

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

A Zoning Board of Appeals Meeting was held on Monday, August 11, 2011, at 1:30 p.m., City Hall, 419 Fulton Street, Council Chambers, Room 400, with Chairperson Barry presiding. He explained the meeting procedures.

ROLL CALL

The following Zoning Board of Appeals Commissioners were present: Chairperson Barry, and Commissioners Blackwell, Ierulli, Jerry D. Jackson, Kouri, and Wagner - 6. Absent: Commissioner Ernestine Jackson - 1.

Staff Present: Gene Lear and Polly Stainback

Ms. Stainback administered the swearing in for testimony.

MINUTES

Commissioner Jerry D. Jackson moved to approve the minutes of the meeting held on July 14, 2011, as printed; seconded by Commissioner Ierulli.

Approved unanimously by viva voce vote.

ZBA 2941 **Petitioner Bradley A. Ward, for Kentucky Fried Chicken, is requesting a variance from the City of Peoria Zoning Ordinance, Article 18, *Retaining Wall Definition*, to allow a retaining wall to exceed the retaining wall height requirement of 3 feet with a maximum height of 6.4 feet tapering down to 3 feet. The property is located at 2231 W. Glen Avenue in the C-1 General Commercial District.**

Chairperson Barry announced Case No. ZBA 2941 and asked Mr. Lear to read it into the record.

Gene Lear, Senior Urban Planner, Planning and Growth Management Department, read Case No. ZBA 2941 into the record. During discussion of the proposal, Mr. Lear reported the zonings of the subject property and surrounding areas. He displayed photographs of the subject property, as well as the proposed site plan. In addition, Mr. Lear displayed the Petitioner's Exhibits, which were submitted in response to Staff's request for more evidence regarding how the safety of the proposed retaining wall would be handled. He pointed out there would be a three-foot rail on top of the wall itself as a safety factor.

Mr. Lear spoke regarding the proposal and Staff recommendations as follows:

There is currently 7 feet of grade elevation differential in the westerly 30 feet of the property. The Petitioner is proposing to build a retaining wall, which coming southward

would rise in elevation from a height of 3 feet at the proposed dumpster location at the northwest side of the property up to a maximum of 6.4 feet in height across from the southwest side of the building, tapering down to 3 feet in height again near the driveway approach at the southwest corner of the property.

SPRB CONCLUSIONS AND RECOMMENDATIONS:

After reviewing the Petitioner's application and performing a site inspection, Staff feels they cannot give a recommendation to approve the request without more specific evidence, showing how the safety of the proposed retaining wall would be handled. Since that time, the Petitioner has submitted information concerning the wall itself and the fact there will be a rail on top of that wall. With the submitted information, the Staff recommendation is not to object to the variance request for the following reason:

1. The subject property is lower in elevation than the adjacent property to the west and because of the lay of the land, a retaining wall is necessary. If such wall is provided in accordance with the requirements of the Zoning Ordinance, the retaining wall would have to be terraced at 3 feet, causing the need for two walls which would cause the proposed drive-through lanes, building, and access lanes to shift to the east, resulting in a reduction of the east transitional buffer yard. The Zoning Board of Appeals just recently granted a variance in parking, in part, so that the required transitional buffer yard would not have to be reduced, thereby maintaining the character of the adjacent residential properties to the east and north.

After receiving the requested evidence as stated above, the Zoning Board of Appeals could find that:

1. A practical difficulty exists in that in order to meet some of the Zoning Ordinance requirements, the Petitioner would need to request a variance for some other zoning requirement on that site.
2. The granting of the variation will not alter, but help to maintain, the essential character of the neighborhood.

Chairperson Barry shared the Petitioner's Exhibits with other Commissioners.

Chairperson Barry questioned if the railing would extend the entire length of the retaining wall. Mr. Lear referred this question to the Petitioner.

Mr. Lear explained that Staff had a concern about safety. He mentioned that Staff is beginning to look at retaining walls and the entire safety factor.

Gary Zumwalt, Engineer, Zumwalt and Associates, Inc., representing the partnership and property owner, explained that to meet zoning requirements across the lot, they need to construct a retaining wall. In response to Chairperson Barry's question, he indicated there is a foot and a half of separation on the safety railing.

Mr. Zumwalt summarized the practical difficulty by saying that they have the elevation differential on the west side, and they have to meet the Zoning Ordinance requirements all across the property if they construct a retaining wall to the height shown on the submitted plan.

Responding to Chairperson Barry's prior question about the railing, Mr. Zumwalt confirmed the length of the railing would cover the entire retaining wall length.

Chairperson Barry commented that normally only a nine-inch ball is allowed to go through a railing inside a building, so the one-foot seemed rather wide.

Mr. Zumwalt said the one-foot size was the structure engineer's detail and would have to be verified.

Chairperson Barry said he assumed they would have to get a building permit and at that point, those plans would be reviewed.

In closing, Mr. Lear reiterated that Staff is looking at the entire retaining wall issue. He said that currently the definition of a retaining wall is very general and just says that it cannot be more than three feet. He indicated that Staff would be sending a text amendment regarding retaining walls to the Zoning Commission and the City Council for final action concerning retaining walls.

Chairperson Barry marked the Petitioner's Exhibits as the following: Petitioner's Exhibit A – West Elevation at Proposed Wall Location; Petitioner's Exhibit B – Typical Section Thru South 180' of Wall; Petitioner's Exhibit C – Typical Section Thru North Length of Wall; Petitioner's Exhibit D – Railing Detail; and Petitioner's Exhibit E – West Elevation at Proposed Wall Location.

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

DELIBERATION:

Chairperson Barry administered the Findings of Fact. The Findings are listed below:

- A unique hardship or practical difficulty does exist.
- 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 unique to the property and are not 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 not self-created.
- The proposed variance would not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood.
- The proposed variance would not alter the character of the neighborhood.

- 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.
- The proposed variance 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 Jerry D. Jackson motioned to grant the variance as requested. The motion was seconded by Commissioner Wagner.

Commissioner Blackwell stated that he was in favor of this type of wall, since there was no other option to allow for needed parking.

Chairperson Barry indicated that his main concern was the railing.

The motion to grant the variance passed by roll call vote 6 to 0.

Yeas: Barry, Blackwell, Ierulli, Jerry D. Jackson, Kouri, Wagner;
Nays: None.

CITIZENS' OPPORTUNITY TO ADDRESS THE ZONING BOARD OF APPEALS

There were no citizens who wished 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 1:50 p.m.

Gene Lear, Senior Urban Planner
Planning and Growth Management Department

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