

**VILLAGE OF PAW PAW  
ZONING BOARD OF APPEALS**

**November 7, 2016**

PRESENT: Chairperson Julie Pioch, Barb Carpenter, Terry Davis, Marcos Flores, Mary Lou Hartwell

ABSENT: None

ALSO PRESENT: Rebecca Harvey, Village Planning Consultant, Sarah Moyer-Cale, Assistant Village Manager and two (2) members of the public.

CALL TO ORDER

Chairperson Pioch called the meeting to order at 7:06 p.m.

APPROVAL OF AGENDA

The agenda was reviewed and approved as presented.

APPROVAL OF MINUTES

It was noted that consideration of the minutes of the regular meeting of July 11, 2016 would be postponed to the next meeting of the Board.

PUBLIC COMMENT REGARDING NON-AGENDA ITEMS

No public comment on non-agenda items was offered.

VARIANCE REQUEST – *Water Street Coffee*

The next matter to come before the Board was the request of Freeman Kirby for Variance Approval from the following standard applicable to a proposed '*private open air business*' (Section 42-367 (23):

: **Section 42-367 (23) a.** – Minimum lot area shall be one acre.

The subject site is located at 1022 and 1022 ½ East Michigan Avenue and is within the B-2 General Business District

Jerry Dundon, was present on behalf of the application. He provided an overview of the proposed use of the property, noting the following:

- : the subject property consists of 2 lots that total 0.8 acres;
- : a retail establishment that includes the outdoor storage/sale of pickup truck body parts is proposed – (Kirby Truck Parts);
- : the operation is not a ‘junkyard’ – no disassembly of vehicles occurs; no hazardous material is involved; no machinery is used on the site except for a forklift;
- : outdoor storage/display area is required for the truck parts due to volume and limited building area;
- : the operation draws business from all over the country and is an asset to the community;
- : the business has been in operation all summer and no complaints have been received by the neighbors.

Wayne Wilhemi questioned why the proposed use was defined as an ‘*open air business*’. Harvey advised that the definition of ‘*open air business*’ provided in the Ordinance is very detailed and was identified as adequately addressing the elements of the proposed use. She added that there was no other use listed in the Ordinance that would reasonably apply to the proposed use, noting specifically the definition set forth for a ‘junkyard’.

Harvey stated that the Planning Commission moved forward with the applicant’s Special Use Permit request in agreement with staff’s interpretation of the Ordinance. ZBA members agreed that the definition of ‘*open air business*’, specifically subsections (4) and (5), seemed to logically apply to the proposed use.

No further public comment was offered on the matter.

Chairperson Pioch referenced Section 42-367 (23), Zoning Ordinance and reviewed the provisions applicable to an ‘*open air business*’. She noted that the proposed business appears to already be in operation.

Harvey stated that the applicant was advised by the Village in the summer that the proposed operation had not received the requisite approvals. To date, the applicant has applied for and received a Special Use Permit for the proposed ‘*open air business*’ and a recommendation for approval of the site plan. Both were subject to variance approval from the one acre lot size standard. If the variance is granted, the site plan will be submitted to Village Council for final action. If the variance is denied, the applicant will be required to bring the property into compliance with the Ordinance.

The Board then proceeded with a review of the variance criteria set forth in Section 42-66, noting the following findings with respect to the variance request:

1. The subject site is a lawful conforming building site in the B-2 District; there are no unique physical limitations on the site.
2. The subject site meets the dimensional requirements of the B-2 District and is a developable commercial site; a denial of the requested variance will not deprive the applicant of reasonable commercial use of the property.
3. The proposal does not meet the intent of the minimum 1-acre lot size requirement, namely to provide for adequate setbacks and buffering, to minimize the intensity (bulk/mass) of the outdoor activity on the site, and to minimize the impacts of the outdoor activity on the surrounding area; the intent of the lot size standard is especially relevant in the area given the role of East Michigan as a gateway into the Village core and the surrounding residential neighborhoods; a variance from the standard will open up outdoor use options on the many lots in the area that are less than 1 acre in area; and, the hardship is self-created.
4. The condition of the property is not of a 'general or recurrent nature' and does not justify an amendment to the Ordinance; a request for a text amendment would be the appropriate avenue if the standard itself is deemed to be without merit.

Chairperson Pioch referenced the request for variance approval from the one acre lot size standard recently considered for the U-Haul operation. She noted that the variance had been granted in that situation due to some very distinct differences in the application. Namely, it was determined that the intent of the Ordinance had been met given the limited extent of the outdoor activity (a maximum of four U-Haul trucks/trailers parked in an existing parking lot); the intermittent nature of the truck parking; its similarity to any other parking lot activity; the amount of open space on the site; the nature of the surrounding land use; and, the limited impact on the surrounding area.

Ms. Hartwell then moved to deny variance approval from the one acre minimum lot size requirement applicable to the proposed '*open air business*' on the subject property based upon the findings of the Board on the variance criteria set forth in Section 42-66, Zoning Ordinance. Mr. Flores seconded the motion. The motion carried unanimously.

The Board advised the applicant that the following options for moving forward with the proposed operation would be available:

1 – locate all merchandise within an enclosed building and seek approval as an allowed '*retail use*' within the B-2 District;

2 – request a text amendment to change the one acre minimum lot size requirement applicable to an '*open air business*';

3 – request ZBA interpretation of the proposed use as something other than an '*open air business*'.

Mr. Dundon reviewed the surrounding land use noting that several '*open air businesses*' were in operation in the area . . . namely two vehicle sales lots; the MDOT truck yard; and the Soil Conservation Service utility yard. Chairperson Pioch noted that this observation could be presented in support of a text amendment but was not pertinent to the applicable variance criteria.

### UNFINISHED BUSINESS

No Unfinished Business was scheduled for Board consideration.

### NEW BUSINESS

Harvey noted that a request for a special Zoning Board of Appeals meeting had been requested to assist in reducing the review/approval timeline in consideration of impending weather limitations. All Board members noted their availability for a special meeting on Monday, November 28, 2016. It was agreed that the meeting would be held at 6:00 p.m. instead of 7:00 p.m. due to the scheduled Village Council meeting.

### MEMBER COMMENTS

No member comments were offered.

### VILLAGE MANAGER/PLANNING CONSULTANT COMMENTS

No staff comments were offered.

### ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 7:45 p.m.