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Jeff Carpenter
Vice-Chair
Vacant
Secretary
Robert Reese, III
Board Members
Johanna Balzer, Trustee
Donald Riel
Andrew Richards
Kristen Krol



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Planner
Tory Niewiadomski

Planner
Brett Wittenberg

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Linda K. Parkinson

**ZONING BOARD OF APPEALS
MINUTES
WEDNESDAY, APRIL 20, 2016
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 Township Planner Tory Niewiadomski.

MEMBERS PRESENT: Carpenter, Riel, Balzer, Krol.

MEMBERS ABSENT: Reese, Richards.

VACANCY: One

APPROVAL OF AGENDA: **Balzer moved to approve the Agenda with the amendment to moved Election of Officers to Item II. and place Appeal 16-770002 at Item I. Supported. MOTION CARRIED.**

APPROVAL OF MINUTES: **Balzer moved to approve the minutes of the December 16, 2015 meeting as presented. Supported. MOTION CARRIED.**

CORRESPONDENCE: None.

PUBLIC COMMENTS: None.

UNFINISHED BUSINESS: None.

NEW BUSINESS:

- I. **PUBLIC HEARING – Appeal 16-770002 – Paul Fata & Sons LLC**, requesting a variance to Section 42-857 of the Zoning Ordinance for the ratio of lot width/maximum depth. The Zoning Ordinance requires the lot width/ maximum depth of non-agricultural parcels to be ¼ based on the Land Division Act requirements. The applicant is proposing to create a parcel that would be 1/7.9 lot width/ maximum depth ratio. The property is described as being located at 13070 S. US 27, DeWitt, MI 48820, west of S. US 27, east of Tucker Drive, south of Herbison Road, north of Twinbrook Drive 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.

Township Planner Tory Niewiadomski briefly reviewed staff's report dated April 13, 2016 going over the nature of the request (as described above). Currently, there are two multi-tenant commercial buildings with separate addresses on the property. The site contains parking and access drives to serve the development. The applicant intends to separate the building to the west (Proposed Parcel B) from the remainder of the property by providing a new legal description. The split would allow the applicant to sell the proposed Parcel B to one of the tenants in the existing building which would continue to be utilized as a daycare and school.

Niewiadomski noted Thirty-Seven (37) letters were sent out notifying the public of this request. No formal inquiries were received seeking information regarding the proposed request.

Niewiadomski went on to review the request for compliance with the four Basic Conditions and two Special Conditions listed in Section 42-70 of the Zoning Ordinance as follows:

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

The intent of the ordinance is to control development in an efficient and orderly manner along the public road system. The proposed parcel would provide sufficient road frontage for the BC (Business, Community) zoning district, however it would create a "flag lot" in the sense that it would only have 66 feet of public road frontage and 521 foot of depth for the parcel. With that being said, the parcel is currently served by a private service drive that allows for access out to Herbison Road and Old 27 to provide adequate means of ingress and egress to the proposed parcel. This is an existing property that has been built out with an overall development plan to provide easement access across multiple properties and would not change the existing development pattern in the area. Staff is of the opinion that the intent of the lot width to depth requirements are to prevent new development from occurring that would be detrimental to the requirements of the ordinance. In this particular case, the only change that would effectively occur, would be a legally described area to allow for an ownership opportunity.

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 originally developed in 1989 and was subsequently sold to Mr. Fata in 1994. The development includes two multi-tenant commercial buildings and associated parking with access provided by easements. The proposed parcel would not change the intended use or character of the property. The circumstances for this variance request do not generally apply to other properties or uses in the BC (Business, Community) zoning district. Based on the existing parcel layout, it would not be possible to split the back portion of the property without the need for a variance. This variance request provides the least amount of variance necessary to subdivide the property compared to other options. The issue with trying to split off a portion of the lot along the Old 27 access is that it is narrower than the Herbison Road frontage, and therefore, creates a larger lot width to depth ratio that would bring the crossroad plaza out of compliance from a building bufferyard setback standpoint. Absent a condominium conversion, this is the only effective means to transfer deeded property to the tenant. The applicant has indicated that a condominium was considered however, it was not a viable option for them at this time.

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.

In closing, Niewiadomski stated staff's findings are that there is no change to the existing conditions of the property and the requested variance would not be detrimental to the requirements of the Zoning Ordinance.

Balzer questioned who would maintain the access drive that runs along the east side of the proposed Parcel B.

Niewiadomski stated it would be the underlying property owner. However, private easements are currently in place that provide access that may already address maintenance responsibilities. Those easements are private matters between the property owners. Perhaps the applicant's representative could provide additional information.

Steve Hershfield, 613 Virginia Avenue, East Lansing, MI 48823, representing the applicant, stated Mr. Niewiadomski was correct, that the easement agreements are private between the property owners. He has been working with all three parties involved (Walgreens, Fata's and the Purves'). There will be maintenance agreements put into place so that the access road will be taken care of appropriately.

Brief discussion followed regarding the fact that the lot width/depth is calculated by using the setback line.

Riel stated he recalls when the applicant previously applied for a variance the potential owner of the proposed Parcel B was not interested in maintaining any portion of the easement area. He questioned if this has changed.

Hershfield advised Brad and Holly Purves still want to purchase the building located on the west portion of the subject site. In order for that to happen there will have to be easements and maintenance agreements between the owners of proposed Parcel A and Parcel B. An agreement has been reached on the easement. However, these agreements would not be finalized until the lot split occurs.

Niewiadomski stated that currently there are easements in place that allow access to all parties involved. Should the split take place the easement language would be revised to better define maintenance responsibilities. Regardless, the decision before the Zoning Board of Appeals tonight runs with the land.

Hershfield clarified that effectively the easements and maintenance agreements would stay the same. The only difference would be that Brad and Holly Purves would own the easement area.

Hearing no further questions or comments, Chairman Carpenter invited public comments.

Dr. Stephen Thimmig, owner of 13020 S. US 27, DeWitt, MI 48820 (potential Walgreens site), stated he has a huge stake in the outcome of how this area develops. He stated there were never any problems with easements that have been put in place when he occupied the building at 13020 S. US 27. He doesn't anticipate any issues in the future.

- C. Close Public Hearing. **Hearing no further comments Balzer moved to close the Public Hearing at 7:24 p.m. Supported. MOTION CARRIED.**
- D. Discussion and possible action by Board of Appeals.

Carpenter stated for the record that he is a customer of the daycare that is located on the property involved in this request and he does know the potential purchasers, Brad and Holly Purves. However, he has no financial stake in the outcome of this request and will be voting on the request.

Balzer moved that Appeal 16-770002, from Paul Fata & Sons, LLC, to allow a variance to Section 42-857 of the Zoning Ordinance to exceed the lot width to depth ratio from 1:4, to 1:7.9 to create a parcel for an existing commercial building that would be approximately 1.82 acres for BC (Business, Community) zoned property for property located at 13060 and 13070 S. US 27 as evidenced by the current parcel 050-016-100-021-00 be approved. Approval is based on a finding that the request meets all four of the Basic Conditions and Special Condition (a) listed in Section 42-70 of the Zoning Ordinance. Supported.

ROLL CALL vote on motion:

AYES: 4 NAYS: 0 ABSENT: 2 (Reese, Richards)

VACANT: 1

MOTION CARRIED.

E. Possible Certification of Decision.

Balzer moved to approve the Certification of Decision for approval of Appeal 16-770002 from Paul Fata & Sons, LLC, as stated in the above motion. Supported.

ROLL CALL vote on motion:

AYES: 4 NAYS: 0 ABSENT: 2 (Reese, Richards)

VACANT: 1

MOTION CARRIED.

II. Election of Officers for the Year 2016.

Chairman Carpenter opened the floor for the nominations for the office of Chairman.

Riel nominated Jeff Carpenter for the office of Chairman.

Hearing no further nominations, Riel moved to close the nomination for the office of Chairman and cast a unanimous ballot for Jeff Carpenter for Chairman. Supported.

ROLL CALL vote on motion:

AYES: 4 NAYS: 0 ABSENT: 2 (Reese, Richards)

VACANT: 1

MOTION CARRIED.

Chairman Carpenter opened the floor for nominations for the office of Vice Chairman.

Chairman Carpenter nominated Andrew Richards for the office of Vice Chairman.

Hearing no further nominations, Carpenter moved to close the nominations for the office of Vice Chairman and cast a unanimous ballot for Andrew Richards for Vice Chairman. Supported.

ROLL CALL vote on motion:

AYES: 4 NAYS: 0 ABSENT: 2 (Reese, Richards)

VACANT: 1
MOTION CARRIED.

Chairman Carpenter opened the floor for nominations for the office of Secretary.

Carpenter nominated Robert Reese, III for the office of Secretary.

Hearing no further nominations, Carpenter moved to close the nominations for the office of Secretary and cast a unanimous ballot for Robert Reese, III for Secretary. Supported.

ROLL CALL vote on motion:

AYES: 4 NAYS: 0 ABSENT: 2 (Reese, Richards)

VACANT: 1

MOTION CARRIED.

The Zoning Board of Appeals Officers for the Year 2016 are:

Jeff Carpenter, Chairman

Andrew Richards, Vice Chairman

Robert Reese, III, Secretary

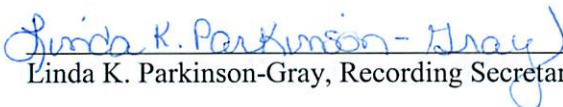
PUBLIC COMMENTS ON NON-AGENDA ITEMS: None.

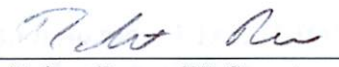
TRUSTEES REPORT:

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

DISCUSSION: None.

ADJOURNMENT: **Riel moved to adjourn the meeting at 7:45 p.m. Supported. MOTION CARRIED.**


Linda K. Parkinson-Gray, Recording Secretary


Robert Reese, III, Secretary