

**CITY OF PEORIA
ZONING BOARD OF APPEALS
THURSDAY, AUGUST 11, 2011
CITY HALL, 419 FULTON STREET, ROOM 400 —1:30 PM**

- 1. ROLL CALL**
- 2. APPROVAL OF JULY 14, 2011, MINUTES**
- 3. REGULAR BUSINESS**

CASE NO. ZBA 2941

Petitioner Bradley A. Ward 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.

- 4. CITIZENS' OPPORTUNITY TO ADDRESS THE ZONING BOARD OF APPEALS**
- 5. ADJOURNMENT**

Inquiries: Gene Lear, (309) 494-8604 or glear@ci.peoria.il.us

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

A Zoning Board of Appeals Meeting was held on Monday, July 14, 2011, at 1:30 p.m., City Hall, 419 Fulton Street, Council Chambers, Room 400, with Chairperson Pro Tem Wagner presiding.

ROLL CALL

The following Zoning Board of Appeals Commissioners were present: Chairperson Pro Tem Wagner; and Commissioners Ierulli, Ernestine Jackson, Jerry D. Jackson, Kouri - 5. Absent: Chairperson Barry, Blackwell - 2.

Staff Present: Corporation Counsel Randy Ray, Gene Lear and Polly Stainback

Chairperson Pro Tem Wagner explained the meeting procedures, and Ms. Stainback administered the swearing in for testimony.

MINUTES

Commissioner Jerry D. Jackson moved to approve the minutes of the meeting held on June 20, 2011, as printed; seconded by Commissioner Ierulli.

Approved unanimously by viva voce vote.

ZBA 2940 **Petitioner Mary Stamberger is requesting a variance from the City of Peoria Zoning Ordinance, Article 9.6.c. (6), to allow a tapered front yard setback along Sterling Avenue to be less than the required 20 feet going from a range of 17.2 feet down to 2 feet; and to allow a tapered front yard setback along Rockwood Road to be less than the required 20 feet going from a range of 16.84 feet down to 2 feet per the submitted site plan showing both front yards building addition to encroach 11 feet into the required 16-foot transitional buffer yard. The property is located at 4749 N. Sterling Avenue in the C-1 General Commercial District.**

Chairperson Pro Tem Wagner announced Case No. ZBA 2940 and asked Mr. Lear to read it into the record.

Gene Lear, Senior Urban Planner, Planning and Growth Management Department, read Case No. ZBA 2940 into the record. During discussion of the proposal, Mr. Lear reported the zonings of the subject property and surrounding areas. Also, he displayed photographs of the subject property, as well as the proposed site plan. He spoke regarding the proposal and Staff recommendations as follows:

The Petitioner is proposing to demolish the existing structures on the site and totally reconstruct the subject site. The property is a uniquely-shaped piece of property which tapers from 114.86 feet across on the south down to 47 feet across on the north. The

existing site has parking spaces located perpendicularly up to the tapering property lines along both Sterling and Rockwood Avenues. This is not in compliance with the front yard setback per the Zoning Ordinance. The Petitioner is proposing to build a new building and pull the parking lot in from both rights-of-way (Sterling and Rockwood), which will allow for some landscaped front yard areas along Sterling Avenue and Rockwood Avenue, as stated above, and bring the property closer to compliance.

SPRB CONCLUSIONS AND RECOMMENDATIONS:

After reviewing the Petitioner's application and performing a site inspection, SPRB does not object to the variance request, subject to providing the required amount of landscaping points for the following reasons:

1. The site does have a hardship because of the tapered shape of the lot.
2. Practical difficulty exists in trying to develop the lot if a required 20-foot yard setback is provided along both frontages (Sterling & Rockwood).
3. The current owner did not create the practical difficulty.

Gary Zumwalt, Engineer, Zumwalt and Associates, Inc., representing the property owner, Eugenia Haasis Trust, indicated that his firm prepared the proposed site plan. He spoke regarding the uniqueness of this particular piece of property in that it is tapered from 114 feet on the south side to 47 feet on the north end. He said that this diminished lot resulted from property being taken from this parcel for right-of-way purposes.

Mr. Zumwalt indicated that the existing parking goes right up against the property lines on the west, the Rockwood side, and on the east, the Sterling side. He mentioned that on the Sterling side, there is a public sidewalk that encroaches as much as six feet onto the property. Also, on this existing site, there are interior diagonal parking spaces that would not meet the normal standards as far as width of the driving aisle, or parking stall depth.

Mr. Zumwalt explained that in the new layout, they have eliminated the interior diagonal parking stalls and moved the paved area inward to create yards on both the Rockwood and Sterling sides. On the Sterling side, they have pulled away from the sidewalk that encroaches and created a yard there also. So, they have created the front yards to move toward compliance. The petition bears the fact that they have a unique lot, and they have a hardship with the nature of that lot with the fact that the sidewalk encroaches; and they are creating front yards to be more in compliance.

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

DELIBERATION:

Chairperson Pro Tem Wagner 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 not 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 Ierulli motioned to grant the variance as requested. The motion was seconded by Commissioner Ernestine Jackson.

The motion to grant the variance passed by roll call vote 5 to 0.

Yeas: Ierulli, Ernestine Jackson, Jerry D. Jackson, Kouri, Wagner;

Nays: None.

CORPORATION COUNSEL RANDY RAY TO ADDRESS THE ZONING BOARD OF APPEALS

Corporation Counsel Ray said he was happy to come and speak and support the Board anyway he could. He spoke regarding the following main points:

- The fact that there is a Zoning Board of Appeals means that discretion is involved.
- A practical difficulty or particular hardship has to be found. Commissioners are not obligated to grant a variance just because it meets one of the factors, but can weigh it against the harm done by other things.
- He quoted the Illinois Supreme Court in 1960: "The variation procedure as prescribed in the act is designed to provide a flexible method for relaxing the rigid requirements of the ordinance in cases of individual need. It is not designed to work major changes in the zoning plan; amendments by the legislative body are available for that purpose."

Commissioner Ierulli questioned applying the standards and then weighing those standards to make a determination on whether to grant or deny a variance. He read from the Zoning Ordinance, 2.12.e: "Finding a practical difficulty or hardship based upon the evidence for each of the cases as to one or more of the findings."

Corporation Counsel Ray concurred with Commissioner Ierulli that as long as Commissioners find any one of the nine factors to determine a practical difficulty or hardship, they have the right to grant a variance.

After further discussion, it was decided to revise the current Findings of Fact by listing No. 1 as a preparatory statement without a number at the top of the page as follows: "A unique hardship or practical difficulty does/does not exist, in that."

In discussion with Chairperson Pro Tem Wagner and Commissioner Ernestine Jackson, Corporation Counsel Ray said if the Zoning Board sees a need to address an issue, they could ask Staff to take it to the Zoning Commission to change or revise the Ordinance.

Chairperson Pro Tem Wagner initiated discussion regarding making contractors aware of Ordinance requirements. He suggested providing a copy of the Zoning Ordinance and having them sign off as having received it.

Referring to budget constraints, Mr. Lear stated that in lieu of copies of the Zoning Ordinance, Staff could possibly use email to let contractors and developers aware that the Zoning Ordinance is online.

Commissioner Ernestine Jackson commented that most reputable contractors know what the Codes are.

CITIZENS' OPPORTUNITY TO ADDRESS THE ZONING BOARD OF APPEALS

There were no citizens who wished to address the Zoning Board of Appeals.

ADJOURNMENT

Commissioner Jerry D. Jackson moved to adjourn the Zoning Board of Appeals Meeting; seconded by Commissioner Ernestine Jackson.

The motion was approved unanimously by viva voce vote.

The Zoning Board of Appeals Meeting adjourned at approximately 2:05 p.m.


Gene Lear, Senior Urban Planner
Planning and Growth Management Department

/ps

TO: City of Peoria Zoning Board of Appeals Commissioners

THRU: Site Plan Review Board

FROM: Gene Lear, Senior Urban Planner

DATE: August 5, 2011

**SUBJECT: RECOMMENDATION FROM STAFF AND SITE PLAN REVIEW BOARD FOR
CASE NO. ZBA 2941**

PETITIONER: Petitioner Bradley A. Ward

LOCATION: 2231 W. Glen Avenue

BACKGROUND:

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.

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 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 involving showing how the safety of the proposed retaining wall will be handled. Once we have received the requested information, the SPRB could give a recommendation 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.

To: City of Peoria Zoning Board of Appeals Commissioners
Page 2
August 5, 2011

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.



CITY OF PEORIA
APPLICATION FOR VARIANCE/ZONING BOARD OF APPEALS

Date:	_____
Received:	_____
Time:	_____
Initials:	_____

JUL 13 2011

I. PROPERTY INFORMATION:

A. Street address: ² 2731 W. Glen Ave. Zip Code + 4 _____
B. Tax ID number: 14-19-256-046; 14-19-256-047
C. Legal description (required to be on attached form, "Attachment A", Legal Description, typed, single-spaced, one inch (1") margins)
D. Area (square feet or acres): 0.779 +/- acres
E. Current property use: Restaurant
F. Current zoning district: C-1

II. APPLICANT(S):

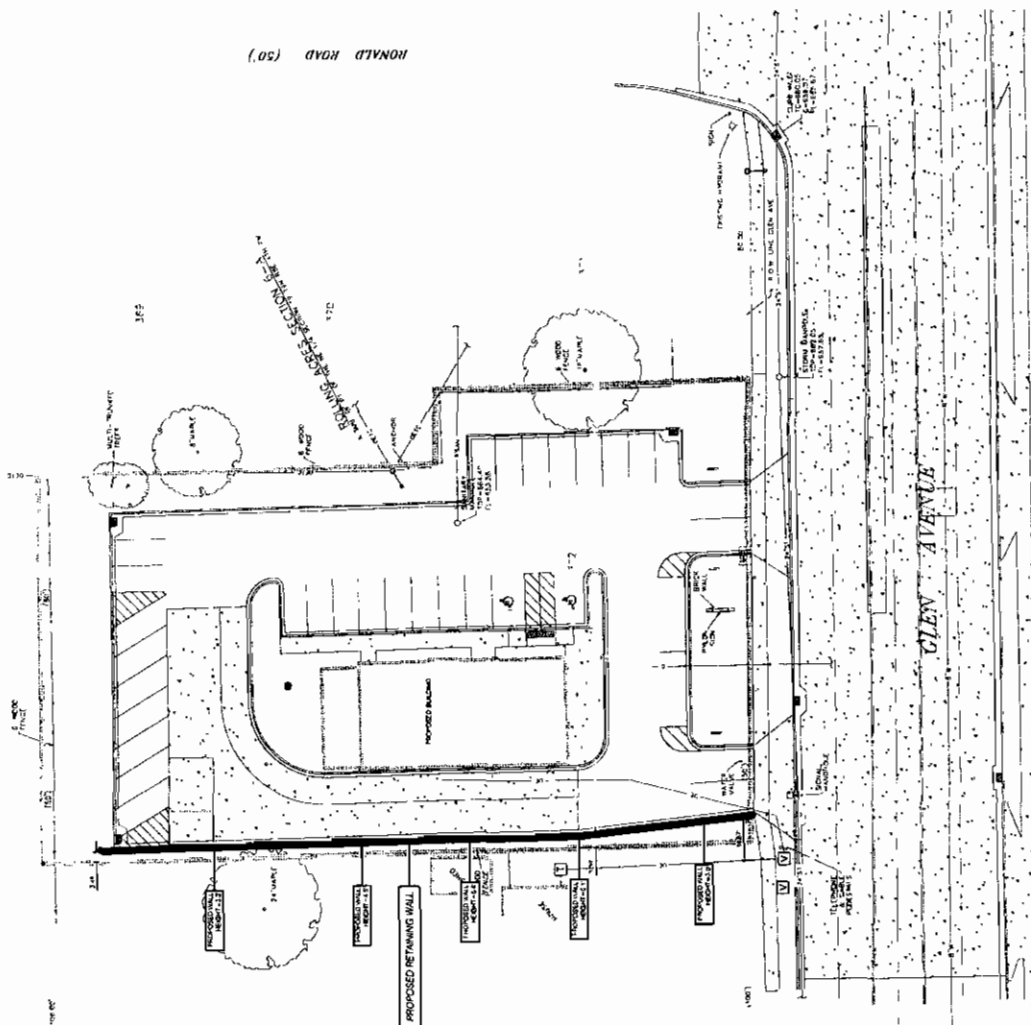
A. Name: Bradley A. Ward
B. Company name: B.A. Ward, Inc.
C. Address (Street, City, Zip + 4): 711 W. Jefferson St., Washington, IL 61571
E-mail Address: bawardinc@comcast.net
D. Daytime phone number: (309) 444-9364
E. Interest in subject property: _____ Owner ☒ Representative
F. Applicant(s) signature(s): _____ Date: _____
_____ Date: _____

III. OWNER(S) OF SUBJECT PROPERTY:

A. Name: Jack & Bonnie Russell
B. Company: B & R Partnership
C. Address (Street, City, Zip): 18427 N. Old Galena Rd., Chillicothe, IL 61523
E-mail Address: gloryhill1@wildblue.net
D. Daytime phone number: (309) 677-4425
E. Owner(s) signature(s): Bradley A. Ward Date: 7/12/11
(AGENT FOR OWNER) 6/12/11

IV. Variance Information

- C. Existing conditions: Currently there is approximately 7 (seven) feet of grade elevation differential in the westerly 30 feet of the subject property. Required minimum drive aisles, parking depth dimensional, and minimum number of parking spaces cannot be provided without construction of retaining wall at a height greater than 3 feet. Proposed retaining wall would have height of 3 feet at the proposed dumpster location at the northwest side of the property. Retaining wall would be a maximum of 6.4 feet in height across from the southwest side of the building, and taper down to 3 feet in height near the driveway approach at the southwest corner of the property.



SITE DATA

2

X-1

ANALYST: DO X-POW, DWG
1102 E1A'91 JLV
200 ABQ DIVISION
PROJECT MANAGER: CUE