be no other modifications to this structure and that its main use is sun protection. Commissioner Gusfa noted that it does not appear to be impossible to get the partial release to get the additional 2 foot side setback. Atty. Ghannam said that it could be an undue burden because it is so difficult to complete the property transfer.

Mr. Tanner stated the appellant has not proven practical difficulty and has not demonstrated the need to exceed the required lot coverage. No factual basis for a claim of practical difficulty unique to the property. Atty. Ghannam suggested removing approximately 2 feet of the structure overhang.

Commissioner Gusfa stated the importance of acquiring the 2 feet of additional side setback and fire rating the existing garage and Atty. Ghannam agreed to the fire rating of the structure but emphasized that the mortgage company will not concede to a partial release. Atty. Ghannam claims that the mortgage company has refused to provide a partial release.

Mr. Tanner requested documented evidence of the partial release denial if the applicant wishes to claim this as part of the difficulty with meeting the code. Mr. Tanner restated that facts have yet to be put forward that demonstrate a practical difficulty.

Atty. Ghannam requested that if it cannot be approved as existing, that it be approved with the condition that the 2 feet be acquired from the neighbor to the north.

The motion to APPROVE WITH CONDITIONS was approved upon roll call vote as follows: Yeas: Commissioners Gusfa, Hostetler, and Van Oast. Nays: Commissioner Binder.

RESOLUTION. Motion by Commissioner Gusfa, supported by Commissioner Hostetler, for the reasons and subject to the facts, representations and stipulations stated on the record during the public hearing, to APPROVE WITH CONDITIONS, the variances detailed below:

2.03(C.2(d)) Setback from garage.

Zoning requirement: 10 feet. Plan to provide: 5 feet is APPROVED WITH CONDITIONS (DZO 32.05, F.1.f).

29.02 Side yard setback.

Zoning requirement: 3 feet. Plan to provide: 1 feet is DENIED (DZO 32.05, F.1).

29.02 Maximum Lot Coverage.

Zoning requirement: 35%. Plan to provide: 40% is APPROVED WITH CONDITIONS (DZO 32.05, F.1.h).

Approval of this appeal is CONDITIONED as follows: 1) Garage must be fire rated (one hour) where it is within 10 feet of the porch canopy 2) Any future modifications to the covered patio must comply with the required 10 foot setback from the garage 3) Two feet must be acquired from the neighbor to the north in order to meet the three foot side setback requirement. This must be done within six months (by November 22, 2008) or the appeal will become a full denial and the structure will have to be brought into full conformance with the zoning ordinance 4) A lot coverage of 37.9% was approved based on the addition of the required two feet of width to the property.

This motion is conditioned on the petitioner's continuous compliance with all applicable ordinances, codes, laws and statutes; and, the petitioner must perform all work under plans, permits and final inspections approved by the City of Dearborn.

Motion carried unanimously.

Appeal #08-120 (Use Variance)

From Matthew Jurson, T-Mobile, LLC, 30150 Telegraph Rd., Ste 420, Bingham Farms, MI requesting to replace an existing light pole with a 120' tall stealth unipole/light pole (antennas mounted inside) along with electronic equipment cabinets at the base for a wireless communication facility. In a One-Family Residential (RA) zoning district at:

13800 Ford Rd (Fordson High School)

Matthew Jurson, T-Mobile, LLC, 30150 Telegraph Rd., Ste 420, Bingham Farms was introduced.

Mr. Paison read the staff report dated May 1, 2008 into the record. Mr. Paison reported that this appeal was previously postponed due the lack of quorum for this use variance.

Mr. Jurson stated the increase in demand for adequate cell phone service is the main reason for this request, particularly in residential areas. They need to achieve a minimal effective signal strength to service users inside their homes. Mr. Jurson reported that T-Mobile would not have to build access roads to the site and that the proposal has minimal impact to the nearby properties.

Audrey Mused, 6018 Horger disapproves of this appeal because Mrs. Mused considers the proposed cell tower to be an eyesore to the historic Fordson High School and suggested another location. She also believes this will lower home values in the area. Mrs. Mused also stated some concerns with potential health effects. Mr. Paison advised her that health effects cannot be considered in zoning decisions related to cell towers per federal law.

Commissioner Van Oast stated that this cell tower will not affect the property values in this area; this was based on his many years of experience as Realtor in the area.

Monique Slin, 5950 Argyle disapproves of this appeal. Mrs. Slin considers the proposed cell tower to be an eyesore as well. They also noted that it would not be compatible with Fordson High School as a historic structure.

Mr. Tanner noted that it is as far from the residential as it can be in the coverage area that they need to locate in, it would be difficult to find a more appropriate location in the area.

Mr. Jurson stated that the proposed tower is comparable in dimensions to other nearby towers. Mr. Tanner asked if 100 feet would be sufficient and was informed by Mr. Jurson that the height is important and needed for the coverage demand. Mr. Tanner was also informed that collocation is sometimes discouraged due to the decrease in desired coverage and does not have another company to collocate to date. Non-stealth towers get better coverage, capacity and allow for many more collocations; use of the stealth towers is a sacrifice made to improve compatibility with residential areas.

Kevin Corriden, Senior RF Engineer, T-Mobile, 12170 Merriman, Livonia was introduced and explained that the request for 120 feet cell tower was based on allowing collocation and lowering the tower at 70 feet will decrease adequacy of the signal coverage and collocation options. Increasing collocation options, decreases the total number of towers required in any given area and generally considered a benefit to the communities and service providers.

Commissioner Gusfa was informed by Mr. Jurson that the cell tower site at Fire Station #4 at Haggerty was investigated and that T-Mobile currently uses the utility poles north of that site and that placing a tower at the fire station would cause 3 cell tower sites to be within ½ mile of each other. This is too close for a functional addition to their network; if they are too close it creates unnecessary redundancy and can cause problems for the network.

Commissioner Gusfa inquired as to how many collocations can be installed in 1 pole and was informed by Mr. Jurson it would be 2 additional carriers and every carrier would need approximately a 12' x 20' space on the ground for equipment. Mr. Jurson stated there will be no flag pole installed and had no intentions of placing antennas on this property.

Mr. Jurson discussed briefly how they work in partnership with the School District to find acceptable sites and notes the public benefit of better phone coverage and the revenue provided to the schools from the leases these generate.

The motion to APPROVE was approved upon roll call vote as follows: Yeas:
Commissioners Binder, Gusfa, Hostetler, and Van Oast.

RESOLUTION. Motion by Commissioner Gusfa, supported by Commissioner Hostetler, for the reasons and subject to the facts, representations and stipulations stated on the record during the public hearing, to APPROVE WITH CONDITIONS, the variances detailed below:

2.16(B.2.c) Exemptions to Height Standard.

Zoning requirement: 45 feet. Plan to provide: 120 feet is APPROVED WITH CONDITIONS (DZO 32.05, F.1.n).

10.02 Use not permitted.

Zoning requirement: Not permitted in a residential district. Plan to provide: Wireless communications tower & support equipment is APPROVED WITH CONDITIONS (DZO 32.05, F.1.n).

Approval of this appeal is CONDITIONED as follows: The tower shall permit a minimum of three collocations.

This motion is conditioned on the petitioner's continuous compliance with all applicable ordinances, codes, laws and statutes; and, the petitioner must perform all work under plans, permits and final inspections approved by the City of Dearborn.

Motion carried unanimously.

Appeal #08-127

From Khalil Chebib, Precision Construction, 24630 Ford Rd., Dearborn, MI requesting to build a gazebo in rear yard of existing home. The property size being 100' x 135', in a One-Family Residential (RA) zoning district at:

6464 Oakman Blvd

Hassan Chabaan, owner of 6464 Oakman Blvd. was introduced.

Mr. Paison read the staff report dated May 1, 2008 into the record and stated this detached accessory structure is not one of the listed structures otherwise specifically regulated by the ordinance and therefore requires ZBA approval to be allowed on the lot.

Commissioner Gusfa was informed by Mr. Chabaan that there was no intention to remove the existing shed but is not against removing the shed.

RESOLUTION. Motion by Commissioner Gusfa, supported by Commissioner Hostetler, for the reasons and subject to the facts, representations and stipulations stated on the record during the public hearing, to APPROVE WITH CONDITIONS, the variances detailed below:

2.03(D.3) Detached accessory structure.

Zoning requirement: Approval of ZBA. Plan to provide: Gazebo is APPROVED WITH CONDITIONS (DZO 32.05, F.1. m).

Approval of this appeal is CONDITIONED as follows: The existing shed shall be removed.

This motion is conditioned on the petitioner's continuous compliance with all applicable ordinances, codes, laws and statutes; and, the petitioner must perform all work under plans, permits and final inspections approved by the City of Dearborn.

Motion carried unanimously.

Appeal #08-128 (Use Variance)

From Randolph Dubitsky, Advance Technology Academy, 7265 Calhoun, Dearborn, MI requesting to use existing college campus as a charter K-12 grade school operation with some college programs. The property size being irregular, in a Community Business (BB) zoning district at:

4801 Oakman Blvd (Advanced Technology Academy (former Davenport University facility)

Suzanne Bartows, Advance Technology Academy, 7265 Calhoun, Dearborn was introduced and expressed the need for the academy to expand due to the increase of students and staff. Ms. Bartows reported there will be no alterations to the property and will be used for high school students. Ms. Bartows also stated there will be no increase in vehicle or school bus traffic, they do not utilize buses. She listed potential benefits from the use, and no negative impacts compared to the prior permitted use.

Mr. Paison read the staff report dated May 1, 2008 into the record and stated the use variance is required due to the change from a college facility to a K-12 school facility.

Commissioner Gusfa was informed by Ms. Bartows that the St. Alphonsus' site will continue to facilitate their K-8 classes for now.

The motion to APPROVE was approved upon roll call vote as follows: Yeas: Commissioners Binder, Gusfa, Hostetler, and Van Oast.

RESOLUTION. Motion by Commissioner Gusfa, supported by Commissioner Binder, for the reasons and subject to the facts, representations and stipulations stated on the record during the public hearing, to APPROVE the variances detailed below:

15.02 Permitted Use.

Zoning requirement: Special land use in RA, RB and RP district. Plan to provide: Charter K-12 school with some college programs is APPROVED (DZO 32.05, F.1.j).

This motion is conditioned on the petitioner's continuous compliance with all applicable ordinances, codes, laws and statutes; and, the petitioner must perform all work under plans, permits and final inspections approved by the City of Dearborn.

Motion carried unanimously.

Appeal #08-129

Appeal POSTPONED at the request of the Administration.

Appeal #08-130

Appeal POSTPONED at the request of the Administration.

Appeal #08-131

Appeal POSTPONED at the request of the Administration.

Appeal #08-132

Appeal POSTPONED at the request of the Administration.

Appeal #08-133

From Uldis G. Vitins, Vitins Engineering, 44275 Brandywyne, Canton, MI requesting to reconstruct the parking lot for the existing dental and general office building. The property size being 105' x 112.5', in a Community Business (BB) zoning district at:

5203-5211 Schaefer

Uldis G. Vitins, Vitins Engineering, 44275 Brandywyne, Canton was introduced. Mr. Vitins reported Dr. Bazzi initially hired his services due to prepare plans to correct a non-operating trench drain on the west side of the building and to develop an underground detention system.

Mr. Paison read the staff report dated May 5, 2008 into the record and reported that the existing parking encroaches on neighbor's property by 3 feet. Mr. Paison stated that the appellant had the back of building removed for additional parking when the building was renovated. The neighbor to the north was unwilling to sign easement agreement in regards to the encroachment issue.

Mr. Tanner discussed the 2006 appeal regarding the restrictions of this building being used as a dental office and the increase of parking traffic. The decision was to use property as a dental training facility on weekends and evenings and limited use as a dental office. Under that approval the entire building was not going to be used as a dental office, part of the building is dedicated to the training/educational use.

RESOLUTION. Motion by Commissioner Gusfa, supported by Commissioner Hostetler, for the reasons and subject to the facts, representations and stipulations stated on the record during the public hearing, to APPROVE the variances detailed below:

4.01 Off-street parking.

Zoning requirement: 24 spaces (17 spaces under prior variance). Plan to provide: 15 spaces is APPROVED (DZO 32.05, F.1. h,k).

4.01(D.2) Parking space size.

Zoning requirement: 9' x 20'. Plan to provide: 9' x 18' is APPROVED (DZO 32.05, F.1. h,k).

This motion is conditioned on the petitioner's continuous compliance with all applicable ordinances, codes, laws and statutes; and, the petitioner must perform all work under plans, permits and final inspections approved by the City of Dearborn.

Motion carried unanimously.

Appeal #08-134

From Jeff Schmitz, Fix N Chips, 11912 Farmington Rd, Livonia, MI requesting to set up a windshield repair location in existing parking lot. The property size being irregular, in a Community Business (BB) zoning district at:

16201 Ford Rd (Shoppes at Fairlane Meadows)

Jeff Schmitz, 1805 Brockton Ave, Royal oak, mi was introduced and discussed the convenience for customers of having minor windshield repair in an existing parking lot. Mr. Schmitz explained why they have moved the chip repair business to mobile, outdoor operations because people will only get this done if it is very convenient.

Mr. Paison read the staff report dated May 5, 2008 into the record and noted that there is no apparent practical difficulty associated with the property that would support this request for outside retail. He also noted the long-term policy of the City to rigorously enforce the requirement for businesses to operate in an enclosed building. This creates a potential issue of substantial justice, in that the City has consistently denied this sort of use/operation to other applicants on other commercial properties.

Commissioner Binder stated that this is also an enforcement issue on other sites in the City. Mr. Paison replied that Mr. Schmitz is the first to ask permission before setting up the repair location. Mr. Schmitz discussed the confusion of this request being previously approved by Building & Safety but was subsequently denied, apparently the permit that was issued was in error and had to be revoked. Mr. Schmitz noted that the chip repairs benefit both the insurance companies and car owners in terms of preventing full windshield replacements.

Commissioners Gusfa and Van Oast agree that practical difficulty has not been shown and discussed with Mr. Tanner the types of outdoor retail that are not permitted.

RESOLUTION. Motion by Commissioner Gusfa, supported by Commissioner Hostetler, for the reasons and subject to the facts, representations and stipulations stated on the record during the public hearing, to DENY the variances detailed below:

15.03(A.2) Outdoor business.

Zoning requirement: All activities in completely enclosed building except parking & loading. Plan to provide: Windshield chip repair in parking lot is DENIED (DZO 32.05, F.1. a,b).

Reasons for DENIAL: 1) Failure to demonstrate a practical difficulty associated with the property 2) Approval would create a special privilege for this applicant that is denied to all other businesses in the City and would therefore create an issue of substantial justice

Motion carried unanimously.

Appeal #08-136

From Brian & Christine Mayer, 307 Tannahill Street, Dearborn, MI requesting to replace an existing 20' x 27' x 16' tall garage with a new 20' x 30' x 16' tall garage. The property size being 85' x 120', in a One-Family Residential (RA) zoning district at:

307 Tannahill Street

Brian & Christine Mayer, 307 Tannahill Street, Dearborn were introduced and are requested to replace the existing deteriorating structure. They are requesting the additional height for bike and other storage in the rafters and submitted a petition consisting of 7 nearby residents' signatures supporting this appeal.

Mr. Paison read the staff report dated May 5, 2008 into the record and stated that the garage is built on a downgrade on the back of the property and has a 3 foot retaining wall between it and the higher neighboring properties behind it. Mr. Tanner was informed that there will be a reverse gable roof top for the proposed garage. Mr. Paison stated the proposed garage will come out of both the side yard setback and easement, an improvement in conformity compared to the existing garage.

Mr. Mayer stated that the proposed structure will have open beam rafters eliminating concerns about it being used as living space. Mr. Tanner suggested building a hip roof as opposed to the requested reverse gable roof which will reduce the bulk of the structure and the visual from the street.

Mr. Paison explained that staff proposes a condition that the lot not be split because the lot coverage conformance is based on the total land area of the current parcel.

RESOLUTION. Motion by Commissioner Gusfa, supported by Commissioner Hostetler, for the reasons and subject to the facts, representations and stipulations stated on the record during the public hearing, to APPROVE WITH CONDITIONS, the variances detailed below:

2.03(C.4.a) Garage height.

Zoning requirement: Max. 14 feet. Plan to provide: 16 feet is APPROVED WITH CONDITIONS (DZO 32.05, F.1. h).

Approval of this appeal is CONDITIONED as follows: 1) The garage shall have a hip roof similar to that on the existing garage 2) The parcel shall not be split to a size that would create a nonconformity for lot coverage 3) The garage shall have a one hour fire rating due to insufficient separation (<10 feet) between the garage and deck 4) Any future modifications to the deck must comply with the ten foot separation requirement under Section 2.03(d) of the Zoning Ordinance

This motion is conditioned on the petitioner's continuous compliance with all applicable ordinances, codes, laws and statutes; and, the petitioner must perform all work under plans, permits and final inspections approved by the City of Dearborn.

Motion carried unanimously.

Meeting Adjourned: 7:54 p.m.