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Planner
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**ZONING BOARD OF APPEALS
MINUTES
WEDNESDAY, DECEMBER 16, 2015
7:00 P.M.**

The regularly scheduled meeting of the Zoning Board of Appeals was called to order at 7:00 p.m. by Chairman Carpenter.

The Pledge of Allegiance to the Flag was said by those present.

ROLL CALL by Secretary Reese.

MEMBERS PRESENT: Riel, Balzer, Carpenter, Reese.

MEMBERS ABSENT: Richards.

VACANCIES: 2 (Gobbo, LaGrand)

APPROVAL OF AGENDA: **Balzer moved to approve the Agenda as printed. Supported. MOTION CARRIED.**

APPROVAL OF MINUTES: **Balzer moved to approve the minutes of the June 17, 2015 meeting as presented. Supported. MOTION CARRIED.**

CORRESPONDENCE: None.

PUBLIC COMMENTS: None.

UNFINISHED BUSINESS: None.

NEW BUSINESS:

- I. PUBLIC HEARING – Appeal 15-770004 – Paul Fata & Sons LLC**, requesting a 40 foot variance to the required 40 feet of lot frontage on a public road as set forth in Section 42-857 of the Zoning Ordinance for the BC (Business, Community) zoning district to be allowed to create a parcel for an existing commercial building that would be approximately 1.15 acres. The property is described as being an approximately 3.11 acres located at 13070 and 13060 S. US 27, DeWitt, MI 48820, on the west side of S. US 27, south of Herbison Road, in the northeast ¼ of Section 16 of DeWitt Charter Township (Parcel #050-016-100-021-00).

- A. Open Public Hearing. **Chairman Carpenter declared the Public Hearing opened at 7:05 p.m.**
- B. Administrative Comments/Applicant/Public Comments.

Before staff's comments Chairman Carpenter disclosed that he has a personal relationship with the childcare business on the subject property as that is where his children attend daycare (Child's Play Place). However, he does not have any financial stake in the outcome of this request.

Township Planner Brett Wittenberg briefly reviewed staff's report dated December 9, 2015 pointing out the location of the site. The request is for the creation of a new legal description of an existing property. The applicant is requesting a 40 ft. variance to the required 40 ft. of lot frontage on a public road to create an approximately 1.15 acre parcel.

Currently, the property consists of two multi-tenant commercial buildings with associated parking and access drives. If granted, the proposed variance would allow the applicant to achieve a land division to create a new legal description to separate the western building, and associated parking, from the remainder of the commercial development. The applicant wishes to sell the western most building to one of the existing tenants.

Wittenberg noted the purpose of the frontage requirements in the Ordinance is to provide orderly development and reduce sprawl. Currently, private streets or frontage onto private roads is only permitted through a condominium plat process. The subject site does have access to Herbison Road and S. US 27 that is provided through access easements. The applicant did submit a land division application. Staff denied the land division because the property does not have the required frontage. The applicant was provided options, such as performing a condominium plat or by revising the proposed land division so that some frontage would be provided.

Wittenberg went on to review the request for compliance with Variance Standards set forth in Section 42-70 as follows:

Basic Conditions:

Basic Condition a) – *Granting the variance will not be contrary to the public interest or to the intent and purpose of this Ordinance.*

As mentioned previously, the intent of the frontage requirements is to provide for efficient and orderly development of property along the public road system. The proposed variance request would allow for a land division that would create a landlocked parcel (Parcel B) that does not have frontage or direct access to a public road. Other options, such as a condominium plat or reconfiguration of the proposed land division to provide the necessary frontage may be available. As such, since other options are available that would be in compliance with the ordinance, it is staff's opinion that the requested variance is contrary to the intent and purpose of the Ordinance.

Basic Condition b) – *Granting the variance shall not permit the establishment within a district of any use which is not permitted by right, under special conditions, or by special use permit within that district.*

Day care center uses are a permitted use in the BC (Business, Community) Zoning District.

Basic Condition c) – *Granting the variance will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.*

There is no reason to believe that granting the variance would have a significant adverse impact on surrounding property values since the variance is for a legal description of an existing developed property.

Basic Condition d) – *The variance is not one where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.*

Requests of this type have not been frequent or consistent so as to demonstrate the need for an amendment to the Zoning Ordinance. Staff finds that the request does comply with this condition.

Special Conditions:

Special Condition a) – *Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district and when such circumstances or conditions shall not have resulted from any act of the applicant subsequent to the adoption of this Ordinance and when such circumstances or conditions shall not have resulted from any act of the applicant in violation of a prior zoning ordinance applicable to said property.*

The property was developed in compliance with the Ordinance at the time. The development includes two multi-tenant commercial buildings and associated parking with access provided by private easements. It is staff's opinion that there are no exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district.

Special Condition b) – *Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.*

Subject to the results of the public hearing, staff believes that the variance request is not necessary to preserve a substantial property right. The applicant is able to use the property for commercial and day care center uses, just like other developments.

Wittenberg further stated, with respect to Basic Condition a), last year staff had a request by a church property for a somewhat similar request. However, the property was a legal nonconforming situation. Whereas, the subject site for this variance was developed after the Ordinance was in effect and was developed as an overall commercial development. Secondly, the applicant was able to provide some frontage

onto S. US 27 so that the entire variance was not needed and a totally land locked parcel was not created. Also, the parcel was brought more into conformity with the current Ordinance. Should this request be granted, the outcome would be changing a parcel that is currently in compliance with the Ordinance and making it nonconforming nonconforming.

In closing, Wittenberg advised staff is recommending denial of the request as it does not meet all four Basic Conditions and does not meet either of the Special Conditions, as required by the Zoning Ordinance.

Chairman Carpenter invited the applicant to speak.

Bill Shy, CBRE/Martin, 1111 Michigan Avenue, Suite 300, East Lansing, MI 48823, representing the applicant, stated the commercial property is currently operating as is with no traffic issues. Granting of a land division will not affect traffic flow at all. The current use will be the same. He noted there is currently an access easement in place that runs with the property in perpetuity. They did work on a few reconfigured options for the land division that just did not work. The other option they are still considering is whether or not the road way can be deeded to the County.

Shy went on to note that the request could meet Special Condition b) based on the fact that a denial would prevent the property owner from selling what would be the newly created parcel. The current tenant would like to purchase the west building and continue to operate there.

Chairman Carpenter invited public comments.

Greg Whitlock 12625 S. US 27, DeWitt, MI 48820, questioned if the two buildings on the site plan were located on the same parcel and if the existing layout was in compliance with current standards.

Wittenberg advised both buildings are located on the same parcel and the site is in compliance with standards in place when they were built.

Riel asked for clarification on whether the potential purchaser was willing to help maintain the easement area in front of the west building.

Shy advised that the potential purchaser of the west building would prefer to have no obligation to maintain the roadway in front of the building. The proposed land division would not give them frontage onto a public roadway. However, they would be provided an easement for use of the roadways.

Wittenberg noted one of staff's concerns with private access easements is that the Township has no authority to enforce them. These are agreements between private property owners.

Dave Fedewa, 1025 W. Herbison Road, DeWitt, MI 48820, stated he is the property owner immediately to the north of the subject site. He feels if the site was vacant and the applicant was allowed to create a non conforming parcel it would set a bad precedent. However, since the building has been there for a very long time and the intent and use is not proposed to change he can see how the variance request could meet the conditions that would allow approval. He stated he was in support of the applicant's request. If we can allow a proposed new business at the southwest corner

of Herbison Road and S. US 27 to use the existing access drive how can this applicant be denied.

- C. **Close Public Hearing. Hearing no further comments or questions, Chairman Carpenter declared the Public Hearing closed at 7:35 p.m.**
- D. Discussion and possible action by Board of Appeals.

Balzer noted any new business that went in at the southwest corner of Herbison Road and S. US 27 would also be using the access drive. Would that site be in compliance with the Ordinance because it has access to Herbison Road and S. US 27, even though there would be no driveway onto either of those public roads.

Wittenberg stated that it would be in compliance with the frontage requirement.

Brief discussion followed regarding the fact that it would be highly unlikely that access onto Herbison Road would be approved due to traffic safety.

Brief discussion followed regarding the approved plans for a Walgreens at the southwest corner of Herbison Road and S. US 27. It was determined that the current access onto Herbison Road would be closed for safety purposes.

Brief discussion followed regarding alternative options for the land division that may minimize the amount of frontage requested for the variance. The applicant could also consider going through the site condominium plat process with private streets.

Carpenter questioned if there were some way a driveway could be legally shared between parcels.

Wittenberg stated that it is possible however, concerns would be if the driveway would provide adequate access to the property and maintenance.

Carpenter noted the intent of the Ordinance is to promote orderly development and reduce sprawl. He questioned how an existing building could cause sprawl.

Wittenberg advised that at some point the Township adopted regulations requiring the public frontage. If this variance were to be granted it would create a land locked piece of property with access that is only controlled by private property owners. Approval would also set a precedent that the Township approved a waiver to the public frontage requirement.

Reese questioned how many responses have been received from the notification process.

Wittenberg advised there were two inquiries for clarification on what the applicant was requesting and one letter in support from Dr. Fedewa.

Brief discussion followed clarifying the frontage requirement.

There were no other questions or comments.

Balzer moved that Appeal 15-770004, from Paul Fata & Sons, LLC to allow a 40 foot variance to the required 40 feet of lot frontage to create a parcel for an existing commercial building that would be approximately 1.15 acres per Section

42-857 for the BC (Business Community) zoned property located at 13060 and 13070 S. US 27 as evidenced by the current parcel #050-016-100-021-00 be denied. Denial is based on a finding that the request does not meet all four of the Basic Conditions or a Special Condition listed in Section 42-70 of the Zoning Ordinance. Supported.

ROLL CALL vote on motion:

AYES: 4 NAYS: 0 ABSENT: 1 (Richards)

VACANT: 2 (Gobbo, LaGrand)

MOTION CARRIED.

E. Possible Certification of Decision.

Balzer moved to approve the Certification of Decision for denial of Appeal 15.770004 from Paul Fata & Sons, LLC, as stated in the above motion. Supported.

ROLL CALL vote on motion:

AYES: 4 NAYS: 0 ABSENT: 1 (Richards)

VACANT: 2 (Gobbo, LaGrand)

MOTION CARRIED.

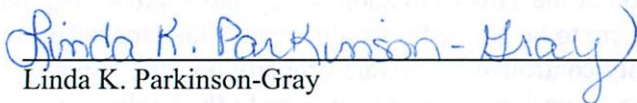
PUBLIC COMMENTS ON NON-AGENDA ITEMS: None.

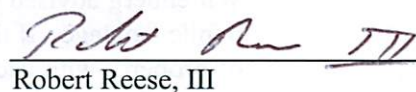
TRUSTEES REPORT:

Trustee Balzer gave a brief report on business conducted and action taken at the recent Board of Trustees meetings.

DISCUSSION: Brief discussion regarding the vacancies on the Zoning Board of Appeals.

ADJOURNMENT: **Riel moved to adjourn the meeting at 7:54 p.m. Supported. MOTION CARRIED.**


Linda K. Parkinson-Gray


Robert Reese, III