

VILLAGE OF PENTWATER
Zoning Board of Appeals
ON PENTWATER LAKE AND LAKE MICHIGAN
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Zoning Board of Appeals - Public Hearing Meeting Minutes – April 11, 2013

Chairperson Castor called the Public Hearing Meeting of the Pentwater Zoning Board of Appeals to order at 7:00 PM with the Pledge of Allegiance.

ROLL CALL:

Present: Keith Wells, Juanita Lamb, Damon Crumb, Norm Shotwell, Earl Raczkowski,
Bill O'Donnell, Mike Castor.

Absent: Paul Anderson, Gay Birchard

Others present: Sara Bizon, Barbara Gremchuk

APPROVAL OF AGENDA: Motion to approve agenda as amended; changing order of items; move approval of minutes to item #6, current 6 & 7 move to 7 & 8; Norm Shotwell, second by Damon Crumb to approve the Agenda as amended on agenda. Voice vote. Aye: 7 Nay: 0. Motion carried.

PUBLIC COMMENTS ON AGENDA PROPER (as modified) – None.

APPROVAL OF MINUTES; Motion to approve April 1, 2013 minutes as amended was withheld due to suggestion of (Zoning Administrator) Sara Bizon, to hold approval until grammatically corrected because of their importance. Motion to approve as presented and amended tonight; Keith Wells, support: Juanita Lamb. Aye: 0, Nay: 7. Motion failed.

OPEN PUBLIC HEARING: Motion to open public hearing for two variance requests with regards to the property at 310 & 320 South Hancock by Earl Raczkowski; support by Norm Shotwell.

Chair Castor stated that there are two separate variances that need to be understood by all present; that this board is bound by the standards of the ordinance when making a decision to grant or not to grant a variance from the stated ordinance. "These standards are called out in the ordinance in Chapter 18, Section 18.08, and for the benefit of all present, will read that standard." Section 18.08, looking at section (A) only, for a non-use variance, when all of the conditions are met. He read each of the six standards, and then asked that questions from the board be held until after each presenter and at the end of the public hearing.

Roll call vote to open public hearing: Damon Crumb: Yes, Juanita Lamb: Yes, Keith Well: Yes, Bill O'Donnell: Yes, Norm Shotwell: Yes, Earl Raczkowski: Yes, Mike Castor: Yes.

OPEN PUBLIC HEARING: Zoning Board Administrator, Sara Bizon stated that Ms. Rapp is requesting a variance on her property at 310-320 South Hancock Street. Her first variance is a variance of Section 15.04Q1; that the gross floor area for all residential units shall not exceed twice the gross floor areas of the commercial or office uses to which they are accessory. Sara said that without the basement the gross floor area would be 4,366 square feet; therefore

the residential units shall not exceed 8,732 square feet. The owner is requesting that the residential units be 12,751 square feet. In order to proceed, a variance is needed to include the basement retail of 5,015 sq. ft. making the total retail office gross floor area 9,381 sq. ft. giving the project a 2 to 1 ratio. Sara pointed out that in 2006; Ms. Rapp did receive a variance to do a similar project on the property for a 2 to 1 ratio that did not move forward.

Her second variance is for a side yard set-back. Her property is a corner lot which has two front yards and two side yards so she would need a 5ft set back on the property that abuts the alley way and because it abuts a residential district, she is requesting zero feet setback. Sara stated that she received two letters regarding the set- back variance from the fire and police departments; the first, concerned with the width of the alley way for their equipment to be completely cleared to a 22ft. clearance and second, concerns about designated parking for the police cars. Sara introduced Chad from Hooker De Jong to speak further about the project

Chad Grinwis with Hooker De Jong Architects, representing Ms. Rapp: Talking about the project in general, he pointed to the picture of the plans for the site across the street explaining that it would be a three story project with a first floor; ground floor, office and retail; primarily retail and a small office. As was mentioned briefly, there is a 7 ft. easement, which was granted off one side, which allows access to a small office space. Right now there is a one office space proposed and an emergency egress for the upper floor tenants. He said that otherwise the first floor primarily consists of retail uses and store fronts for a corner lot frontage for retail, upper two floors allows for 6 condo units; 3 per floor, typically with windows for view and balconies; primarily fronting the 2 rows which would have those features and the other 2 sides abut the alley way and police station and primarily would be flat building frontage as is in the packets. He explained that currently the existing building sits back approximately 4 ft. from the property line and that's where the sidewalk is assumed that it takes 4ft of that parcel and so would like to maintain that extra four feet and put it out to the front of that building for possible cafe seating and additional pedestrian circulation and allow that extra frontage. Then along the alley way is where we're discussing the 5 ft. variance. Chad then said, "Yes, we will be asking that the alley is restored to the 22 feet after the removal of a hedgerow of trees that impedes that some, and for this project. With parking coming off of the back, it would obviously serve this project, and also get it back up to the normal standards that it should be."

He said the parking that is in the back, currently to come into the building, has 6 parking spaces per level, and a lift, so each condo unit should have 2 parking spaces per unit. "Trying to create 12 parking spaces, so by having an indoor lift, every resident would have 2 parking spaces; it just happens to be on a lift." "A portion of that basement is where your other parking space is. So the lift is able to go up and down and get those vehicles; either access from the basement or from the main level."

Chad exclaimed, "That's a big of part why we're hoping to push this back; it abuts an alley, it doesn't directly abut another residential use, so there is a buffer, and also we'd really like to put that space up front."

Chad stated, "In terms of the other variance in square footage of office/retail versus residential, it is obvious to make a residential project work, we've got to get as much appeal as we can to the residential units, and get them to be a size that's going to get that." "We've been able to maximize the layout into basically three sections to get quality condo units." "Basically the typical floor plans again, depending on the main road; have 3 units, 2 looking out the front and one primarily across the back of the alley." "That's really the basics of it; in terms of square footages per floor; works out to roughly 4,300 square feet on the ground level for office retail that puts us about 5,000 square feet into the basement, creating about 9,300 total square feet of business retail space." "We're not maxing out per se on the residential, of what we're trying for, we're just trying to give them good quality retail space and resident space." He then asked if there were any questions.

Damon Crumb asked about the front sidewalk space being allowed to have tables, and if it had been investigated. Sara replied that it was not expressed in our ordinance; it had been discussed, and some businesses have a bench in front, or a little table with a couple of little chairs, not a sit down enclosed restaurant, just a couple of little chairs. Damon said his question was answered.

Comment by Mike Castor regarding a situation about tables and chairs that required an MDOT Café permit, Chad interjected, "That's if we're within the right away." Mike Castor repeated, four feet is real easy to get into the right way, and then asked Chad if he had checked the dimensions of the centerline of the MDOT right away to the building. To which Chad replied, yes, and right now that's where this property line, the four feet comes outside of that right away, so any little table or chairs would be outside of that.

Damon said that's part of the reason they're looking for the five feet in the back, because they don't want to build up there to the property line; its relevant to what we're talking about, and they don't want to keep that five feet set back in the back, and asked why they didn't ask for four. Chad asked "Why four instead of five, or five instead of four? We felt that was enough." Damon replied, "You're looking for room!"

Norm Shotwell said that he was confirming Damon's statements and the plans the board had received as part of the packet showing the property line in the front; moved back and taking square footage out of the various elements. He asked if it was true to say the balconies don't count as useable space; then stated, "We haven't seen any definition for basement retail, or sketches," and asked Chad if he had any sketches to which Chad replied, that he didn't have it defined and did not have it broken out by specific tenant size, just a general space layout.

Chad pointed to some sketches on the easel showing the basement plans under the parking lift and said that the basement becomes unusable for about 25 feet, the vertical circulation of the building; required with 2 egress stairs, elevator and other space up, he said it was about 5,000 but now it is down to about 4,800, and the general space all works with 2 required exits per code and could be broken up based on need and the size space that the tenants' show interest.

Norm asked if this would be the only basement retail or commercial space on the east side of Hancock; which led to comments about other retail with a basement. It was unknown if any of them were still being used as retail or commercial, and if this would set a precedent.

Keith Wells asked that if the building was built according to the diagram, would five feet plus four feet be needed. Chad asked if giving back the required set back is what was meant, and that he didn't understand. Keith asked if the five feet is predicated on the diagram or with the four feet front pushed back, and the building pushed back. Chad said that they are pushing the building back four feet to maximize the pedestrian space which is important, and the five feet alley which was in question, doesn't change. They requested the side yard be zero so that the back of the building could sit against the property line of the alley.

Keith asked Chad if they didn't push the building back would they only need a one foot variance. Chad said, "Yes, if we don't give four feet it would be one foot."

Norm commented about the loss of ambiance. Chad said then they would not be able to allow the on street participation between retail and street frontage and in heavy times the sidewalk is nicer having the extra space.

Mike said, looking at the basement drawing; what's the means of egress is for retail customers for that area? Chad said that stair 1 and stair 2 both egress directly outside, coming up to the main level, there are doors at the top of the stairs that egress directly outside which are both according to code requirements, meeting that egress, and explained the elevator was for all floors with keyed access for the top floors not accessible by retail to the condo units, but a resident could come in.

Chad said they are investigating the option of opening a third stair, just for pedestrian traffic to the basement and allow a more open feel and better access and visibility to those tenants in the basement. He said the basement is completely below ground because of the need for retail to be right at the sidewalk level; barrier free code accessible with no steps up or window wells.

Damon asked if they are sticking with the foot variance request to which Mike answered that they are on both variance requests, but they will be deliberating one at a time meeting all criteria.

Bill O'Donnell had questions about the basement and asked if there will be storage in the basement; retail and for merchandise; Chad replied that it would be negotiated with each tenant and there would not be any common storage; the ground floor retail would have some capacity for their own storage.

Bill asked Sara about the definition on page two-nine regarding gross floor area including restrooms and stairwells but excluded storage, and would change math formula about the relation of the gross floor area. Chad asked if storage then would be calculated per tenant based on the floor plan they submit; then it would be on the need base of each tenant and how would that be viewed; we don't know what each person needs. He said right now he didn't include any vertical space and didn't include the stairs.

On merchandise coming and going, Chad said there is no dedicated loading dock. Regarding the definition of gross floor area measured from the exterior face of the exterior walls was questioned that diagram appeared to show interior rather than exterior. Chad replied no, it was how the program showed the diagram. Chad then said, "When calculating other items by definition of storage, and stairwells, more than retail space, which did not include stairs or any of that vertical space because of the hard time counting that in the ground floor retail space because it serves the basement and the residential residents, so did not include that in the square footage. The total square footage would include all of those elements, but the office and retail numbers did not include the stairs and elevator. The elevation of each floor was not on the diagram, nor the overall height of each floor. Chad said that he did not have the exact numbers; he thinks the second floor is roughly 14 feet.

The parking elevator for each unit would have a top and bottom; Chad explained that when the basement car is at the ground level, you could see the second car sitting up in the air. It doesn't affect the six condo units. It works with hydraulics similar to a project in Grand Haven.

Damon commented on giving up the 5 feet with regards to the concerns of the fire and police departments, and backing up to a residential area. Chad responded with the clearing of the alley to the 22 feet with parking in smaller or tighter spaces of parking in some other suburban areas.

Public presenter; Ted Cuchna, 529 Clymer, said #1) The storage is skewing the ratio drastically and needs to be clarified about the full public access for the basement. #2) We have already given a major concession to the seven foot space of at least 600 additional feet of floor space, if they wanted to maintain using as egress for an office and exit for a second retail in that area which was granted from the village. He highly objects to the village selling property and has additional concerns with the parking issues. He said he thinks few people would take advantage of the parking elevator, and half of those cars will be using the street, and there has been enough concessions made. He has concerns regarding turning the car into that twenty foot space if they decide to do that same footprint to front the property line or back property line. He explained his concern to block the sidewalk and doesn't know that the village should encourage café/sidewalk, vendor operations objecting to making more concessions for commercial use which the town officials tend to change the ordinance. He said that it is not our responsibility; as a taxpayer, we always seem to suffer under the advance of the commercial or tourist side.

Bill Maxwell, 670 East Fifth: expressed his concerns about the safety issues, and handicap accessibility, by which Chad responded that their plans have met the building codes safeguards.

Juanita Lamb questioned how a store would be taxed with storage in the basement, and Mike Castor replied that property taxes have same rate regardless of floor plan.

Chief Terry Cluchey said that his only concern was the alley space to be cleared to the full twenty-two feet to be able to maneuver their equipment.

Damon wanted to make a statement regarding Sara's (ZBA) comment that back in 2006, Marty Rapp was given a variance on the same request regarding a basement. He said that he

was chairman at the time, and they were wrong in giving that variance. He said that they were severely criticized by the Planning Commission.

No questions from the board.

CLOSE PUBLIC HEARING: Motion to close public hearing for two variance requests with regards to the property at 310-320 South Hancock Street: Norm Shotwell. Support: Keith Wells. All Ayes. Motion carried.

Old Business:

Sara stated that she had received a new proposal from LSL to have a split training session (as noted in the board's packet); one session for the Zoning Board, a short break, and one session for the Planning Commission. This new proposal for an estimate of \$540.00 would fit within the budget. She said that she would bring the same information to the next Planning Commission meeting, and check the community hall availability for an evening session starting about 6 PM.

New Business:

Two Variance Requests on 310 & 320 South Hancock Street:

Mike asked for a motion to approve or deny variance requests with regards to the property at 310 & 320 South Hancock. He said each will be voted on separately after a board discussion and for the record, needs to know if the variance request meets or does not meet the standard.

Motion to approve first request for a variance regarding the gross floor area; section 15.04(Q)1 by Damon Crumb, support by Juanita Lamb.

No comments.

Discussion:

Standard One: Gross floor area does not meet the standard per Damon and contrary to the spirit of the ordinance. Bill O'Donnell said it does not meet the second part and is contrary to the first part written intended to keep the ratio between commercial and residential; then both parts haven't been met. Juanita commented and asked Bill to explain why it doesn't meet between residential and commercial on main street; the basement area does not count between residential and commercial. Norm asked, "Where does it say not included?" Earl said, "Gross area only one half." Mike said, "The basement is full under, totally submerged."

Standard Two: Castor; if we grant the variance on square foot, will it have adverse effects to other properties in the C3 district? Bill said it would meet confines not going to affect other properties; the first would, this would not. .

Standard Three: Damon said it does meet. Case in point: front yard, back yard, water district.

Standard Four: Strict regulation intended use does not generally apply to other in same district, exception, Damon and Norm said that it does not meet the standard. No exceptional problems.

Standard Five: Agreed; it does not apply; Bill said that no property rights were being denied.

Standard Six: Norm said it does; not due to any action. Bill agreed. Damon disagreed. Juanita said she didn't have a problem; getting a better alley out of it.

Mike Castor wanted the board to bear in mind; "if we grant this variance and are not totally in agreement, we have to look at all six standards. Not a situation majority. The law says; have to meet all six criteria. If met for example, four, but not the other two; it has to meet all six criteria. That's the law." Norm said it does not meet all six. Damon said that even if it did meet only one of the six standards; they would not get the variance.

Mike said: Ready to vote; asked the public to hold any further comments.

Damon Crumb asked for the motion to be reread: Motion to approve request for variance of Section 15.04(Q)1; that the gross floor area for all residential units shall not exceed twice the gross floor areas of the commercial or office uses to which they are accessory by Damon Crumb. Support: Juanita Lamb.

Roll call vote: Damon Crumb: No, Juanita Lamb: Yes, Keith Wells: Yes, Bill O'Donnell: No, Norm Shotwell: No, Earl Raczkowski: No, Mike Castor: No. Motion failed.

Motion to approve the variance requesting deviance from section 12.04(D) allowing side-yard setback by Norm Shotwell; Support by Damon Crumb.

Norm said no, it doesn't. Damon said no, it does not meet all six.

Roll call vote: Damon Crumb; No, Juanita Lamb: Yes, Keith Well; No, Bill O'Donnell: No, Norm Shotwell: No, Earl Raczkowski: No, Mike Castor: No. Motion failed.

Mike Castor said that if the requestor desires to appeal; must file within 30 days after the board signs off officially.

Adjournment

Motion to adjourn by Bill O'Donnell; second by Earl Raczkowski.
Chair Mike Castor adjourned the meeting at 8:37 PM

Respectfully submitted by,

Barbara Gremchuk
Deputy Clerk/Treasurer

Date