

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

February 6, 2017

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

ABSENT: Barb Carpenter

ALSO PRESENT: Rebecca Harvey, Village Planning Consultant, Sarah Moyer-Cale, Assistant Village Manager and six (6) members of the public.

CALL TO ORDER

Chairperson Pioch called the meeting to order at 7:07 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 November 28, ~~2017~~ **2016** Zoning Board of Appeals meeting. Ms. Hartwell moved to approve the minutes as presented. Chairperson Pioch seconded the motion. The motion carried unanimously.

PUBLIC COMMENT REGARDING NON-AGENDA ITEMS

No public comment on non-agenda items was offered.

VARIANCE REQUEST – *Lipson (Performance Fieldhouse)*

The next matter to come before the Board was the request of Lipson Holding Inc. for Variance Approval from the minimum landscape requirements applicable within the B-2 District set forth in Section 42-406 (c), Zoning Ordinance. The subject site is located at 1027 East Michigan. The rear 5.7 acres was recently annexed into the Village of Paw Paw from Antwerp Township and is still within the Township's GC General Commercial District. The property

has been recommended for approval to be rezoned to the B-2 District. The front 1.1 acres is within the B-2 General Business District.

Mark Lipson, was present on behalf of the application. He provided an overview of the use/annexation history of the subject property; the recent Planning Commission recommendation to rezone the rear 5.7 acres of the site to B-2; and, the review/approval of the Special Use Permit/Site Plan for the proposed Performance Fieldhouse on the subject property.

Referencing a site plan for the project, he provided an overview of the requested variance, noting the following:

: the subject property is approximately 6.8 acres in area;

: given the size of the property, Section 42-406 (c) requires the following:

- 1.02 acres (44,431 sq ft) of landscaped open space – (15% of site)
- 0.3 acres (13,329 sq ft) landscape open space between the building and the roadway – (30% of open space)
- 45 evergreen trees/shrubs
- 23 deciduous trees

: the subject property is narrow with limited frontage with which to comply with the open space standards;

: loss of needed open area to landscaping renders compliance with site development standards on the narrow lot difficult;

: the subject property is larger than average-sized lots within the B-2 District;

Ms. Harvey reviewed the Planning Commission's consideration of the Special Use Permit/Site Plan, highlighting the findings of the Commission on the Special Use Criteria and the elements of the site plan as they related to the open space/landscaping. She noted approval was granted conditioned upon compliance with applicable landscaping requirements.

Mr. Lipson referenced the proposed landscape plan dated December, 2016 and the application letter prepared by Wightman & Associates dated February 6, 2017. He noted that, as presented, the site includes over 4.5 acres of open space (66%), approximately 4000 sq ft to be located between the building and the roadway; 13 new deciduous trees along with the retention of 13 existing deciduous trees; 38 shrubs and 104 perennials; and, the retention of existing trees on the perimeter, including a row of evergreen trees at the rear of the property.

In response to Board questions, Mr. Lipson noted that the planting beds account for approximately 1200 sq ft of the open space and the detention basin of native seeding accounts for 13,500 sq ft of the open space.

The Board concluded from the presentation that the proposed landscape plan provides more than the required 44,431 sq ft of open space and meets planting requirements - - but that only approximately 20,000 sq ft of the open space will be landscaped (less than the 44,431 sq ft required), of which only 4000 sq ft will be located between the building and the roadway (less than the 13,329 sq ft required). Mr. Lipson confirmed that variance approval from the two noted 'open space' requirements is requested.

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 request:

1. The subject property is 6.8 acres in area and is generally larger than most sites within the B-2 District; the subject property is provided 150 ft of frontage and 1300 ft of depth, rendering the bulk of the property well separated from the East Michigan corridor; and, compliance with the B-2 standards would require the first 90 ft of depth of the property along the corridor to be landscaped and not occupied by building/parking/drives.
2. The surrounding commercial properties are generally less than an acre in area, resulting in landscape requirements that are in scale with the size of the site/building; the size of the subject property results in landscape requirements that do not relate to the scale of the site/building.
3. A large portion of the open space is located to the rear of the site . . . where the property is adjacent to residential zoning; the use of the rear portion of the property is proposed to remain as softball fields; the proposed landscape plan meets the intent of the landscape standards in that it exceeds open space requirements and meets planting requirements.
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 'landscaped open space' requirements set forth in Section 42-406 (c), specifically - - that 15% of the site be in landscaped open space, and - - that 30% of the required landscaped open space be located between the building and the roadway, based

upon the landscape plan presented and 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.

INTERPRETATION REQUEST – ‘lot area’

The next matter to come before the Board was the request of the Village of Paw Paw for Interpretation of the application of the definition of ‘lot area’ as set forth in Section 2.2, Zoning Ordinance.

Ms. Harvey stated that Section 2.2, Zoning Ordinance defines ‘lot area’ as ‘the area of a lot bounded by lot lines’. She stated that the historic application of this definition by the Village has considered lot area to include the area within the property lines . . . but where the front lot line is the centerline of a street, the area does not include that part within the road right of way.

Ms. Harvey explained that the definition of ‘lot area’ has been questioned in its application to unplatted property within the Village and has prompted a request for a formal interpretation of the Zoning Ordinance definition by the Zoning Board of Appeals. She referenced correspondence received from Village legal counsel dated January 13, 2017 providing guidance on the question.

Jerry Dundon stated that the interpretation question has relevance in its application to the Kirby property. He introduced Don Gilchrist, Van Buren County Surveyor, noting that he is present to provide information for Board consideration in the matter. Mr. Gilchrist stated that the official deed sets forth a legal description for the Kirby property that extends to the center of the road right of way. He noted that the property is unplatted, unlike most property within the Village, and is not described the same as a platted lot. He stated that property that is not platted will be described as extending to the centerline of the abutting road right of way and should be considered differently.

It was noted that the Zoning Ordinance currently defines both ‘lot’ (land within a recorded plat) and ‘parcel’ but that the terms appear to be used interchangeably within the Ordinance provisions.

No further public comment was offered on the matter.

Lengthy Board discussion ensued, wherein the following was noted:

- the Zoning Ordinance does not specify a method for calculating lot area;
- the Village has historically applied the definition of ‘lot area’ to be exclusive of road right of way;

- the legal opinion provided by Village legal counsel supports an interpretation that ‘the road right of way is not included with the lot when calculating total lot size’ . . . and suggests that ‘the ordinance should be amended to remove the distinction between platted and unplatted lots’;
- other provisions in the Zoning Ordinance reference the road right of way as the property boundary (ie. sidewalk standards, landscaping requirements) which suggests the intent of the ‘lot area’ definition to not include the road right of way;
- setback requirements are measured from the road right of way line;
- previous site plan reviews involving issues of building setbacks;
- sidewalks, and landscaping all consider the road right of way as the property boundary.

Chairperson Pioch then moved to interpret the Zoning Ordinance as follows:

1. There is not a distinction between lots and parcels in the application of the zoning provisions, and
2. The road right of way is not included with the lot when calculating total lot area.

Said interpretation is based upon the historic application of the lot area standards within the Village and a recognized consistency with the structure of other provisions within the Zoning Ordinance that reference the road right of way as the property boundary.

Ms. Hartwell seconded the motion. The motion carried unanimously.

It was then recommended that the Planning Commission: 1) review/clarify the definitions of ‘lot’ and ‘parcel’ set forth in the Zoning Ordinance; 2) clarify/establish the method for calculating lot/parcel area; and, 3) review the Zoning Ordinance to ensure that ‘lot’ and ‘parcel’ are referenced accurately.

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 8:45 p.m.