

MINUTES

ZONING BOARD OF APPEALS

April 27, 2016

COUNCIL CHAMBERS, CITY HALL

CALL TO ORDER:

Chairman Dutcher called the Zoning Board of Appeals to order at 5:00 p.m.

ROLL CALL:

Present: Anderson, Bray, Dutcher, Lambie, Lewis, Polluch

Absent: Guest

Chairman Dutcher opened the public hearing and explained the procedures for the hearing.

Public Hearing of Case ZBA16-02

Adam Poll, Planning and Development Director presented the zoning request as follows: All Saints Catholic Area Parish, 817 Sable Street is requesting a variance in the R-2 One-Family Residence District to allow for the construction of a new parking lot setback five feet from a residential side property line, five feet fewer than required at the proposed location of **903 Sable Street**. Article 3.30E12.

**Property Address: 903 Sable Street**

Notices were sent to all adjoining property owners within 300 feet of the subject property.

To authorize a variance, the board shall find that all of the following conditions are met:

1. The need for the requested variance is due to unique circumstances or physical conditions of the property involved that do not apply generally to other properties in the surrounding area, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship.
2. Strict compliance with the regulations governing area, setbacks, frontage, height bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome.

3. Whether granting the requested variance would do substantial justice to the applicant as well as to other property owners in the district, or whether granting a lesser variance than requested would give substantial relief to the property owner and be more consistent with justice to other property owners;
4. The need for the requested variance is not the result of action of the property owner or previous property owners. It is not a self-created problem.
5. That the requested variance will not cause an adverse impact on the surrounding property, property values, or the use and enjoyment of the property in the neighborhood or zoning district and will not impair an adequate supply of light and air to adjacent property, unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or in any other respect impair the public health, safety, comfort, morals, or welfare of the inhabitants of the City of Alpena.

**CONDITIONS:** The Zoning Board of Appeals may impose such conditions or limitations in granting a variance as deemed necessary to protect the character of the area, as provided for in Section 9.9.

**FINDING OF FACT:** In granting or denying a variance, the board shall state in a written statement of findings of fact, which you can do verbally, the grounds upon which it justifies the granting of the variance.

Staff evaluation of the five conditions relative to this petition is as follows:

1. The applicant's request would appear to be unique. The proposed lot is located between a set of railroad tracks and a residential home. It is separated from the existing church parking lot only by the railroad tracks. Due to the width of the railroad right-of-way, the church cannot construct the parking lot any further away from the residential home without losing a significant number of parking spaces.

Due to the location adjacent to the railroad tracks, it is unlikely the lot would be desired for residential purposes, and a parking lot that would probably only be utilized one day a week, and that created a visual buffer from the existing railroad tracks and the existing homes could help lessen the impact of the railroad tracks.

2. The lot in question is a standard residential lot measuring 66 feet wide by 140 feet deep. The proposed lot abuts a residential lot to the northwest, and railroad tracks and right-of-way to the southeast. In order to have two rows of parking and two-way access in the vehicular maneuvering area, a 22 foot maneuvering lane is required, and the stalls are required to be 19 feet deep for 90 degree parking stalls. The lot itself is required to be 60 feet wide. The proposed plan is showing the lot to be five feet from the lot line of the adjacent residence to the north and one foot from the lot line adjacent to the railroad right-of-way to the south.

If the applicant wanted to use angled parking and utilize a one-way maneuvering lane, the needed width could be reduced from 60 feet to something less, but it would be more difficult to access, and could potentially sacrifice the total number of parking stalls.

The lot in question is designed to fill the length of the block from Sable Street to Lockwood Street. In order to construct the lot as shown, a section of alley would need to be vacated and sold to the church which is a process that is currently underway and is handled by City Council. Usually staff does not support vacating a portion of an alley as it creates dead end alleys, but in this case the alley already dead ends into the railroad tracks so staff has no objection. If the vacate is not passed, the church could redesign the proposed lot to allow for access from the alley although it would reduce the amount of parking provided.

A variance is not needed for the adjoining residence on Lockwood Street as the church has a wider lot on that side and will meet the required setback of ten feet.

3. The proposed design would not appear to have a negative impact on the area. It would appear to provide a buffer between the existing home and the railroad tracks. The fence will be located fairly close to the existing home, but the applicant could install a privacy fence in this location at any time.

In addition, the proposed lot would allow the church to sell their existing lot located across Lockwood Street, and would prevent parishioners from having to cross Lockwood Street, a local street, and have them instead cross a very lightly used set of railroad tracks.

4. The variances would not appear to be self-created. The lots in question are vacant and will likely not be utilized for residential purposes due to the proximity of the railroad tracks. The lot in question is not quite wide enough to accommodate the required width the Zoning Ordinance requires; however, a parking lot would appear to be an appropriate use due to its proximity to the church and ability to be used to buffer the residential housing to the north from the railroad tracks.
5. Granting the variance would not appear to have a negative impact on the area. Screening would be required and actually serve to buffer the residential homes from the railroad tracks. In addition, this lot would only be utilized once a week, and as it would be located further from the church than its other lots, it would be the last lot to be utilized.

Although there would be limited concern about causing a situation that requires church attendees to cross a non-signalized segment of railroad track, the potential threat would appear to be limited as the volume of traffic on the railroad track is small. In addition, the existing parking lot that this lot is going to replace is located across an existing local street which has significantly more traffic than the existing railroad. The Zoning Ordinance does allow for church parking to be located across a street from the church via the issuance of a special permit.

In granting a variance, the board may attach conditions regarding the location, character and other features of the proposed structure as it may deem reasonable in furtherance of the purpose of this ordinance. In granting a variance, the board shall state the grounds upon which it justifies the granting of said variance.

Staff recommendations:

1. The request is unique as the lot is just narrow enough not to meet setbacks and is located between residential and existing railroad tracks.
2. Strict compliance would not easily allow this lot to be used as a residence due to the presence of the railroad tracks, or a parking area, as it is too narrow for a standard parking pattern.
3. The request would appear to do substantial justice as it would not appear to have a negative impact on the area and creates a visual screen between the residential and the railroad tracks. It will also not be a heavily utilized parking area most of the time.
4. The need would not appear to be self-created. The lot is too narrow to meet the setbacks required, and the railroad makes the lot less than optimal for residential.
5. The request would not appear to adversely impact surrounding properties and would appear as a buffer between the railroad tracks and the residential.

Therefore, staff recommends that the request to construct a parking lot at this location be approved subject to the approval of a special use permit by the Planning Commission.

PUBLIC COMMENT:

Chairman Dutcher asked if there was anyone who desired to speak either for or against this variance.

Mark Wozniak of 910 Lockwood Street addressed the board. He was wondering if the parking lot was going to lower his property value.

Adam Poll said ultimately whether or not it lowers property values, is up to the assessor, it won't change your zoning district, and it won't change the use of your home. There will be a six foot privacy fence erected, as well as some sort of plantings on the other side of it creating a visual buffer between the railroad tracks and your residence.

Since no one else wished to speak on this case, either for or against, Chairman Dutcher closed the public comment portion of the meeting at 5:10 p.m. to deliberate for case ZBA16-02.

DISCUSSION BY BOARD MEMBERS:

Member Lamble asked if the privacy fence is going to run adjacent to the home. Adam Poll said yes, and there will be some plantings in there as well. Member Lamble asked, what kind of privacy fence are they talking about? Adam said it would be a wood privacy fence.

Adam Poll said with regards to any potential conflicts of interest, there are a number of members in the community that are members of St. Anne's. Adam does not think being a member of St. Anne's church, if anybody here is one in itself, is a conflict of interest unless you feel somehow that your decision here one way or the other is going to impact your liability in the church. Adam says he does not think it is a conflict. If you do, let it be known to the board.

Member Lamble said there is no pecuniary interest involved.

Member Anderson said for the record, it does meet criteria and the gentlemen that questioned his property, I think he is getting a better neighbor.

Greg Dziesinski, maintenance supervisor for All Saints Parish, told the board they are planning on installing a five foot high chain link fence, with solid shrubbery. He said that is what is on their print.

Donald Gilmet, Building Official, addressed the board. He said whatever they put up, it will have to meet the screening criteria. Whether five feet chain link is going to be the whole length or not, chain link fences are not allowed in front yards because of the setbacks from the street. There might be some areas that are going to be chain link but other areas it might have to be more like a screening fence like they did when they took the old parish hall down. A more decorative 50 percent open fence. Whatever they do, it will have to meet the screening requirements for parking lots. We will make sure that if it is chain link, it is only in places that you can use that for screening.

Member Lewis made a motion to accept the request to construct a parking lot as presented by the city.

Member Bray seconded the motion.

ROLL:

Ayes: Anderson, Bray, Dutcher, Lamble, Lewis, Polluch

Nays: None

The variance has been granted to allow for the construction of a new parking lot set back five feet from a residential side property line. Also to meet the screening requirements with some kind of fencing or shrubbery.

Adam Poll also added that the vacating of the alley is going to City Council. There is a special hearing on that and there also will be a separate hearing for a special use permit. This is the first of a number of approvals.

Let the record show to authorize a variance, the board shall find that all of the following criteria has been met for Case ZBA16-02.

1. The need for the requested variance is due to unique circumstances or physical conditions of the property involved that do not apply generally to other properties in the surrounding area, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship.
2. Strict compliance with the regulations governing area, setbacks, frontage, height bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome.
3. Whether granting the requested variance would do substantial justice to the applicant as well as to other property owners in the district, or whether granting a lesser variance than requested would give substantial relief to the property owner and be more consistent with justice to other property owners;
4. The need for the requested variance is not the result of action of the property owner or previous property owners. It is not a self-created problem.
5. That the requested variance will not cause an adverse impact on the surrounding property, property values, or the use and enjoyment of the property in the neighborhood or zoning district and will not impair an adequate supply of light and air to adjacent property, unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or in any other respect impair the public health, safety, comfort, morals, or welfare of the inhabitants of the City of Alpena.

#### Public Hearing of Case ZBA16-01

#### **Property Address: 1115 W. Chisholm Street**

On January 27, 2016 the Zoning Board of Appeals approved a variance to allow the McDonald's restaurant at 1115 W. Chisholm Street to tear down the existing McDonald's and rebuild in a new configuration that would allow for additional stacking, but would eliminate some required parking spaces and allow for reduced parking setbacks for the front and side. The Zoning Board of Appeals placed some conditions on the approval that included the following requirements:

- 1) McDonald's would widen the access/exit on Chisholm Street to create an additional exit lane.
- 2) A section of the rear wall on the northwest side of the site would be removed to provide an additional exit for vehicles using the drive through that would allow vehicles to exit via the alley to Thirteenth Avenue. The Zoning Board of Appeals also required that the entire alley is paved.
- 3) A section of the wall along the alley is lowered near the access points to allow for better visibility.

Jeff Brinks, who represented McDonald's at the hearing, communicated the conditions to McDonald's and now would like to ask that condition number two be delayed or rescinded. After looking closely at the site and comparing it to other McDonald's stores, Mr. Brinks feels that the additional exit is unnecessary. Mr. Brinks was able to incorporate an additional exit lane at the Chisholm Street exit/entrance that he feels that the existence of both a right and left exit lane would appear to alleviate potential stacking issues.

Mr. Brinks proposed that the need for another exit via the alley could be evaluated for a trial period at a later date if that is the desire of the Zoning Board of Appeals.

Staff would also note that upon further evaluation there would appear to be a significant grade difference in the section of the alley desired for the additional access and the elevation of the existing McDonald's site.

Member Lamble asked if there are drainage issues.

Don Gilmet, Building Official, said that alley is about 12-18 inches higher right now. There is no drainage issues currently, because of the fact there is a concrete wall there. Member Lamble asked if they remove a section of that wall, will we end up with drainage issues. Don said they would have to do a little additional grading there so they are not winding up with drainage issues. But if the whole thing is removed, then you are looking at potentially bringing that whole site up. Then you are talking a lot of fill and that is going to goof up the grade between that site and U. S. 23.

#### PUBLIC COMMENT:

Chairman Dutcher asked if there was anyone who desired to speak either for or against this variance.

Nancy Thatcher of 504 Beebe Street addressed the board. Her brother-in-law and sister-in-law live right behind McDonald's. Their concern is if they open that alley up, are they going to move that wall back, are they going to put a fence there. What are they going to do to protect their house?

Mr. Jeff Brinks is with Williams and Works and he addressed the board. When he was here last time he met with McDonald's and they talked through the variance requirements and most of it was fine. We were able to address the opening to create visibility and get the third lane in the driveway. McDonald's has a couple of concerns. One of the concerns was the grade of the alley. They feel like the third lane in the driveway onto the state highway will alleviate the problems in terms of access on to it. The issue besides the grading problems, is the fact that there still is residential over there and that wall provides a great barrier. There already is an opening there that has been there for a long time. Improving that of allowing traffic to continue to utilize that alley probably is not going to change the status quo. However, opening up a much larger hole on the other end and then sticking people down there, McDonald's is just worried about being a good neighbor at that point, and impacting where there is still residential uses. We did know that there was some concern about the access. We discussed last time about Little Caesar's opening that is there now. McDonald's did reach out to Little Caesar's, and we approached them about continuing that access and Little Caesar's said no.

Mr. Brinks asked the board if they could rescind the requirement of removing a section of the rear wall. He figures the downside of opening up that wall are potentially worse than the upside, with drainage and the neighborhood.

Member Lamble asked if anyone has done any traffic counts on Chisholm Street, with respect to a left turn lane, with making a left turn during the Noon hour out of that particular location. Mr. Brinks said, not on McDonald's part. Member Lamble thinks what happens is, they think this is going to alleviate stacking by putting that left turn lane there, he does not see that happening. He says this will alleviate ingress issues that have occurred. You are not going to have traffic stacked out on Chisholm Street waiting to turn in there during the Noon hour. Anybody coming out of McDonald's making a left turn onto Chisholm Street during those time periods is going to stack traffic right back.

More discussion ensued about the difficulties when making a left turn out of McDonald's.

Member Lamble said they could make a motion to table the issue about making a left turn out of McDonald's. His suggestion would be to table that at this juncture. Let the building get up, and then we will experience if there is a huge problem, and we can come back and deal with it.

Donald Gilmet said he is not sure that tabling a request for a period of time is OK. Don said once we grant them something at the zoning board, you pretty much have to live with it.

Member Lamble asked if this is by way of an appeal. He said we have already granted a variance. Now we are coming back. Member Lamble said he is going to characterize, is this a motion for reconsideration. Is that proper to do that.

Don Gilmet said he thinks they have done that in other cases.

Member Lamble said they also dealt with a very similar issue in terms of a request for a certain building over at the mission. We basically shut that down, because it had already been dealt with.

Member Lewis said the mission did not make any changes to their plan. Where there is a change to this plan.

Member Lamble said there is not any change here taking place.

Member Lewis said they widened the driveway going in and out. Member Lamble said that was part of the original motion.

Member Bray said it was never part of the original plan. Member Lamble said you are correct that it was never part of the original plan, but this board already made a finding on that.

Donald Gilmet said, I think somebody can apply for a zoning variance as many times as they want. Mr. Gilmet said there is nothing that prohibits somebody from exercising that right to apply for a variance.

Member Polluch asked Mr. Gilmet, how far back are they going to take the wall. Mr. Gilmet said, originally there was going to be another opening cut into the other end of the wall and another chunk was going to be taken down just for visibility. So if you are coming out to the alley and you are going to turn right, you could at least see. That wall because of the difference, you are going up a little bit and it is quite tall.

Member Polluch said if we say OK to this, there is no paving of the alley. Mr. Gilmet said the paving is still going to continue from where they go out and where they would drive on it and turn right. That part would still be paved.

Member Anderson asked Mr. Gilmet to give him a reason why he would vote yes. Mr. Gilmet said if that wall was taken down for a driving lane to access the alley, you don't need a screening wall. If that wall was taken down, just to take it down, it has to be put back up, because they need to screen all the parking and travel lanes. Right now there are some privacy fences that are owned by property owners across the alley. If they did not want to have a privacy fence, all of a sudden McDonald's would have to somehow shield whatever that wall got removed. The only problem is the only place they could put a wall up is on their own property. They could not put it in a city alley, and it would have to have the property owner's permission across the alley to put it on their property. Mr. Gilmet said if he were to approve it, is just because it makes sense. He believes that people will eventually go to the easier route and use that alley exit instead of trying to turn left. Sometimes you can turn left.

Member Anderson said was this something they learned after we approved their variance.

Adam Poll said basically what happened the last time is McDonald's had to have their initial plan submitted. Staff, the Building Official Don Gilmet, and I had some concerns. We suggested something be done, either the exit be widened or potentially another option would be to open up that extra exit into the alley. Ultimately, the zoning board decided to go with both. Unfortunately, McDonald's did not have a lot of time to analyze how that would work. Basically what happened, McDonald's went back and analyzed what we were asking them to do, and they had some genuine concerns. Because it was a late addition by the zoning board, and they had some concerns that is why I said OK, if you want to make the request feel free. Mr. Brinks did his best to look at other alternatives, as well as talking to Little Caesar's. He did manage to widen the entrance and they are going to take down the other one. If they had been identical, I said don't waste your time. Adam did say, there is a very real chance that even if the zoning board does feel that your request is valid, they might ask you to reconsider in a one year's time just to make sure there aren't any additional issues.

Member Lamble said in terms of getting this going, he said remove the condition for the cut on the wall, and he also thinks we may find that we are going to need that ultimately. As far as getting this project moving too, he also will say we delete it at this point and see how it operates. He thinks there is going to be a problem, because you have multiple points of ingress and egress at that current site, and we are limiting it down to one, which is going to make a difference.

Member Lewis said he would have to disagree with that. Basically you have an in and an out there, and one more entrance down. Member Lewis thinks that entrance does not really get used that much that it is more of an employee kind of thing.

Member Lamble said he sees that used a lot.

Member Anderson said, based on the information we have just obtained, would that make a difference in the motion when we voted for it the first time.

Member Lamble said he thinks so, because they did not have any input from neighbors.

Member Anderson, said therefore Mike was right the first time that essentially it is a different variance to vote on.

Since no one else wished to speak on this case, either for or against, Chairman Dutcher closed the public comment portion of the meeting to deliberate for case ZBA16-01.

#### DISCUSSION BY BOARD MEMBERS:

Member Lamble moved to amend his original motion, withdrawing only that aspect to the motion that would require the second cut in that masonry wall and the paving of the entire alley. The cut that currently exists will remain and the paving that takes place from Twelfth up to there remains. The only amendment would be the second cut that we would do further down the wall

towards Little Caesar's, he would withdraw that aspect of his motion and the aspect of the motion that would require the paving of the entire alley. This is an amendment of a motion.

Member Anderson seconded the motion.

ROLL:

Ayes: Anderson, Bray, Dutcher, Lamble, Lewis, Polluch

Nays: None

The variance has been granted for McDonald's to widen the access/exit on Chisholm Street to create an additional exit lane. The condition to make a second cut in the masonry wall further down has been rescinded. Also, McDonald's will not be required to pave the entire alley, only the part of the alley that is required.

OLD BUSINESS:

Adam Poll said there is not any old business or communications.

NEW BUSINESS:

Chairman Dutcher entertained a motion to approve the minutes of the January 27, 2016 meeting as printed.

Member Lamble made a motion that they be approved.

Member Anderson seconded the motion.

ROLL:

Ayes: All

The minutes of the January 27, 2016 meeting were approved.

Chairman Dutcher made an announcement that he will be stepping down as Chairman of the Zoning Board of Appeals due to health reasons. Mr. Dutcher said he has served on the Zoning Board of Appeals for 34 years.

ADJOURNMENT:

With no other business to discuss, Chairman Dutcher adjourned the meeting at 6:00 p.m.

---

Alan Guest, Secretary

---

Norman Dutcher, Chairman