

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

April 18, 2016

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

ABSENT: None

ALSO PRESENT: Rebecca Harvey, Village Planning Consultant and one (1) member of the public.

CALL TO ORDER

Chairperson Pioch called the meeting to order at 7:00 p.m.

APPROVAL OF AGENDA

The agenda was reviewed and approved as presented.

APPROVAL OF MINUTES

The next matter to come before the Board was consideration of the proposed minutes of the March 7, 2016 Zoning Board of Appeals meeting. Mr. Flores moved to approve the minutes as presented. Ms. Carpenter seconded the motion. The motion carried unanimously.

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 Andrew Rossell, P.E. of AR Engineering for Variance Approval from the following standards applicable to a proposed Coffee Drive –Thru Restaurant (*Section 42-367 (10) - 'drive-in restaurant'*):

: **Section 42-367 (10) a.** – The main and accessory buildings shall be set back a minimum of 60 feet from any adjacent right-of-way line or residential property line.

The subject site is located at 821 South Kalamazoo Street and is within the B-2 General Business District

Chairperson Pioch stated that this variance request was considered by the Board on March 7, 2016 and at that time was held to have been granted on the vote of 2 to 1 based upon an interpretation of the Michigan Zoning Enabling Act regarding what would constitute a quorum of the Board with only three (3) sitting members. She advised that subsequent study of the Village of Paw Paw Zoning Ordinance revealed that the Ordinance itself is clear that three (3) members constitutes a quorum of the ZBA . . . thus rendering the 2 to 1 vote in March a failed vote. To that end, the matter has been placed on the agenda for continued consideration. She clarified that the applicant's parking variance that was considered and acted upon in March remained valid in that it was granted with a vote of 3 to 0.

Chairperon Pioch then welcomed new ZBA members Terry Davis and Mary Lou Hartwell. She noted that consideration of the variance request with a full board present will improve the ability of the Board to act conclusively on the request.

Andrew Rossell, project engineer, was present on behalf of the application. He provided a new overview of the project, noting the following:

- : the B-2 District applies a 0 ft setback to commercial uses; only a 'drive-thru restaurant' is subject to the 60 ft setback requirement
- : the subject site is .5 acres in area but has 52 ft of its depth occupied by road right-of-way (19 ft right-of-way; 33 ft easement)
- : the building dimensions are only 20 ft x 90 ft . . (plus a rear yard patio) in consideration of the site constraints
- : the site has been designed to meet parking requirements and provide a dumpster facility and landscaping
- : a 12.5 ft setback from the edge of the right-of-way is proposed . . which results in a 20.5 ft setback from the edge of the road

Referencing the aerial photo previously presented, Mr. Rossell reiterated that the proposed building location is similar to other drive-thru restaurants located along Kalamazoo Street and that no drive-thru restaurants along the corridor comply with the 60 ft setback requirement. He further noted the proximity of the AT&T building and St Julian's to the roadway.

In response to Board questions, Mr. Rossell noted that McDonald's and Taco Bell are set slightly further back than the proposed coffee shop, but that

both facilities have a front yard drive-thru element. He added that both sites are also larger than the subject property and do not provide any rear yard parking. He then confirmed that the existing fence on the McDonald's site along their north property line and the proposed parking along the site's south property line are setback similarly.

Board discussion ensued. Mr. Flores referenced recently approved improvements to the Wendy's facility. He noted that the existing building is within the required front yard. It was agreed that the proposed improvements to the Wendy's site will facilitate turning movements at the signal and improve traffic flow in that area. The heavy traffic volumes and number of turning movements along the Kalamazoo Street corridor were reviewed.

Following Board discussion of the proposed sidewalk extension and landscape areas, Ms. Harvey confirmed that the requested front yard setback variance could be conditioned upon said extension of the sidewalk and specific landscaping requirements. Ms. Carpenter stated that such a condition would alleviate her concerns regarding traffic safety at the driveways.

No public comment was offered on the matter.

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 building setback variance request:

1. The subject site is a lawful nonconforming building site . . . but is limited by its size, narrowness, and unique shape. It was noted that the narrowness of the lot has required parking placement in the rear yard . . . which has further limited building placement on the site.
2. The proposed use and site layout are similar to many properties along the corridor; compliance with the 60 ft setback requirement will not allow reasonable use of the property; the proposed setback is similar to the front setback existing on area properties . . . specifically, the property adjacent to the south (McDonald's).
3. The proposed 12 ft setback is closer to the road right-of-way than other 'drive-in restaurants' along Kalamazoo Street but a 0 ft setback is allowed in the B-2 District for other uses along the corridor; the site design allows for adequate vehicle stacking and safe site circulation . . . both objectives of the 60 ft setback requirement; the proposed sidewalk extension and the use of low landscaping near the driveways will maintain visibility and sight lines for exiting traffic.

4. The condition of the property is not of a 'general or recurrent nature' and does not justify an amendment to the Ordinance.

Ms. Hartwell then moved to grant variance approval from the 60 ft front building setback requirement so as to permit the proposed 12 ft front setback as shown on the 'draft site plan' presented at the meeting. The variance is granted based upon the findings of the Board on the variance criteria set forth in Section 42-66, Zoning Ordinance and conditioned upon the following: 1) the extension of the sidewalk along Kalamazoo Street the width of the subject property, including along that portion of the Knauss property to be developed for parking, and 2) the provision of landscaping in the front yard in those areas on either side of the driveways and in front of the building, not to exceed 24 inches in height. Ms. Carpenter seconded the motion. The motion carried unanimously.

UNFINISHED BUSINESS

No Unfinished Business was scheduled for Board consideration.

NEW BUSINESS

No New Business was scheduled for Board consideration.

MEMBER COMMENTS

Board members welcomed Terry Davis and Mary Lou Hartwell to the Board.

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 7:47 p.m.