

: OFFICIAL PROCEEDINGS :**: OF THE CITY OF PEORIA, ILLINOIS :**

A Zoning Board of Appeals Meeting was held on Thursday, May 12, 2011, at approximately 1:30 p.m., City Hall, 419 Fulton Street, Council Chambers, Room 400, with Chairperson Pro Tem Barry presiding. Ms. Stainback swore in those planning to give testimony.

ROLL CALL

The following Zoning Board of Appeals Commissioners were present: Chairperson Pro Tem Barry; and Commissioners Blackwell; Ierulli; Jackson; and Wagner – 5. Absent: Commissioner Kouri – 1.

Staff Present: Gene Lear and Polly Stainback

MINUTES

Commissioner Blackwell moved to approve the minutes of meetings held on March 10 and April 14, 2011, as printed; seconded by Commissioner Ierulli.

Approved unanimously by viva voce vote 5 – 0.

ZBA 2936 **Petitioners Richard Haefli and Robert Haefli, representing Haefli Brothers Partnership, are requesting a variance from the City of Peoria Zoning Ordinance: Article 16.4.c, to reduce the existing required 21-foot transitional buffer yard to 0 feet in some areas and leave the remaining existing buffer yard the same for the expansion of a parking lot. The property is located at 201 E. Lake Avenue in the C1, General Commercial District.**

Chairperson Pro Tem Barry announced Case No. ZBA 2936 and asked Mr. Lear to read it into the record.

Gene Lear, Senior Urban Planner, Planning and Growth Management Department, displayed the subject property, site plan, and described the proposal. He explained that the Petitioners wanted to remove the transitional buffer yard (TBY) and in its place, expand a parking lot for 10 additional parking spaces. He also displayed a photograph of the TBY and retaining wall on the east and west ends, which have the correct depth of 21 feet and landscaping as required by Ordinance. He also reported the following:

SITE PLAN REVIEW BOARD (SPRB) CONCLUSIONS AND RECOMMENDATIONS:

After reviewing the Petitioners' application and performing a site inspection, SPRB does not support the variance request for the following reasons:

1. The existing transitional buffer yard is intact and in compliance with the Zoning Ordinance and provides a buffer between the commercial use and the adjacent residential use to the north.
2. There is no hardship.
3. The current owner would be creating the practical difficulty.
4. The granting of the variation would alter the essential character of the neighborhood.

Richard Haefli, Petitioner, explained they needed some additional parking for the businesses at the subject property, especially on the weekends. He said a lot of the customers are elderly people, so they would like to have as much parking as possible. He mentioned that there was a dangerous situation for accidents on Lake. He said they have a letter and agreement with the adjoining property owner, Our Saviour's Chapel. He announced that George Pogue, representing Our Saviour's Chapel, was present.

Petitioner Haefli presented several photographs of the existing parking and buffer areas, along with an agreement document from Our Saviour's Chapel. Chairperson Pro Tem Barry marked them as Petitioners' Exhibits A – J.

George Pogue, representing Our Saviour's Chapel, expressed concern regarding safety and security, as well as privacy. He said that if the variance is approved, the Petitioners would provide them with some dense landscaping and secure the premises with a fence and gate to allow some access on Sundays,

In discussion with Chairperson Pro Tem Barry, Mr. Pogue indicated that the landscaping would be on the Chapel's property. He also stated his assumption that there would be five feet of buffering on each side of the property.

At Commissioner Blackwell's request, Mr. Lear explained that most of the TBY would be removed. He also mentioned that Our Saviour's Chapel was located northwest of the subject property.

In discussion with Chairperson Pro Tem Barry, Mr. Pogue concurred that both properties were the same length; and the landscaping would be along the entire back of the Haefli property.

Mr. Lear concurred with Commissioner Jackson that there was an apartment complex located north of the subject property. Mr. Pogue said the apartment complex was located to the right of Our Saviour's Chapel.

Commissioner Wagner spoke of there being a substantial grade difference and questioned what kind of retaining wall would be used. Mr. Haefli explained that their parking lot would be at a slight angle, approximately 2 ½ feet, where it would be at grade with the Chapel's property.

In discussion with Commissioner Jackson, Mr. Lear indicated that the TBY on the east of the parking area would remain; and they would take enough to add 10 parking spaces.

In discussion with Chairperson Pro Tem Barry, regarding a retaining wall, Mr. Haefli said they may have a short retaining wall; but otherwise, they would be at grade with the Chapel's property. He said that if a retaining wall is used, it would probably only consist of one or two masonry blocks.

Mr. Lear pointed out that a retaining wall could be up to three feet in height. Mr. Haefli stated that he thought they would not need a retaining wall because of the grading and also mentioned they would be replacing several trees with landscaping.

Chairperson Pro Tem Barry questioned the depth of landscaping that would be used on the adjacent properties. Mr. Haefli said it would depend on what is required.

Mr. Lear explained the TBY is currently in compliance and is 21 feet deep. He said the Zoning Board of Appeals could only address those issues that would affect the subject property, not an agreement between property owners, which would be a civil matter.

Mr. Lear concurred with Chairperson Pro Tem Barry that Commissioners could not approve this case, subject to landscaping provided on another property.

In discussion with Commissioner Blackwell, Mr. Haefli said the Chapel would maintain the landscaping; and any future buyers would have to maintain the landscaping.

In discussion with Commissioner Wagner, Mr. Lear stated that currently the subject property meets all regulations.

Responding to Commissioner Wagner, Petitioner Haefli stated that right now they have sufficient handicap parking spaces; but they could add more if needed.

Mr. Pogue commented that the new parking would be at an incline, making it more accessible to intruders, so a barrier would be needed.

Mr. Lear asked for verification that the lay of the land slopes down; and when done, it would be at an incline, but not as steep, but more gradual. Petitioner Haefli said there is a gradual slope, and he explained that they do not think a retaining wall would be needed because they would be at grade with the Chapel's property.

In discussion with Commissioners Wagner and Jackson, Petitioner Haefli concurred that Saturdays and Sundays were the busier days for the café, which is open every day, except Monday.

In response to Chairperson Pro Tem Barry, regarding a hardship, Mr. Haefli said that the tenants do not have enough parking spaces for them to come in off the street. He said his fear is that they would start parking on the streets, and there would be a backup of

traffic on Lake, which would be dangerous. He indicated that granting this variance for 10 parking spaces would be sufficient.

Commissioner Jackson asked if there was a way to park on Lake. Mr. Lear responded, "Not legally."

Mr. Lear read a letter from Margaret Pacyna, owner of an eight-unit garden apartment building and Oak Cliff Neighborhood Association Vice President, who wrote on behalf of the people who live in her neighborhood. She requested that the Zoning Board of Appeals deny the request to reduce the existing 21-foot TBY and allow it to remain in place. She said a variance would bring strangers closer to their back yards and make them more vulnerable to noise, litter, and uninvited guests.

Chairperson Pro Tem Barry marked the letter from Margaret Pacyna as Public's Exhibit 1.

Mr. Lear pointed out that the lot immediately east of the subject property is zoned P1, Parking. He mentioned that northwest of the P1 zoned property is the apartment complex. Commissioner Blackwell asked if there was a business which uses that parking and if there had been any discussion with the owner of that property.

Petitioner Haefli responded that they own that property, which is eight feet higher than their present parking lot. He said they could extend their parking there, but it would require steps, which they are trying to avoid. He said that if their variance request is denied, they would have to put parking in that area. He further stated that currently that property is all grass, and there is an occupied house on that lot.

Petitioner Haefli expressed his concern for older people who frequent the restaurant and barber shop on the subject property. He said he would appreciate the granting of this variance.

Roger Sparks, Peoria citizen, expressed his concern that since the parking lot would be in the back where it slopes up two feet, it would be dangerous for someone using a walker or wheelchair to try and get up a slope that steep. He questioned if they add 10 additional parking spaces, would it require more handicap parking spaces. He commented that it seems feasible that they use their property which is already zoned for parking.

Petitioner Haefli explained that on the west side where they are considering parking, it would be level for about four of five parking spaces, i.e., about half of the 10 spaces would be on flat ground with a gradual slope, coming out level on the west side.

Mr. Lear clarified that the ground on the east is higher, and it slopes down to the west.

Petitioner Haefli indicated that if more handicap parking spaces were required, they could provide some in that area. He said they were going to encourage the owners of the businesses on the subject property to park in that area, which is farther away from their locations. He said he thought they would cooperate.

Chairperson Blackwell questioned the hardship as it relates to the property, such as the size or topography. Petitioner Haefli explained the lack of parking spaces for Saturdays. He also said that because of the nature of the businesses and a lot of customers on the weekends, there was a hardship for them.

Commissioner Wagner questioned if, at the time of leasing, there was no forethought regarding the need for parking expansion. Petitioner Haefli said that they went through the Building Department, and everything was approved.

There being no more testimony, Chairperson Pro Tem Barry closed the public testimony.

DELIBERATION:

Chairperson Pro Tem Barry administered the Findings of Fact.

There were different opinions regarding a unique hardship or practical difficulty. Chairperson Pro Tem Barry marked on the Findings of Fact sheet that a unique hardship or practical difficulty does not exist. He noted that it was very difficult to ascertain. Other comments regarding a hardship were as follows:

- Commissioner Ierulli said there was no hardship or practical difficulty presented.
- Commissioner Jackson commented that it was a good thing that the businesses are thriving, but she was not sure there was a hardship.
- Commissioner Blackwell said he had not heard a clear hardship or practical difficulty as it related to the property.

Other Commissioners' findings and comments were as follows:

- The property in question could yield a reasonable economic return without the requested variance.
- The conditions upon which an application for the variance sought are not unique to the property and are applicable to other property within this same zoning district.
- The purpose of the variance is based primarily upon a desire to increase financial gain.
- The hardship is self-created.
- The granting of the variance would not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood. It was noted that Ms. Pacyna's letter was evidence of an impact.
- Commissioner Wagner mentioned the possibility of the landscaping being retained on Ms. Pacyna's property. Commissioner Jackson commented that was not known.
- Although Commissioners noted that the granting of the variance would not alter the character of the neighborhood, it was pointed out that the submitted letter indicated that it would.
- The granting of the variance would not impair an adequate supply of light and air to adjacent property, nor increase the danger of fire, nor impair natural drainage, nor create drainage problems on adjacent properties; and would not

endanger the public safety, nor diminish, nor impair the property values within the neighborhood.

- The proposed variation is not consistent with the Comprehensive Plan and other development codes and regulations of the City.

MOTION:

Commissioner Jackson motioned to grant the variance. The motion was seconded by Commissioner Ierulli.

Commissioner Blackwell said he would like to allow this, but there is no real hardship. He commented that he thought it would be helpful if the businesses alleviate some of the safety concerns.

Commissioner Jackson mentioned that thriving businesses need additional parking; and not granting a variance could hurt the businesses. She said she thought it was important that businesses be allowed to grow if it does not negatively affect the neighborhood.

Commissioner Wagner commented that most of those businesses are closed by five or six o'clock, so he did not see a problem with strangers being a concern in this particular location.

The motion to grant the variance passed by roll call vote 3 to 2.

Yeas: Barry, Jackson, Wagner;

Nays: Blackwell, Ierulli.

Chairperson Pro Tem Barry announced a brief recess at approximately 2:15 p.m. and called the meeting back to order at approximately 2:20 p.m.

ZBA 2937 **Petitioner Floyd J. Rashid is requesting a variance from the City of Peoria Zoning Ordinance: Article 16.4.c. (1), Transitional Buffer Yard Depth, to allow a building addition to encroach 11 feet into the required 16-foot transitional buffer yard. The property is located at 4711 N. Knoxville Avenue in the O1, Arterial Office District.**

Chairperson Pro Tem Barry announced Case No. ZBA 2937.

Commissioner Jackson indicated that she was a patient of the petitioner and would be recusing herself from discussion and voting on this case.

Gene Lear, Senior Urban Planner, Planning and Growth Management Department, read the case into the record. He displayed the subject property, proposed site plan, and photographs of the existing house and the existing transitional buffer yard (TBY). He mentioned that the property to the north is zoned R7, and the subject property is zoned O1, Arterial Office, which requires a TBY of 16 feet from the property line, compared to the proposal of only five feet. Also, he reported the following:

SPRB CONCLUSIONS AND RECOMMENDATIONS:

After reviewing the Petitioners' application and performing a site inspection, SPRB does not support the variance request for the following reasons:

1. The proposed addition could be built elsewhere on the property in compliance with the Zoning Ordinance.
2. There is no hardship.
3. The current owner would be creating the practical difficulty.

Mr. Lear mentioned that he had a copy of the email submitted by Mr. Timothy O'Connor, and he would read it during public testimony.

Floyd J. Rashid, Petitioner, presented photographs of the subject property, along with two site plans and elevation plan for Commissioners' review. Chairperson Pro Tem Barry marked the documents as Petitioner's Exhibits 1 – 13.

Petitioner Rashid explained that his property was 5 ½ to 6 feet lower than the adjacent property north of his property, and he had a 45-degree angle with nothing but weeds and large trees. He had a land survey done, whereby he erected a fence and concrete wall, only to find out that the surveyor made a mistake. The surveyor came back a few weeks ago and relocated the survey pins. He found out that he did not have 10 feet of land between his property and that to the north, but rather 3 ½ to 4 feet.

Petitioner Rashid indicated that originally he wanted to start out with a two-story building. Because of a side yard setback variance, he did not want a two-story building adjacent to a short piece of side yard, so he decided against a two-story building. The garage was supposed to be used for two examining rooms, adjacent to the two additional ones in the house. He was told by a contractor that it would be more applicable to tear the garage down and do a straight addition. He mentioned plans for a reception room area. He said the two examining rooms would be where the garage was previously, and behind that would be a two-stall garage.

Petitioner Rashid explained that in his petition, the tax ID number identifies 14-21-328-025, which is a 90-foot lot. He referred to two different prints of the two lots. The lot to the south of his property was to be for a new office building and was not included in the 90-foot piece, but Mr. Lear said he had a 160-foot frontage. He said the 90-foot lot has a requirement of a 10-foot minimum side yard setback. He said he asked for a variance on the 10-foot setback to accommodate the new building addition for two offices. He said he needed a variance to allow for a five-foot setback. He said he did not think that he should have been allocated as 160-foot frontage, but rather a 90-foot frontage, because of the tax ID number which he used on his application.

In discussion with Petitioner Rashid regarding his concern about the frontage, Mr. Lear commented that based on the submitted application and site plan, the request was a setback of five feet from the northern property line, which is a five-foot variance. He explained that whether this is a 90-foot width lot or 160-foot width lot, the request would

still be for five feet from the north property line. Petitioner Rashid commented that he did not include both lot numbers on the application because the other lot would be used for a new building next spring.

There was discussion regarding the site plan submitted with the application, versus the other site plan that Petitioner Rashid distributed at the meeting, which showed only the north side. Commissioner Blackwell indicated that it sounded like there was a miscommunication regarding what this site plan should look like. He clarified that there were two different pieces of property, and Petitioner Rashid was asking for a variance on the northern-most piece.

In discussion with Chairperson Pro Tem Barry, Petitioner Rashid agreed that either way, the variance would be the same.

Petitioner Rashid explained his submitted photographs. He pointed out that the wall would be removed and placed on his property, along with a new decorative fence after the new addition is completed.

In discussion about the garage, Petitioner Rashid indicated the existing building sets back 3 feet, 2 inches, in the front of the house; and 3 feet, 6 inches in the rear yard from the northern property line. He mentioned that it would not look good to have a high building adjacent to the apartment complex to the north. He said it would be adequate and less costly to have a one-level building.

In discussion with Commissioner Blackwell regarding the possibility of building the addition in the rear of the property where there is plenty of yard space, Petitioner Rashid explained if he built the addition in the rear yard, the examining rooms would face the back yard, and also the land was too irregular. He also explained that the back yard slopes down, and there is a 20-foot differential between the southwest and northeast corner; it drops down at a 40-degree angle.

Commissioner Blackwell commented on his understanding that the back yard topography is such that it makes it impractical to build on the back.

Chairperson Pro Tem Barry asked Petitioner Rashid to explain his hardship. Petitioner Rashid explained that he needs to have the new examining rooms adjacent to the existing examining rooms. He stated that he could not move the house to the south 10 feet to accommodate what he needed to do. He commented that he needed a five-foot variance because right now his office is too small. He pointed out that the area would be fully landscaped, with a garage located in the back. He indicated that he wanted to use the same brick as the house, and it would be a quality building.

Mr. Lear read an email submitted by Timothy O'Connor, who lives across the street from the subject property. Mr. O'Connor wrote of his concern that the lack of a TBY would affect the appearance of the area. He also expressed concern that the proposed addition would not leave enough room for one to see a break between buildings if viewed from any angle other than exactly perpendicular to the road. He said if the required TBY is kept, there would remain a view of background foliage, as well as

whatever other landscaping the owner may provide, which would preserve the aesthetics of a fairly unique area of Peoria.

Petitioner Rashid indicated that he would be moving the existing retaining wall after the new building is added in front of it, and it would come out about 20 or 25 feet in front of the existing garage. From that point on, that new wall would be taken down and brought forward another six or eight feet, however much of it is level to where the new decorative fence would be on the back side, and that would be totally landscaped.

Roger Sparks, Peoria Citizen, said he thought the Petitioner was saying that he needs to tear down the garage, so that all of the addition is on one level to make it ADA accessible and make sure it has ADA restrooms, etc. He commented that he did not know why the addition could not be built on the south side, except that his hardship is the property line because he wants to build an office building on the adjacent property on the south side.

There being no more testimony, Chairperson Pro Tem Barry closed the public testimony for this case.

DELIBERATION:

Chairperson Pro Tem Barry administered the Findings of Fact. There were different opinions regarding a unique hardship or practical difficulty. Chairperson Pro Tem Barry marked the Findings of Fact sheet that a unique hardship or practical difficulty does not exist. He noted that it was very difficult to ascertain. Other comments regarding a hardship were as follows:

- Commissioner Blackwell commented on the topography issue on the back side. He said to some extent, there is a hardship. Commissioner Wagner said the Petitioner could have worked around that issue.
- The property could yield a reasonable economic return without the requested variance. It was noted, "We may not fully know the answer to that."
- The conditions upon which an application for the variance sought are not unique to the property and are applicable to other property within this same zoning district.
- The purpose of the variance is based primarily upon a desire to increase financial gain.
- The hardship is self-created.
- The variance will not be detrimental to the public welfare, or injurious to other property or improvements in the neighborhood.

- Although Commissioners noted that the variance would not alter the character of the neighborhood, it was pointed out that the submitted email indicated that it would.
- The proposed variance would not impair an adequate supply of light and air to adjacent property, nor increase the danger of fire, nor impair natural drainage, nor create drainage problems on adjacent properties; and would not endanger the public safety, nor diminish, nor impair the property values within the neighborhood.
- The proposed variation is not consistent with the Comprehensive Plan and other development codes and regulations of the City.

Motion:

Commissioner Blackwell motioned to grant the variance. The motion was seconded by Commissioner Ierulli.

Commissioner Blackwell commented that it seemed the addition could be moved some place to the back side, but it has been there with less than a five-foot setback, so it was not that much of a difference. He said that he thought it could be built on the back side; Chairperson Pro Tem Barry concurred.

The motion passed by roll call vote 3 to 1, with one abstention.

Yeas: Barry, Blackwell, Wagner;

Nays: Ierulli;

Absent: Jackson.

ELECTION OF NEW CHAIRPERSON AND VICE CHAIRPERSON

Chairperson Pro Tem Barry announced the next item on the agenda, Election of New Chairperson and Vice Chairperson.

Motion:

Commissioner Ierulli motioned to approve Commissioner Barry as Chairperson. The motion was seconded by Commissioner Blackwell.

The motion was approved by viva voce vote.

Commissioner Blackwell motioned to approve Commissioner Wagner as Vice Chairperson. The motion was seconded by Commissioner Ierulli.

The motion was approved by viva voce vote.

CITIZENS' OPPORTUNITY TO ADDRESS THE ZONING BOARD OF APPEALS

At this time, there were no citizens to address the Zoning Board of Appeals.

ADJOURNMENT

Commissioner Blackwell moved to adjourn the Zoning Board of Appeals Meeting; seconded by Commissioner Wagner.

The motion was approved unanimously by viva voce vote.

The Zoning Board of Appeals Meeting adjourned at approximately 3:00 p.m.

Gene Lear, Senior Urban Planner
Planning and Growth Management Department

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