



:9-2004

**FENTON ZONING BOARD OF APPEALS  
City Hall Conference Room  
Tuesday, August 23, 2022  
7:00 P.M.**

**MINUTES**

Vice Chairperson Bancroft called the meeting to order at 7:00 pm.

**ROLL CALL**

Present: Bancroft, Halligan, Siwik, McDermott, Avenedt, Marcum  
Absent: No one  
Others Present: Jason Payne, Building/Zoning Administrator, Justin Sprague, CIB Planning

**MINUTES**

**Motion by Halligan, supported by McDermott, to approve the minutes of the October 26, 2021, meeting.**

**MOTION CARRIED, ALL AYES**

**BUSINESS/PUBLIC HEARINGS**

- A. PUBLIC HEARING – To allow public comment to consider a Zoning Variance for a five-foot six-inch (5'-6") side yard setback at 1331 N. Leroy St. Articles 15, Fenton Zoning Ordinance regulates ten-foot (10') side yard setback. The property is zoned GBD, General Business District.**

The public hearing was opened at 7:02 pm. There were no speakers and the hearing was closed.

- B. PZVA22-0005 – Diamond Optical, is requesting a variance to allow a setback of less than 20-feet for parking area in a front yard, zoned, GBD, General Business District. The location is at 1331 N. Leroy Street.**

Justin Sprague, CIB Planning gave the following review:

At your request, we have completed our review of the above variance request for 1331 N. LeRoy Street, to allow for a setback reduction for a front yard parking area. Per Section 36.19.06 (D-1), *"In accordance*

*with subsection 36-19.02b. Location, the planning commission may determine that parking lots may be appropriate in the front yard. If such determination has been made, parking lots, including drives and maneuvering aisles but excluding driveways, must be set back a minimum of 20 feet from any adjacent street right-of-way line in all zoning districts except the CBD".*

The subject parcel is roughly 0.78 acres and will be the future site home of Diamond Optical. Site plan approval was granted by the Planning Commission in July, conditioned upon receiving the parking setback variance. The plan is to construct a new 4,925 square foot optical care center. In addition to the new building, there will be a parking lot with 17 spaces, and landscaping along N. LeRoy and Fenton Commons Lane.

The opinions in this report are based on a review of the materials submitted by the applicant, a site visit, and conformance to city plans and ordinance standards. In making a decision on this request, the Zoning Board of Appeals should apply appropriate standards in consideration of our review, additional comments from the applicant, and relevant factual new information presented at the public hearing. Based upon a review of the submitted application and the dimensional variance criteria in the ordinance, we offer the following comments for your consideration.

## **REVIEW COMMENTS**

Dimensional and non-use variances are regulated under *Section 36-27.06(a)* of the Zoning Ordinance. A non-use variance may be allowed by the ZBA only in cases where the applicant has shown there is reasonable evidence of practical difficulty in the official record of the hearing and that all of the following conditions are met:

*(1) Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other "non-use" matters will unreasonably prevent the owner from using the property for a permitted purpose or will be unnecessarily burdensome. The variance will do substantial justice to the applicant, as well as to other property owners.*

Strict compliance with the ordinance would not unreasonably prevent the owner from using the property for a permitted principal use however, given the small size of the property and having two front yards, the property is very limited for accommodation of commercial uses and parking.

*(2) A lesser variance than that requested will not give substantial relief to the applicant and/or be consistent with justice to other property owners.*

A lesser variance does not resolve the fact that this is a very narrow lot compared to others in the area.

*(3) The need for the variance is due to unique circumstances or conditions peculiar to the property and not generally applicable in the area or to other properties in the same zoning district such as exceptional narrowness, shallowness, shape, topography or area.*

This property is narrow and deep and has frontage along both N. LeRoy Street and Fenton Commons Lane, making it very difficult to have enough developable area for both a building and parking.

*(4) The problem and resulting need for the variance has not been self-created by the applicant and/or the applicant's predecessor may or may not be considered depending upon whether the practical difficulty would have existed regardless of the action.*

The problem resulting in the need for the variance is not created by the applicant.

*(5) The variance will not alter the essential character of the area. In determining whether the effect the variance will have on the character of the area, the established type and pattern of land uses in the area and the natural characteristics of the site and surrounding area will be considered.*

The granting of the variance would not alter the essential commercial character of the area.

*(6) The granting of the variance will not materially impair the intent and purpose of this Ordinance.*

The need for the requested variance is specific to this site and will not impair the intent of the zoning ordinance.

## **RECOMMENDATION**

After review of the requested variance against the standards of the Michigan Zoning Enabling Act and the Fenton Zoning Ordinance, we are of the opinion that the requested variance meets all of the above standards for approval. Therefore, **we recommend approval of the request to allow a setback reduction of 5.5 feet for parking in a required front yard less than 20-feet from a right-of-way at 1331 N. LeRoy**, for the following reasons:

1. Strict compliance with ordinance requirements would not unreasonably prevent a permitted principal use but greatly limit the site;
2. A lesser variance would provide substantial relief to the applicant;
3. There are unique or peculiar site conditions not present on other properties in the vicinity;
4. The need for the variance is not self-created
5. The variance would not alter the character of the Fenton Business and Technology Park; and
6. The variance would not harm the intent of Section 36.19.06 (D-1) of the City of Fenton Zoning Ordinance.

The applicant and owner of Diamond Optical, Joesph Leppek, added that with the parking, they are basically giving the patients closer access to the front of the office where the main entrance is and the parking in the back will be for the employees.

After a few minutes of discussion, the following motion was made:

**MOTION BY HALLIGAN, SUPPORTED BY AVENDT, to APPROVE the requested variance to allow for the parking lot setback, located at 1331 N. Leroy, as recommended in the CIB letter dated August 17, 2022.**

**MOTION PASSED (6-0) Halligan - aye, Bancroft - aye, Siwik – aye, McDermott – aye, Avendt – aye, Marcum – aye.**

- C. PUBLIC HEARING – To allow public comment to consider a Zoning Variance request to have a loading dock with drive facing S. Alloy Drive. Article 20 of the Fenton Zoning Ordinance regulates Access Management and Driveway Standards where loading docks are**

**to be at the rear of the building. The property is located at 130 S. Alloy Drive, zoned IND, Industrial District.**

The public hearing was opened at 7:09 pm. There were no speakers and the hearing was closed.

**D. PZVA22-0006 – American Recreational Products is requesting a variance to allow for a street-facing overhead door at their future site, to be located at 130 S. Alloy, zoned IND, Industrial.**

Mr. Sprague gave the following review;

At your request, we have completed our review of the above variance request for 130 N. alloy, to allow for street-facing overhead door where this is not permitted per the non-residential design standards of the ordinance.

The subject parcel is roughly 1.79 acres and will be the future site home of American Recreational Products which will be in front of the Planning Commission for site plan review at their August meeting. The applicant intends to construct a new, 30,725 sf manufacturing facility but as a result of the relatively small lot size, the applicant is requesting a variance from the Zoning Ordinance to allow for an overhead loading door facing Alloy Drive to accommodate their manufacturing processes.

The opinions in this report are based on a review of the materials submitted by the applicant, a site visit, and conformance to city plans and ordinance standards. In making a decision on this request, the Zoning Board of Appeals should apply appropriate standards in consideration of our review, additional comments from the applicant, and relevant factual new information presented at the public hearing. Based upon a review of the submitted application and the dimensional variance criteria in the ordinance, we offer the following comments for your consideration.

## **REVIEW COMMENTS**

Dimensional and non-use variances are regulated under *Section 36-27.06(a)* of the Zoning Ordinance. A non-use variance may be allowed by the ZBA only in cases where the applicant has shown there is reasonable evidence of practical difficulty in the official record of the hearing and that all of the following conditions are met:

*(1) Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other “non-use” matters will unreasonably prevent the owner from using the property for a permitted purpose or will be unnecessarily burdensome. The variance will do substantial justice to the applicant, as well as to other property owners.*

Strict compliance with the ordinance would not unreasonably prevent the owner from using the property for a permitted principal use however, given the small size of the property, the property is very limited for accommodation of industrial uses and parking.

*(2) A lesser variance than that requested will not give substantial relief to the applicant and/or be consistent with justice to other property owners.*

A lesser variance does not resolve the need for the variance and at least two other property owners in the area already have street-facing overhead doors.

*(3) The need for the variance is due to unique circumstances or conditions peculiar to the property and not generally applicable in the area or to other properties in the same zoning district such as exceptional narrowness, shallowness, shape, topography or area.*

This property is relatively small for industrial uses and is between Alloy Drive and US-23. The majority of the parcels in this district are at least 2+ acres and are more accommodating of industrial uses and associated parking and loading. In this case, it is not feasible to accommodate parking and loading on the non-street facing (south side) side of the property.

*(4) The problem and resulting need for the variance has not been self-created by the applicant and/or the applicant's predecessor may or may not be considered depending upon whether the practical difficulty would have existed regardless of the action.*

The problem resulting in the need for the variance is not created by the applicant.

*(5) The variance will not alter the essential character of the area. In determining whether the effect the variance will have on the character of the area, the established type and pattern of land uses in the area and the natural characteristics of the site and surrounding area will be considered.*

The granting of the variance would not alter the essential commercial character of the area given the fact that a number of business adjacent and across the street have street-facing overhead doors.

*(6) The granting of the variance will not materially impair the intent and purpose of this Ordinance.*

The need for the requested variance is specific to this site and will not impair the intent of the zoning ordinance.

## **RECOMMENDATION**

After review of the requested variance against the standards of the Michigan Zoning Enabling Act and the Fenton Zoning Ordinance, we are of the opinion that the requested variance meets all of the above standards for approval. Therefore, **we recommend approval of the request to allow a street-facing overhead door at 130 N. Alloy**, for the following reasons:

1. Strict compliance with ordinance requirements would not unreasonably prevent a permitted principal use but greatly limit the development of the site for industrial uses;
2. A lesser variance would provide substantial relief to the applicant;
3. There are unique or peculiar site conditions not present on other properties in the vicinity given the size of this lot compared to others nearby;
4. The need for the variance is not self-created
5. The variance would not alter the character of the Fenton Business and Technology Park; and
6. The variance would not harm the intent of Section 36.02.20 (D-1) of the City of Fenton Zoning Ordinance.

The applicant, Mr. Patrick Fenton, stated Mr. Sprague covered everything and was available for any other questions.

After a brief discussion, the following motion was made;

**MOTION BY MCDERMOTT, SUPPORTED BY MARCUM, to APPROVE the requested variance to allow for a street-facing overhead door at 130 S. Alloy Drive, as recommended in the CIB letter dated August 17, 2022.**

**MOTION PASSED (6-0) Halligan - aye, Bancroft - aye, Siwik – aye, McDermott – aye, Avendt – aye, Marcum – aye.**

## **ADMINISTRATIVE ITEMS**

### **1. Zoning Board By-Laws**

The ZBA By-Laws are before the Board this evening because the previous by-laws were established under the old act and since then there have been a number of items that needed to be brought up to date. After a brief discussion, the following motion was made:

**MOTION BY MCDERMOTT, SUPPORTED BY HALLIGAN, to ADOPT the ZBA BY-LAWS as written.**

**MOTION PASSED (6-0) Halligan - aye, Bancroft - aye, Siwik – aye, McDermott – aye, Avendt – aye, Marcum – aye.**

### **2. ZBA Appointments for vacancies and re-appointments of Avendt, Marcum and Halligan.**

Payne stated that we need to appoint two new members due to Mr. Bancroft's term ending with the Planning Commission next month so he will no longer be the cross-member, and also to fill the vacancy of Carl Hammond, who's term also expires next month. The only two applications received were Mr. Bancroft's and Ms. Charity Thompson. We also need to re-appoint members Marcum, Halligan, and Avendt, whose 1<sup>st</sup> term ends next month as well. After some discussion, the following motion was made:

**MOTION BY MCDERMOTT, SUPPORTED BY MARCUM, to recommend to City Council the appointment of Skip Bancroft and Charity Thompson for a first term on the ZBA, along with re-appointing Thomas Halligan, Kaylee Marcum, and Scott Avendt for a second term.**

**MOTION PASSED (6-0) Halligan - aye, Bancroft - aye, Siwik – aye, McDermott – aye, Avendt – aye, Marcum – aye.**

## **CIB ITEMS**

Mr. Sprague stated that he hopes American Recreation does as good of a job with their front loading dock as Niles Industrial's did on their loading dock.

**CALL TO THE PUBLIC**

No one this evening.

**BOARD MEMBER ITEMS**

Nothing this evening.

**ADJOURNMENT**

The meeting was adjourned at 7:27 pm.

Respectfully submitted by,

**Linda Davis**

Recording Secretary