

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

July 11, 2016

PRESENT: Chairperson Julie Pioch, Barb Carpenter, Terry Davis, Marcos Flores, Mary Lou Hartwell, Wayne Wilhemi (Alternate)

ABSENT: None

ALSO PRESENT: Rebecca Harvey, Village Planning Consultant and four (4) members 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 April 18, 2016 Zoning Board of Appeals meeting. Ms. Hartwell 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 – *Barker (U-Haul)*

The next matter to come before the Board was the request of Justin Barker for Variance Approval from the following standards applicable to a proposed U-Haul Truck & Trailer Rental Operation (Section 42-367 (23) – '*private open air business*')

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

: **Section 42-367 (23) b.** – A five foot fence or wall shall be constructed along the rear and sides of the lot capable of keeping trash, paper, and other debris from blowing off the premises.

The subject site is located at 301 West Michigan and is within the B-2 General Business District

Chairperson Pioch noted that a representative for the application was not present. The Board agreed to move the matter to the end of the agenda to accommodate a late arrival by the applicant.

VARIANCE REQUEST – Village Pharmacy

The next matter to come before the Board was the request of James Clark for Variance Approval from the following sign standards applicable to the building occupied by Paw Paw Village Pharmacy:

: **Section 42-259 B.4.** – a projecting sign shall not exceed 20 sq ft in area.

: **Section 42-259 B.1.d.** – signs may not be internally-illuminated.

The subject site is located at 322 East Michigan and is within the Downtown Overlay District.

Ms. Carpenter stated that she will be abstaining from consideration of the request by Village Pharmacy due to a conflict of interest. She explained that she owns property within 300 ft of the subject site. The Board acknowledged Ms. Carpenter's declaration.

(Ms. Carpenter exited the meeting)

Wayne Wilhemi, Zoning Board of Appeals Alternate, joined the Board for consideration of the application.

James Clark was present on behalf of the application. He provided an overview of the request, noting the following:

: variance relief from both the 20 sq ft sign size standard and the illumination standard is requested

: the proposed sign was constructed with the understanding that it met the adopted sign standards

: the sign was designed to be visible to passing traffic

: the proposed internal illumination of the sign will generate less light than would external illumination of the sign
: the proposed sign will not have neon nor will it be flashing; the letters will glow from internal lighting

A rendering of the building with the proposed projecting sign was presented. Mr. Clark then distributed photos of the sign that demonstrate the proposed internally-illuminated sign in both daytime and evening conditions.

Kris Nelson questioned the intent of the lighting standard for the Downtown Overlay District. The Board noted the character of the downtown corridor; the historic nature of the downtown buildings; and, the desire to create a commercial core that does not have signage similar to the Kalamazoo Avenue commercial strip. Examples of existing downtown signs that are consistent with the DOD sign standards were referenced.

In response to Board questions, Ms. Harvey provided a review of the sign requirements of the DOD Downtown Overlay District and the variance criteria established by Section 42-66 that should be applied in consideration of the variance requests.

No further public comment was offered on the matter.

Chairperson Pioch questioned why the size and lighting standards could not be met. She stated that the DOD signs standards were recently adopted and that signs established in the downtown since its adoption have met the requirements. She further noted the following:

- the sign standards developed for the DOD were established to preserve and enhance the walkable, historic character of the downtown core;
- the DOD allows for additional signage beyond the proposed projecting sign;
- the subject site is a corner lot and allows adequate visibility of the pharmacy;
- no hardship preventing compliance was presented.

Chairperson Pioch expressed concern that the size and internal-illumination of the proposed projecting sign will be inconsistent with the intent of the new standards.

Mr. Flores stated that the subject site, though on the edge, is still in the 'downtown' area and that it would be difficult to separate it out when applying the standards of the DOD. He elaborated that the site represents the entry point of the downtown and will set the trend for the rest of the block that is currently under construction.

Chairperson Pioch noted that the design of the pharmacy expansion/renovation meets the intent and standards of the DOD. She questioned why signage within the same district should be treated differently.

Mr. Wilhemi stated that the pharmacy requires a sign that is big enough to be visible to passing motorists. He also questioned why an internally-illuminated sign would not meet the intent of the DOD.

Ms. Hartwell added that the renovated pharmacy building is a single-story building and that a bigger sign may be needed to compete with the two- and three-story buildings in the downtown area.

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 requests:

1. In considering exceptional circumstances of the property, the subject site is a corner property and is afforded greater visibility than other properties in the district; the DOD allows additional sign options beyond the proposed projecting sign, especially considering its location on a corner site; and, the DOD requires a 0 ft building setback which affords a premium sign location not allowed on neighboring B-2 zoned property.
2. In determining substantial justice to other properties in the district and in the vicinity, it was recognized that other signs established in the district since the adoption of the DOD have complied with the sign requirements; that the DOD was recently adopted and that no sign variances had been granted to properties in the district/vicinity; and, that existing signs within the DOD that did not comply with the Ordinance were lawfully nonconforming and would be expected to conform when modified.
3. In considering the impact on adjacent properties, it was noted that the requested variances would allow signage inconsistent with the signage allowed on adjacent DOD properties currently under development and with recently updated signage.
4. The requested variances were found to not be in keeping with the intent of the recently adopted sign standards of the DOD. It was further noted that a variance was granted to the subject site to allow for a building height of less than 2 stories based on the presentation that the proposed 1 ½ story building design was comparable in appearance to existing 2-story buildings in the downtown. Such a finding would not

support the claim that a sign variance is needed due to the building height.

5. The hardship presented is financial in nature and cannot be deemed sufficient to warrant the grant of the requested variances.
6. The Board noted that the situation/condition of the property is of a general and recurrent nature and may instead warrant consideration of an amendment to the DOD.

Ms. Pioch then moved to deny variance approval from the 20 sq ft sign size limitation for projecting signs and the standard prohibiting the internal-illumination of signs. The variance is denied 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.

(Ms. Carpenter re-entered the meeting)

VARIANCE REQUEST – Biggby Coffee

The next matter to come before the Board was the request of LSM Ventures for Interpretation of the application of the definition of 'Restaurant' as set forth in Section 2.2, Zoning Ordinance to a proposed coffee shop with a drive-thru element. (Biggby Coffee)

Applicant also requests Variance Approval from the following standards (if deemed) applicable to the proposed coffee shop:

- : **Section 42-404 (8)** – off-street parking requirements applicable to a 'drive-in restaurant' or a 'restaurant and bakery'.
- : **Section 42-367 (10) a.** – 60 ft setback requirement from an adjacent right-of-way line. ('drive-in restaurant')
- : **Section 42-367 (10) b.** – 75 ft driveway separation from any intersection. ('drive-in restaurant')
- : **Section 42-367 (10) d.** – limitation on locating parking within the required front building setback area. ('drive-in restaurant')

The subject site is located at 400 South Kalamazoo Street and is within the B-2 General Business District.

Kris Nelson, Schley Architects, and Linda Marcon were present on behalf of the application. Mr. Nelson provided an overview of the request for

interpretation, noting that the Board's action on this matter will impact greatly which Ordinance standards will apply to the proposed development on the site. He explained that Section 42-2 – *Definitions* provides for five (5) types of 'restaurants' and that the proposed coffee shop with a drive-thru window does not cleanly fit any of the types defined.

Mr. Nelson stated that the proposed coffee shop largely meets the adopted definition of a 'standard restaurant' and that a 'restaurant and bakery' is a permitted use within the B-2 District. He added that the proposed site design can easily meet the general requirements of the B-2 District. Mr. Nelson noted that a 'drive-in restaurant' is a special use within the B-2 District . . . but that the proposed coffee shop is not a 'drive-in' establishment where 'consumption of foods upon the premises outside the restaurant is encouraged' as defined by the Ordinance. He advised that the design standards applicable to a 'drive-in restaurant' are not conducive to a drive-thru window arrangement and will be very difficult to meet on the subject site.

Mr. Nelson stated that the interpretation is requested in order to determine if the coffee shop proposal on the subject site is a permitted or special use and if variances from the applicable design standards will be required.

No public comment was offered on the matter.

Board review of Section 42-2 - *Definitions* ensued wherein the following was noted:

- a coffee shop with a drive-thru window is not a true 'drive-in restaurant' as defined in the Ordinance;
- the proposed coffee shop may better fit the definition of a 'fast food restaurant';
- 'fast food restaurants' and 'carry-out restaurants' are not identified as allowed uses within any district in the Village;
- the 'drive in restaurant' provision has consistently been applied to 'fast food restaurants' in the Village.

Ms. Hartwell then moved to interpret that the proposed coffee shop with a drive-thru window constitutes a 'drive-in restaurant' as defined and allowed by the Zoning Ordinance. Said interpretation is based upon 1) a finding that such drive-thru establishments are similar in character to a 'drive-in restaurant', as defined, and should be regulated similarly, and 2) a past application of the 'drive-in restaurant' provision to other similar fast food restaurants in the Village. Ms. Carpenter seconded the motion. The motion carried unanimously.

Mr. Nelson then proceeded with a review of the proposed site design and the requested variances from the setback and parking requirements applicable to a 'drive-in restaurant'. He stated that the following variances are requested:

- 1) variance approval from the parking requirements – 15 spaces required; 11 spaces proposed
- 2) variance approval to allow parking within the required 60 ft front setback area
- 3) variance approval from the front setback requirement – 60 ft required; 66 ft from Kalamazoo Street and 0 ft from side street proposed
- 4) variance approval from the driveway separation requirement – 75 ft required; 18 ft and 58 ft proposed

Mr. Nelson noted the following in support of the requested variances:

- the subject site is narrow (58 ft x 148 ft) and is situated on a corner;
- the site is currently served by a parking lot that is located partially within the abutting road right-of-way;
- the site is not currently provided a defined driveway from either Kalamazoo Street or the side street;
- the proposed site design will provide for safe on-site circulation with defined driveways and building setbacks consistent with area properties;
- adequate on-site parking and vehicle stacking space is provided;
- nearby commercial establishments are provided setbacks that range from 48 ft to 67 ft and are served by front yard parking lots
- sidewalk extensions are proposed and landscaping/greenspace requirements are proposed to be met.

Larry Larson raised questions regarding applicable setback and parking requirements. He expressed concern that an inadequate parking area will result in parking on adjacent properties. He also questioned plans for snow removal on such a small site.

Linda Marcon stressed her desire to improve the property with safe access and circulation design and increased greenspace and to be a good neighbor.

No further 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 variance requests:

1) *Parking Variance Request:*

1. In considering exceptional circumstances of the property, it was noted that the subject site is a corner property and is an existing lot that is small and narrow.

2. In determining substantial justice to other properties in the district and in the vicinity, it was determined that adequate parking can be provided through on-street parking, similar to nearby commercial properties.
3. In considering the impact on adjacent properties, it was recognized that inadequate parking can lead to off-site parking arrangements but the availability of on-street parking options and the parking afforded through the vehicle stacking lane was noted.
4. The requested variance was found to be in keeping with the intent of the Ordinance given the following: on-street parking is available in the area; the site is provided pedestrian accessibility and is located near the walkable downtown; proposed sidewalk extensions will improve pedestrian activity in the area; the proposed site design provides an improved parking arrangement by relocating the parking out of the road right-of-way and defining the driveways on the site.
5. The hardship presented is self-created, although the size and location of the site were acknowledged.
6. The Board noted that the situation/condition of the property is not of a general and recurrent nature and does not warrant consideration of an amendment to the Ordinance.

Ms. Hartwell then moved to grant variance approval from the parking requirements based upon the findings of the Board on the variance criteria set forth in Section 42-66, Zoning Ordinance and the proposed site design set forth on the site plan dated June 21, 2016 and presented at the meeting. Ms. Carpenter seconded the motion. The motion carried unanimously.

2) Parking Setback Variance Request:

1. In considering exceptional circumstances of the property, it was noted that the subject site is a corner property and is an existing lot that is small and narrow.
2. In determining substantial justice to other properties in the district and in the vicinity, it was recognized that nearby commercial properties are situated on small lots with front yard parking lots . . . as well as other drive-thru establishments along Kalamazoo Street that have received approval for parking in the required front setback area.
3. In considering the impact on adjacent properties, it was noted that the proposed parking lot design is similar to parking arrangements on

surrounding properties and represents an improvement to the existing parking situation on the site.

4. The requested variance was found to be in keeping with the intent of the Ordinance given that the proposed site design provides an improved parking arrangement by relocating the parking out of the road right-of-way and defining the driveways on the site.
5. The hardship presented is self-created, although the size and location of the site and applicable building setback requirements were acknowledged.
6. The Board noted that the situation/condition of the property is not of a general and recurrent nature and does not warrant consideration of an amendment to the Ordinance.

Mr. Flores then moved to grant variance approval from the 60 ft parking setback requirement based upon the findings of the Board on the variance criteria set forth in Section 42-66, Zoning Ordinance and the proposed site design set forth on the site plan dated June 21, 2016 and presented at the meeting. Ms. Carpenter seconded the motion. The motion carried unanimously.

3) *Building Setback Requirement:*

1. In considering exceptional circumstances of the property, it was noted that the subject site is a corner property and is an existing lot that is not wide enough to accommodate the 60 ft setback requirement.
2. In determining substantial justice to other properties in the district and in the vicinity, it was recognized that nearby commercial properties are situated similarly, with front building setbacks along the side street that range from 0 ft to 5 ft.
3. In considering the impact on adjacent properties, it was recognized that the B-2 District allows a 0 ft building setback for general commercial development which has resulted in similarly situated buildings along the side street. It was further noted that the proposed site improvements will relocate the parking out of the right-of-way and provide defined driveways and greenspace along the side street.
4. The requested variance was found to be in keeping with the intent of the Ordinance given the following: the 60 ft setback requirement is intended to provide adequate vehicle stacking space; the proposed site design allows stacking space for approximately 5 vehicles; and, the proposed building location affords safe site access and circulation.

5. The hardship presented is self-created, although the size and location of the site were acknowledged.
6. The Board noted that the situation/condition of the property is not of a general and recurrent nature and does not warrant consideration of an amendment to the Ordinance.

Ms. Hartwell then moved to grant variance approval from the 60 ft building setback requirement based upon the findings of the Board on the variance criteria set forth in Section 42-66, Zoning Ordinance and the proposed site design set forth on the site plan dated June 21, 2016 and presented at the meeting. Mr. Flores seconded the motion. The motion carried unanimously.

4) Driveway Separation Variance Request:

1. In considering exceptional circumstances of the property, it was noted that the subject site is a narrow corner property with limited options for driveway placement.
2. In determining substantial justice to other properties in the district and in the vicinity, it was recognized that similar driveway separation is not afforded on nearby properties.
3. In considering the impact on adjacent properties, it was recognized that the proposed site improvements will relocate parking out of the right-of-way and provide defined driveways, sidewalk extensions and greenspace along the roadways.
4. The requested variance was found to be in keeping with the intent of the Ordinance given the following: the proposed driveway arrangement affords safe site access and circulation; traffic exiting the site will largely use the Kalamazoo Street driveway and turn right (away from the intersection); the abutting side street is a low volume roadway and can accommodate the occasional exiting vehicle that desires to turn left on Kalamazoo Street; and, the proposed site circulation and driveway placement allows for compliance with the Kalamazoo Street building setback requirement.
5. The hardship presented is self-created, although the size and location of the site were acknowledged.
6. The Board noted that the situation/condition of the property is not of a general and recurrent nature and does not warrant consideration of an amendment to the Ordinance.

Mr. Flores then moved to grant variance approval from the 75 ft driveway separation requirement based upon the findings of the Board on the variance criteria set forth in Section 42-66, Zoning Ordinance and the proposed site design set forth on the site plan dated June 21, 2016 and presented at the meeting. Ms. Hartwell seconded the motion. The motion carried unanimously.

VARIANCE REQUEST – Barker (U-Haul)

The next matter to come before the Board was the request of Justin Barker for Variance Approval from the following standards applicable to a proposed U-Haul Truck & Trailer Rental Operation (Section 42-367 (23) – ‘*private open air business*’):

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

: **Section 42-367 (23) b.** – A five foot fence or wall shall be constructed along the rear and sides of the lot capable of keeping trash, paper, and other debris from blowing off the premises.

The subject site is located at 301 West Michigan and is within the B-2 General Business District

Chairperson Pioch noted that a representative for the application was still not present. The Board agreed to proceed with consideration of the request.

Mr. Flores advised that he owns property within 600 ft of the subject site. Board members acknowledged Mr. Flores statement and determined that he does not have an identified ‘conflict of interest’ and shall participate in the Board’s consideration of the request.

Ms. Harvey provided an overview of the request and the applicable Ordinance standards. She noted that the Planning Commission had considered the applicant’s request for Special Land Use Permit on July 7, 2016 and granted approval conditioned upon receipt of the requisite variances.

Lengthy discussion ensued regarding the intent of the one acre lot size requirement applicable to an ‘*open air business*’. It was determined that the lot size requirement was established to provide for adequate area for setbacks and buffering; to minimize the intensity (mass/bulk) of the outdoor activity on the site; and, to minimize the impacts of the outdoor activity on the surrounding area.

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 variance requests:

1. In considering exceptional circumstances of the property, it was noted that the subject site is occupied by a small building that is setback a significant distance from the abutting roadway with a large amount of open space surrounding the building/parking area.
2. In determining substantial justice to other properties in the district and in the vicinity, it was recognized that the subject site is adjacent to commercial zoning and the Paw Paw Middle School. It was noted that the proposed parking activity would be similar in nature to that occurring on adjacent properties.
3. In considering the impact on adjacent properties, it was noted that the requested parking area is a small existing parking lot and that no parking area expansions are proposed; no other outdoor activity will be associated with the proposed use except for the intermittent parking of four trucks/trailers; and, the proposed outdoor activity will be similar in nature to typical parking lot activity currently occurring on nearby properties.
4. The requested variance was found to be in keeping with the intent of the Ordinance given the following: 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.
5. The hardship presented is self-created, although the amount of open space on the site and the openness of the surrounding area were acknowledged.
6. The Board noted that the situation/condition of the property is not of a general and recurrent nature and does not warrant consideration of an amendment to the Ordinance.

Chairperson Pioch then moved to grant variance approval from the one acre lot size requirement and fencing requirement based upon the findings of the Board on the variance criteria set forth in Section 42-66, Zoning Ordinance and the proposed site design set forth on the site plan presented at the meeting. Ms. Hartwell seconded the motion. The motion carried 4 to 1, with Mr. Flores dissenting.

UNFINISHED BUSINESS

No *Unfinished Business* was scheduled for Board consideration.

NEW BUSINESS

No *New Business* was scheduled for Board consideration.

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 9:32 p.m.