

A motion was made by Palmer and seconded by Beduhn that the request for a variance in application no. V130012 be granted, accepting staff's Finding of Facts.

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or class of use in the same vicinity and district because the petitioner's property is 14,400 square feet, which is significantly greater than the 8,400 square feet required in this R-2 Single Family zoning district. The proposed 96 square feet of additional accessory building area will be indiscernible on a property of this size.
2. That such variance is necessary for the preservation and enjoyment of substantial property rights because the requested accessory building area will provide for additional indoor storage.
3. That the granting of such variance will not diminish the marketable value of adjacent land and improvements, or unduly increase congestion in the public streets because the proposed additional accessory building area is minor in scale and will not impact adjoining properties or the public streets.
4. That the condition or situation of a specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation because due to the size of the property, a limited accessory building increase can be granted without detriment to adjoining properties.

Dykhouse asked if the total square footage of the garage with the proposed addition and the shed would exceed 1,000 square feet. It was determined they did not.

Motion carried: 7 Yeas 0 Nays (Resolution #5357)

PUBLIC HEARING:

Appeal #V130013 P.P. #41-17-13-453-011
David Frueh
3425 Buchanan Ave. S.W.
Zoned R-2

The application was read by Secretary Lomonaco. Zoning Code Section 90-9 Definitions – Home Occupations provides for limited business use of residences by the occupants. A provision of that Zoning Code states that no article or service shall be sold or offered for sale on the premises except as is produced by such occupation. The petitioner requests a variance to allow the residence to be used for the sale of firearm and related sporting goods as a Home Occupation. Secretary Lomonaco also read two communications of opposition; one from Barbara Brotherton, 3439 Opal Ave. S.W. and one from Lynn and John Kiessel, 3361 Birchwood.

Chairman VanderSluis opened the public hearing.

David Frueh, 3425 Buchanan Ave. told the Board he was trying to obtain a Federal Firearms License. He would sell via the computer on line and at gun shows. He would sell anything

that could make him money. With an FFL he has to be allowed to have people come to the house, but he was not planning on having people come to the house.

Jacque Vokovoak, 3440 Buchanan Ave. opposed the variance request. She thought the address was not the proper place for sale of fire arms, ammuniton and related sporting goods. There are schools nearby.

There being no further remarks, Chairman VanderSluis closed the public hearing.

Cochran noted the Board had granted other Use variances for fire arm sales. Typically the Board had granted them with a time limit of three years. The business is highly regulated by the U.S. Government. Staff would recommend the variance be granted with the stipulation that there be no signage for the business.

A motion was made by Dykhouse and seconded by Beduhn that the request for a variance in application no. V130013 be granted, accepting staff's Finding of Facts.

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or class of use in the same vicinity and district because the sale of firearms is regulated through licensure by the Federal Government. The conditions applying with that licensure include inspection by the Federal Government.
2. That such variance is necessary for the preservation and enjoyment of substantial property rights because the proposed use is a hobby business, which can be conducted without detriment to nearby properties.
3. That the granting of such variance will not diminish the marketable value of adjacent land and improvements, or unduly increase congestion in the public streets because the limited business activity will not diminish the marketability of adjoining properties or unduly increase traffic in the neighborhood. However, if authorized by the Zoning Board of Appeals, the approval should be conditioned upon prohibiting identification signage on the property, and limiting the business to three years. Extensions may be granted by the Zoning Board of Appeals after that period.
4. That the condition or situation of a specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation because there are relatively few residentially zoned properties within the City where the owners desire this business use.

The Board discussed the safety of gun sales, the governmental regulations involved, and the scope of the business.

Mr. Frueh did not want to go into details about his plans for security since he did not want that information to be public.

Motion carried: 5 Yeas 2 Nays (Lomonaco, VanHouten) (Resolution #5358)

PUBLIC HEARING:

Appeal #V1300015 P.P. #41-17-11-428-004
Jean Ermatinger
949 Aldon St. S.W.
Zoned R-2

The application was read by Secretary Lomonaco. Zoning Code Section 90-891 Residential Districts specifies a minimum side yard of seven feet in the R-2 Single Family Residential District. The petitioner proposes to build an addition to the rear of the existing home and maintain the current side yard setback of six feet four inches. The petitioner requests a variance of eight inches to the required seven foot setback for the proposed addition. Zoning Code Section 90-891 Residential Districts specifies a minimum 35 foot front yard setback in this R-2 Single Family Residential District. The petitioner proposes to construct a 24 square foot porch in the front yard that would have a 31 foot front yard setback. The petitioner requests a variance of four feet to the required 35 foot front yard setback for the proposed porch.

Chairman VanderSluis opened the public hearing.

Ms. Jean Ermatinger, Holland, MI planned to move to the home when the addition is completed. It is a small two bedroom house. They wish to add a bedroom and kitchen, following the existing setback of the house. Also, currently the front porch has a metal overhang, which they would like to replace with a permanent cover.

There being no further remarks, Chairman VanderSluis closed the public hearing.

Cochran said new investment helps improve established areas. The proposed addition will make this house a little larger than the other houses in the neighborhood. The existing house has a reduced setback, so extending the house along the setback is reasonable. As for the porch overhang, while all the houses on the street align, this variance is minor and is not out of keeping in the area. Staff supported the variance request.

A motion was made by Postema and seconded by Lomonaco that the request for a variance in application no. V1300015 be granted, accepting staff's Finding of Facts.

- 1 That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or class of use in the same vicinity and district because the existing home has a 6 foot 4 inch side yard setback. The petitioner is proposing substantial improvements to the property including an addition to the home, an attached garage, new driveway and patio. The proposed additions would maintain the existing side yard setback. The proposed porch will provide for a more appropriate entryway into the home, as the existing (a reconstructed) driveway directly abuts the residence, which inhibits proper access.
2. That such variance is necessary for the preservation and enjoyment of substantial property rights because new investments in neighborhoods are essential in maintaining property values. The proposed additions can be reasonably accommodated with minor variances.

3. That the granting of such variance will not diminish the marketable value of adjacent land and improvements, or unduly increase congestion in the public streets because the proposed additions add to the value of the neighborhood and thereby the marketable value of adjoining lands. The additions will not detriment the public streets.
4. That the condition or situation of a specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation because the existing homes side yard setback dictates that of the proposed building addition. The proposed porch is positioned to provide a safe and attractive entryway into the residence, away from conflict with the existing driveway.

There was a question if the existing garage would be affected by the new addition. It was reported the garage would be moved and all setback requirements would be met.

Motion carried: 7 Yeas 0 Nays (Resolution #5359)

PUBLIC HEARING:

Appeal #V130016 P.P. #41-17-26-276-020 & 41-17-26-276-029
AMDG Architects
4600 & 4620 Herman Ave. S.W.
Zoned I-1

Secretary Lomonaco read the application. Zoning Code Section 90-648 (4) Orientation of Overhead Doors specifies that such doors for truck loading areas shall not face the front yard. The petitioner proposes to construct two additions to the existing building at 4620 Herman Avenue. Each addition is proposed to have an overhead door facing Herman Avenue. The petitioner requests a variance to allow the two overhead doors. Zoning Code Section 90-648 (1) Uses Requiring Loading Area specifies that there shall be provided and maintained on the lot adequate space for standing, loading and unloading services in order to avoid undue interference with public use of the streets. The proposed overhead doors with each addition will require utilizing Herman Avenue for the backing of tractor-trailers into the property. The petitioner requests a variance to allow the use of Herman Avenue to access the proposed overhead doors.

Chairman VanderSluis opened the public hearing.

Peter Baldwin, A.M.D.G. Architect, said the location is unique. Other businesses also use the street to off load. The additions will add more jobs and investment into the property, however to place the additions the street will have to be used for truck maneuvering.

Daniel Rupert, Control Tech, 4599 Herman, has no objection to the variance request, however he is concerned that the traffic is causing damage to the street. There is a large pot hole in the cul-de-sac.

There being no further remarks, Chairman VanderSluis closed the public hearing.

Cochran said the project had been reviewed by the Planning Commission, and granted with conditions, one of which was this variance. This is not a large site, and to accommodate the two additions, they would have to use the street for truck maneuvering. Staff typically would not support a variance of this nature, however this location is at the end of the cul-de-sac, and the only traffic affected would that of Die Tech. Staff recommended the variance be granted.

Chairman VanderSluis asked if the City was aware of the pot hole. Cochran said the City's Public Work's Department was aware of the situation.

A motion was made by Dykhouse and seconded by Palmer that the request for a variance in application no. V130016 be granted, accepting staff's Finding of Facts.

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or class of use in the same vicinity and district because the property is located at the end of a cul-de-sac. An adjoining property currently has an overhead door for a loading area directly accessed from the cul-de-sac. The use of the cul-de-sac is almost entirely devoted to the businesses adjoining. The movements of the tractor trailers to the loading areas will thereby not interfere with the general public's use of this terminal end of Herman Avenue. The project received site plan approval from the Planning Commission on May 21, 2013 subject to the approval of the variances by the Board of Zoning Appeals.
2. That such variance is necessary for the preservation and enjoyment of substantial property rights because the overall project involves the demolition of an existing building and constructing two additions, each with an overhead door oriented to Herman Avenue. The proposed additions are a significant investment to the community and will provide additional employment.
3. That the granting of such variance will not diminish the marketable value of adjacent land and improvements, or unduly increase congestion in the public streets because the proposed additions will not detriment adjoining properties nor interfere with their access to Herman Avenue.
4. That the condition or situation of a specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation because the property is located on a cul-de-sac at the end of an industrial street. An adjoining property currently has overhead door access to this cul-de-sac. The two properties will almost exclusively share use of this cul-de-sac.

Dykhouse wanted to know what type of truck loads are usual for the business.

Mr. Baldwin did not know the answer.

Motion carried: 7 Yeas 0 Nays (Resolution #5360)

PUBLIC HEARING:

Appeal #V130017

P.P. #41-17-28-201-035

Kent Ward

2720 44th St. S.W.

Zoned B-1

The application was read by Secretary Lomonaco. Zoning Code Section 90-372 (7) B-2 General Business District Special Uses specifies that open air business uses may be permitted subject to the approval of the planning commission. In April 1995, this B-1 Local Business District property obtained a use variance by the Board of Zoning Appeals to allow an outdoor dining area at the restaurant. The petitioner proposes to construct a second outdoor dining area of 765 sq. ft. The petitioner requests to expand the prior variance to include the second outdoor dining area.

Chairman VanderSluis opened the public hearing.

Jeff Carmody, partner of JK Wyoming Real Estate. LLC., said they had originally put in a Belgium bowling style room that is not popular. They would like to provide additional patio area. They are covering their patios so patrons may dine in a more open air feeling, and use it more during three seasons.

There being no further remarks, Chairman VanderSluis closed the public hearing.

Cochran said originally this address received a variance approval in the 1990's for outdoor dining. This variance will expand the use. The patio will be located more to the southwest corner of the building away from the residential area to the east.

A motion was made by VanHouten and seconded by Palmer that the request for a variance in application no. V130017 be granted, accepting staff's Finding of Facts.

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or class of use in the same vicinity and district because this property (originally Damon's) has utilized an outdoor dining area since 1995, after authorization by the Zoning Board of Appeals. The proposed additional dining area expands upon that prior approval.
2. That such variance is necessary for the preservation and enjoyment of substantial property rights because the restaurant businesses on this property have found the outdoor dining area to be a significant enhancement. The authorization of the second outdoor dining area should contribute significantly to the business operation.
3. That the granting of such variance will not diminish the marketable value of adjacent land and improvements, or unduly increase congestion in the public streets because the proposed outdoor dining area is to the rear of the building and is located substantially away from nearby residences. The property has access from 44th Street, a four lane boulevard.
4. That the condition or situation of a specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation because the authorization of the variance in 1995 established the outdoor dining use on the property. The proposed expansion of that use is an unusual circumstance.

Motion carried: 7 Yeas 0 Nays (Resolution #5361)

PUBLIC HEARING:

Appeal #V130014 P.P. #41-17-32-476-018
Epique Homes, Inc.
3360-3380 56th St. S.W.
Zoned ER

The application was read by Secretary Lomonaco. Zoning Code Section 90-45 (7) Accessory Buildings specifies a maximum of 768 square foot per building and a maximum combined 1000 square foot for all accessory buildings on a single family zoned parcel. The petitioner desires to construct a single accessory building of 1,008 square foot in conjunction with a new home. The petitioner requests a variance to allow an additional 240 square foot of accessory building area.

Chairman VanderSluis opened the public hearing.

Troy Schrock, Epique homes said the actual square footage of the garage would be larger than what was read in the application. The house was designed with the garage off the side on an angle. The owner had decided the area between the house and garage should be made storage area off the garage, which would include it as part of the square footage of the garage.

There being no further remarks, Chairman VanderSluis closed the public hearing.

Cochran went over the site plan. Overall, staff would have no problem with recommending the variance be approved, this is a larger lot and the house will be larger as well. As some point this area could be developed into a plat, but the lots would still be of significant size. However the original site plan had not indicated the area between the house and garage would be included with the garage. It was not until recently that staff had received a more detailed layout. Unfortunately by then the public notices had already been sent. To legally grant this variance with additional footage, the notice should be resent with the correction.

A motion was made by Postema and seconded by Lomonaco that the request for a variance in application no. V130014 be tabled, so staff can resend the notices with the corrected accessory size.

Motion carried: 7 Yeas 0 Nays

REQUEST FOR INTERPRETATION:

Cochran introduced staff's request for interpretation regarding a use classified as a "learning lab." The lab would provide students with a blended educational environment that would include computer based learning and focused instruction based on varied student needs. The students would receive credits that would apply towards graduation. A director, teachers, and paraprofessionals would provide guidance to the students. The facility would provide an instructional area but will have no need for ancillary amenities, such as athletic fields, gyms, or cafeterias. As a non-traditional learning facility, staff is unclear on how the Zoning Code

must be applied. Staff is requesting this interpretation to provide direction in developing proper findings of fact to present to the Board of Zoning Appeals at your next meeting, or possibly withdrawing the variance request scheduled for June 17, 2013. At this time, staff is not focusing on the potential location of the facility, but the proper consideration of the use, however staff has not been able to come to a consensus on how to determine what the “use” would be.

To help guide the Board of Zoning Appeals, Cochran had provided copies of the following sections of the Zoning Code, Section 90-1. Interpretations, Section 90-4. Definitions. – Community Center and Schools (it was noted that Community Centers exclude schools from the definition), and Section 90-371. Principal Permitted Uses B-2 General Business District.

Cochran reported there were several determinations the Board of Zoning Appeals could make. These included, but were not limited to, the following:

1. The Rocket Learning Lab could be determined to be a public school. Since public schools are prohibited in the B-2 General Business district by the Zoning Code, a use variance would be required to operate such a facility.
2. The Rocket Learning Lab could be determined to be similar to a business school or private school operated for a profit. This use is allowed by right in the B-2 General Business district. Such a determination would result in the withdrawal of the scheduled use variance request.

He added that the Board of Zoning Appeals may find they needed additional time to consider the interpretation request. If so, this might result in a delay to the scheduled use variance request. He did say there was a representative present from the Kellogsville School System if the Board wanted to hear specifications regarding the facility.

Chairman VanderSluis looked to the Board for a general idea of how they would like to proceed. Did the Board want to discuss the matter and make a determination before the end of the meeting or did they want to take additional time to consider the request.

VanHouten preferred taking the two weeks until the next meeting to consider the request, but he suggested the school representative be allowed to explain the concept of “learning lab.”

A motion was made by Lomonaco and seconded by Dykhouse to delay making an interpretation until the June 17, 2013 Zoning Board of Appeals meeting.

Motion carried: 7 Yeas 0 Nays

Tammy Savage, Principal, Discovery Alternative High School, told the Board she would be the director of the learning lab. The goal would be for students to go to the facility, use netbook computers, and leave the facility just as it was at the end of the day. The facility would help those students who needed to earn credit towards graduation or those students who were looking to accelerate their education. The facility would receive funding from the State of Michigan just like the other schools.

Beduhn asked what the facility’s primary objective would be.

Ms. Savage said it would be to help student who were behind in credits, as well as those students looking to gain extra credits for early graduation.

Beduhn asked if there was a specific curriculum.

Ms. Savage said the curriculum would be individualized per student.

The Board had general conversation with Ms. Savage regarding what staff was involved in the process. They appeared to be trying to determine whether there were teachers involved on a regular or daily basis. Ms. Savage referred to the staff that helped the students as “content specialists” and “learning facilitators”, who would be involved as needed. These content specialist and learning facilitators could be teachers and/or paraprofessionals. The principal and secretary would be there every day.

Postema asked if the students would attend this facility exclusively. Ms. Savage said the best answer was that the students would spend most of the day at the facility.

Dykhouse asked what the difference between this school and the others would be.

Ms. Savage said it was a different model of teaching.

Postema asked if the Board took two weeks to consider the request, if it would affect the variance request on the next meeting’s agenda.

Cochran said the Board could make their determination prior to the variance request. If it was determined a Use variance was necessary, they could continue to the Public Hearing. If a Use variance was not necessary, the variance request would not have to be heard.

Postema thought it seemed to be a “school” use. The funding comes from the State of Michigan so it is not a private, business or vocation school. By definition, schools may not be tied to community centers, so it is not an auxiliary use of a community center.

There were no public comments at the meeting.

The new business items were discussed by Cochran and the Board members.

VanderSluis commented on the training opportunity that had been held the previous Thursday. He thought the speaker had done a good job, and found the training beneficial.

Cochran said staff appreciated any comments from the attendants. He thought it helped the boards with their focus and their interaction with each other.

Canda Lomonaco
Secretary

Char Bell
Recording Secretary