

The Board of Zoning Appeals met in regular session and was called to order by Chairman Kent Frauenberger on Tuesday, August 22, 2017, at 3:30 p.m. Board members in attendance were Will Harrelson, Patricica Chavis, Kent Frauenberger, and Richard Burns. Staff in attendance included Planning and Zoning Manager Tim Davis, and Secretary Sheri Green. Also present was Richard Haas, Senior Vice-President of KHN, and Chuck Springmeyer.

MINUTES:

Minutes of the May 9, 2017 meeting were approved on a motion by Richard Burns with a second by Will Harrelson.

Approved 4-0

NEW BUSINESS:

Mr. Frauenberger explained the workings of the Board of Zoning Appeals for those present. He advised that the Board of Zoning Appeals is a quasi-judicial board and that it has a Standard for Variances that has to be followed. Mr. Frauenberger then read each one of the standards. He continued by saying that four of the seven members were present, and that four affirmative votes were needed in order to approve the request. He also advised that, according to law, all motions are made in the affirmative. The Board's decisions are final; and if an applicant does not agree with the Board, they may appeal to the courts.

Mr. Frauenberger then swore in Tim Davis, and Richard Haas.

600 W Main St.

Tim Davis presented his staff report to the Board. He advised the Board that the City received a request to construct a hospital and medical building at 600 West Main Street which is zoned OC-1 Office-Commercial District. In order to construct the hospital and medical office building, the following variances would be needed:

- A variance to the minimum front yard setback; and
- A variance to allow an accessory building to be permitted within the required front yard; and
- A variance to allow a loathing berth to be located within the required front yard; and
- A variance to allow off-street parking area to be located within the required front yard.

In 2014, demolition of the former Hobart Brother Company Manufacturing Plant commenced and was completed in 2015. The result ended with a large open green space lot bordered by West Water Street to the North, North Adams Street to the East, West Main Street to the South, and North Elm Street to the West. After the proposed re-plat to combine the lot, this lot will encompass four front yards as it is completely surrounded by public right-of-way.

Kettering Health Network submitted an application to build a three story, 93,500 square feet, hospital and medical office building at 600 West Main Street.

During the review process of the submitted site plan, items did not meet the minimum standards required by the City of Troy Zoning Code. The first item that is not in compliance with the zoning requirements is the setback from the principal building to the northern property line. Section 1143.12(f)(3) of the Zoning Code requires a twenty-five foot front-yard setback in the OC-1 zoning district. The application proposes a 15 foot setback. A variance to our requirements would be needed to allow the proposed location of the building. The building location has been pushed to the north to accommodate the required parking spaces for the large building. Without a variance, the front row of parking along West Main Street would need to be eliminated reducing parking below our requirements. Pushing the building to north prevents the building from blocking the view of the courthouse when traveling east on West Main Street into downtown. This request was suggested by city representatives during initial discussions.

The second item that fails to meet the minimum zoning standards is the generator enclosure (accessory structure). Section 1151.04(c)(6) of the zoning code requires all accessory structures to be located in the rear yard. The application shows a generator located near West Water Street, within the front yard. This lot (once re-platted) will not have a rear-yard but will have four front-yards. Without a variance, accessory structures will not be permitted on this lot.

The third item that needs a variance to comply with our zoning code requirements is a variance to allow loading berths in the front-yard. Section 1153.02(b) of our code does not allow loathing berths in the front yard. The application shows the loathing berths near West Water Street, which is in the front yard. As stated above, this lot (once re-platted) will not have a rear yard but four front yards. Without a variance, loading berths will not be permitted on this lot.

The last item that fails to meet our zoning requirements is the location of the parking lot. Section 1155.07(e)(1) of the zoning code prevents off-street parking areas to be located within the front-yard in the OC-1 zoning district. As stated above, this lot (once re-platted) will not have a rear yard but four front yards. Without a variance, the parking lot would not be large enough to meet the required number of spaces.

The applicants have stated that it is their intentions to apply for a Planned Development after the building location has been decided. The city is anticipating an application within three months of this hearing.

Tim then read the "Code Sections and Findings" from his staff report. Section 1143.12(f)(3) requires a 25' minimum front yard depth. Section 1151.04(c)(6), prevents accessory structures from being located in any required front yard. Section 1153.02(b) prohibits loading berths within a required front yard. And Section 1155.07(e) prohibits off-street parking areas within a required front yard.

Following the Code Sections and Findings, Tim read from his staff report, the Standards for Variances. In his finding, the Appeals Board shall not grant a variance as authorized in Section 1137.08(e) of this Zoning Code unless it evaluates the proposed variance in view of the following criteria, and makes writing findings of fact as to these criteria and any other matters that the Board may find relevant. An affirmative finding as to each of the following criteria is necessary for approval of a variance.

- The variance requested arises from a condition which is unique, that is, a condition which is not ordinarily found in the same zoning district and the condition is created by the regulations of this section and not by an action or actions of the property owner or the applicant. **The variance request stems from a condition that is not ordinarily found in the OC-1 zoning district. The property entails four front yards with no side or rear yards which significantly limits the development on the lot.**
- The granting of the variance will not adversely affect the rights of adjacent property owners or residents. **The granting of the variance would not impact adjacent property owners or residents as none of the adjacent lots have four front yards and all the lots have side and/or rear yards.**
- The strict application of the provisions of this section from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application. **The strict application of the above listed sections will constitute a hardship upon the property owner by limiting the development options on the property. Only items permitted within the front yard setback would be allowed on this parcel. For example, accessory structures and loading berths would not be permitted anywhere on this lot.**
- The variance desired will not adversely affect the public health, safety, morals, convenience, comfort, prosperity, or general welfare. **The requested variance will not adversely affect the public health, safety, morals, convenience, comfort, prosperity, or general welfare.**
- The variance desired will not be opposed to the general spirit and intent of this section. **The requested variances would not be opposed to the general spirit and intent of Zoning Code and specific sections mentioned above. These sections are written based upon traditional lots (lots that consist of rear and side yards). No accommodations are addressed for lots that have four front yards in the Zoning Code.**
- The particular physical surroundings, shape, or topographical condition of the specific property involved would result in a practical difficulty or unnecessary hardship upon or for the owner, lessee, or occupant, as distinguished from a mere inconvenience, if the provisions of this section were literally enforced. **There is a unique condition that exists with this property. The property is surrounded by four public streets which results with four front yards. This leaves a hardship upon the owner as there is no side or rear yard on this lot.**
- The request for a variance is not based exclusively upon a desire of the owner, lessee, or occupant, or applicant to realize economic gain. **Staff does not feel this variance request is intended to achieve a benefit or produce an economic gain.**
- The granting of the variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located. **No, the variance would not be materially detrimental or injurious to the neighborhood. In fact, the development should enhance and improve the surrounding properties and neighborhood.**
- The proposed variance will not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood. **No, the proposed variance would not impact any of the above stated issues. A traffic impact study has been commissioned by the city to address traffic concerns. The Zoning code and Subdivision Regulations address public safety concerns which have been met with the exception of the requested variances.**

Conditions and Restrictions. In granting a variance, the Appeals Board may impose such conditions, safeguards and restrictions upon the premises benefited by the variance as may be necessary to comply with the standards set out in Section

1137.08(f) of this Zoning code so as to reduce or minimize any potential injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of this Zoning Code.

Recommendation:

The variance request is the result of a practical difficulty and the requested variance does meet the standards for a variance as required by Section 1137.08(e) of the City of Troy Zoning Code. It is the opinion of the staff that this variance be approved in accordance with the submitted site plan and with the following conditions:

- The property is combined into one parcel within three months; and
- An application for a Planned Development is received within three months.

After some discussion and a couple more questions, and no more testimony, Mr. Frauenberger adjourned the meeting temporarily for discussion.

After due review of all testimony, the staff report, and the applicants requests for variance, the Board of Zoning Appeals findings and facts is that the variance request is the result of practical difficulty for the property owner and are satisfied in the affirmative.

Mr. Harrellson made a motion to grant the requested variances, and Mrs. Chavis seconded that motion.

Approved 4-0

Mr. Frauenberger asked if there was any old business; there being none, Mr. Harrelson made a motion to adjourn meeting, and Mrs. Chavis seconded that motion.

Approved 4-0

Kent Frauenberger, Chairperson

Sheri Green, Secretary

Date