

**ESCANABA ZONING BOARD OF APPEALS
ROOM C101, CITY HALL, ESCANABA, MI
FEBRUARY 27, 2013**

A regular scheduled meeting of the Escanaba Zoning Board of Appeals was held on Wednesday, February 27, 2013, at 6:00 p.m. in Room C101, City Hall, 410 Ludington Street, Escanaba, MI 49829.

PRESENT: Chairperson Brian Black, Vice Chairperson Ralph Blasier, Boardmembers James Hellerman, Jon Liss, and Philip Strom.

ALSO PRESENT: City Council Member Liaison Brady Nelson, Blaine DeGrave, Ex-Officio, and Kim Peterson, Executive Secretary.

The meeting was called to order at 6:00 p.m. by Chairperson Brian Black.

ROLL CALL:

Kim Peterson conducted the roll call. Vice Chairperson Blasier was not present for roll call, however, he came in at 6:04 p.m.

Approval/Corrections to the August 29, 2012, meeting minutes

A motion was made by Boardmember Strom, seconded by Boardmember Liss, to approve the August 29, 2012, meeting minutes.

Ayes were unanimous.

Approval/Adjustments to the Agenda

None.

Conflicts of Interest Declaration

None.

UNFINISHED BUSINESS

None.

NEW BUSINESS

Election of Officers

A motion was made by Boardmember Hellerman, seconded by Vice Chairperson Blasier, to table the Election of Officers until City Administration could review term limits. Ayes were unanimous.

PUBLIC HEARING

Public Hearing – Auto Zone, Inc. 405 North Lincoln Road – Variance Request – Zoning Ordinance

Ex-Officio Blaine DeGrave stated AutoZone, Inc. is requesting a variance to Section 1907.1.A Building Orientation as the front door will not face North Lincoln Road.

Wes Berlin, Senior Project Engineer for Professional Engineer Associates for AutoZone Inc. appeared before the Board. Mr. Berlin stated with exhibits and discussion he will demonstrate a valid hardship with development of the site. Reasons for the request are due to the orientation of US2 running at south-west in an easterly direction and pinches the width of the site down. The lot is 124' wide on the south edge and the site pinches approximately 40' from the north to south. This pinching effect of the site, in conjunction with the other requirements of the Zoning Ordinance for building setbacks and parking, limit the feasible layout options for this development. The main hardship is the orientation for US2 and is not a self-created situation. The issue is specific to this site and not common to the area or the corridor as a whole. Mr. Berlin drove the corridor from 3rd Avenue North to 6th Avenue North and looked at the door locations for all the current businesses in the area. Out of eleven businesses in the area, eight businesses have doors on the north or south building wall meaning they don't face the roadway. If this variance is granted, it wouldn't be a situation where you would have a single building door not facing a roadway.

The current site plan layout was reviewed.

Mr. Berlin stated the building door is orientated facing south and a row of parking to the south of the building with a two-way drive aisle south of that. A second row of parking would also be located to the south. The building cannot be moved any further west as there is a two-way north-south drive aisle and is the main drive aisle to the shopping complex. The proposed building would line up with the landscape island of Pizza Hut and with the existing stripping in the area.

Vice Chairperson Blasier questioned what businesses don't have their main entrance facing Lincoln Road. Mr. Berlin showed a layout of where the businesses were located to include: McDonalds, Pizza Hut, Hardees, Wells Fargo Bank, Burger King, and Culvers.

Chairperson Black questioned the intent of the Zoning Ordinance for granting so many variances related to entrances facing the main roadway. City Administration was not aware of any variances that were requested for the current businesses and their history. Discussed history of businesses that don't have their main entrances facing Lincoln Road and why this was. Discussed having the Planning Commission look at the Zoning Ordinance language as a majority of businesses in this area don't have their main entrances facing North Lincoln Road.

Ex-Officio DeGrave reviewed the rules for the Board of Appeals:

Powers and Duties of the Zoning Board of Appeals – Section 305.1 General

The Zoning Board of Appeals shall have the power to hear and decide on appeals where it is alleged that there is an error in any order, requirement, decision, determination or interpretation by the Code Official. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination of appeal from and shall make an

order, requirement, decision, or determination as in the Board's opinion ought to be made. If there are practical difficulties or an unnecessary hardship in carrying out the strict letter of the ordinance, the Zoning Board of Appeals may, in passing on appeals, grant a variance in any of the provisions relating to the construction, or structural changes in equipment or alteration of buildings or structures, or the use of land, buildings or structures so that the spirit of the ordinance shall be observed, public safety secured, and substantial justice done. The Zoning Board of Appeals shall not have the power to vary a standard for a Planned Unit Development or a Special Land Use Permit.

Variance Review Criteria – Section 305.4

The Board shall have the power to authorize specific variances or departures from this Zoning Code, if all of the basic conditions are satisfied, and if there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Zoning Code. A variance from the dimensional requirements of this Zoning Code may only be granted if it is determined that all basic conditions have been satisfied and there is a practical difficulty in carrying out the requirement. A variance from the use requirements of this Zoning Code may only be granted if it is determined that all basic conditions have been satisfied and that there is an unnecessary hardship created by those use restrictions.

Basic Conditions – Sections 305.5

Any variance granted from this Zoning Code shall meet the following basic conditions:

- A. The spirit of the Zoning Code shall be observed, public safety secured and substantial justice done.
- B. There is no substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.
- C. The difficulty or hardship relating to the property is not so general or recurrent in nature that the formulation of a general regulation for such conditions is preferable.
- D. The practical difficulties or unnecessary hardships are unique to the property under consideration and not to the general neighborhood, and shall apply only to property that is under the control of the applicant.
- E. It shall be necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.
- F. There is a clear showing of an unnecessary hardship in that the property as a whole cannot reasonably be put to a use authorized by this Zoning Code.
- G. The alleged hardship or difficulty is not solely economic and is based on the reasonable use of a particular parcel of land.
- H. It may be denied where the alleged practical difficulties or unnecessary hardships resulted from an act of the applicant, or a person in privity or concert with the applicant.

Practical Difficulties and Unnecessary Hardships - 305.6

In order to determine if there are practical difficulties or unnecessary hardships that prevent carrying out the strict letter of this Zoning Code, the following shall apply:

Dimensional Variance – Section 305.6.1

A practical difficulty shall exist where there are exceptional or extraordinary circumstances or physical conditions, such as narrowness, shallowness, shape or topography of the property involved, that do not generally apply to other properties or uses in the same zoning district.

Boardmember Hellerman questioned the Zoning Ordinance language for the entrance door facing the main road and whether it was for shady operations/back door businesses at the time or for a uniform appearance on the road. In every illustration the square footage of the buildings is identical and by the laws the Board of Appeals has to follow is for the variance not to be self-created. In his opinion, the building could be shrunk the probability of seeking a variance could be eliminated. It is not the City's nor the Board's concern on what size the building is required to be because it could still be economically used the area with a smaller building with the door facing the front.

Mr. Berlin stated the proposed site plan is the smallest prototype that can be built by the client. The proposed project would be seven spots under the required parking. AutoZone Inc. has had discussions with the neighboring property owner to share seven parking spots. Vice Chairperson Blasier stated he knows the stalls are far from the central store and they are rarely full.

Boardmember Hellerman questioned whether this lot was partitioned off and if it was always a parking lot. It was believed to always have been a parking lot and Dial Properties split the property.

Mr. DeGrave stated City Administration has no concerns with granting this variance. The complete site plan to include parking will be reviewed at the 03/14/13 Planning Commission Meeting.

Boardmember Strom questioned whether there was a public safety benefit by not having the entrance on the side facing North Lincoln Road and whether there was a concern with placing an entrance that close to a major roadway.

Chairperson Black stated one of the reasons a variance can be granted is the proposed site plan protects the public better than what would be required under the Zoning Ordinance.

Boardmember Strom stated he is referring to Basic Conditions – Section 305.5.A. which states, "The spirit of the Zoning Code shall be observed, public safety secured and substantial justice done". He believes the safety of the public would be better served with an entrance not being right off of Lincoln Road.

Vice Chairperson Blasier stated in reviewing the site plan it looks like 40' from the curb with sidewalk going through it from the front of the building.

Discussed having the façade facing Lincoln Road being aesthetically pleasing to match the attractive thoroughfare. Mr. Berlin stated he was willing to do so with windows, signs, canopies, landscaping, etc. Ex-Officio DeGrave stated this will be reviewed by the Planning Commission with the site plan review. Boardmember Hellerman stated the City does not want a warehouse on Lincoln Road. Mr. Berlin stated they could add architectural features to all four sides to include windows, signage, canopy, varying heights, etc. to look more like an entrance along the wall facing North Lincoln Road.

Boardmember Strom stated he sees a rather restrictive part of the conditions to follow in Basic Conditions 305.5.C. which states, "The difficult or hardship relating to the property is not so general or recurrent in nature that the formulation of a general regulation for such conditions is preferable". When he reads this and applies it to other buildings, the fact that a majority of other buildings on Lincoln Road may have their doors on the north or south entrance seems to require a general regulation as opposed to granting individual variances. He questioned if the Board of Appeals should defer to the Planning Commission to do away with the door facing the main roadway requirement in this area. The code requirement to have entrance doors facing the main roadway makes sense for Ludington Street, not for Lincoln Road as it could be an exception in the general policy as opposed to having to come before the Board of Appeals. He would be interested to know why other buildings in the surrounding areas have their entrance doors facing either south or north. He believes it is worth exploring the dimensional variance portion of this based on the unique dimensional lot that is essentially cut off by Lincoln Road through no fault of the developers. This lot is odd shaped and considering this, believes the shape of the lot does potentially fall under Section 305.6.1. Dimensional Variance. He would also take in account Section 305.5.C. Basic Conditions if every lot along Lincoln Road is similarly shaped.

Ex-Officio DeGrave stated he could bring the information back to City Administration for their review. Vice Chairperson Blasier questioned how long it would take to make a change to the Zoning Ordinance. Chairperson Black stated a change was just made to the Zoning Ordinance and took a few months.

Rich Meyer, employee at Advanced Auto Parts, appeared before the Board and stated the proposed development's front door would be facing south directly looking towards Advanced Auto Parts which is his major concern. This development will be a neighbor of Advanced Auto Parts to the south and a major competitor. Mr. Meyer has concerns with the dumpster placement which would be directly in front of Pizza Hut's front door and 180 degrees from the proposed development's front door. Further concerns are about semi access to the loading area on the north side and trying to get a semi into an 18.5' x 80' loading area and having to come through the parking spots directly to the west. This would be blocking off the two-way roadway. Snow removal is another concern with currently having Super One piling their extra snow in the proposed construction area and would then have to make Super One truck their snow out. If Super One didn't lose their snow bank spots, there are seven extra spots that they are going to share from a leasing company will not be there anymore when there is an 18' snow bank there. They are sharing spots from a property management company, Dial Company, that they purchased the property from. AutoZone bought an odd shaped piece of property and now they want a variance to not point their door towards Lincoln Road. The traffic that comes into the divided entrance north of 3rd Avenue North already have problems with people cutting the light through the parking lot and will get worse with another building. There are accidents with people trying to turn into the parking lot coming northbound when they come through the light and try to get into the turn lane and turn into the parking lot area which will be more traffic in that area also. Semis frequently break off the sign that is outside North Lincoln Road. Two businesses will be displaced with the Christmas Tree sales and Fourth of July sales who rent rooms in town and bring money to the area. The question of the door location and safety concerns would place the door between the bike route and sidewalk that are currently on North Lincoln Road and their building and if it is not safe for people to walk into the front door, why would it be safe for people to use the sidewalk and bike route. The businesses that were mentioned that don't have doors that face North Lincoln Road all have windows or seating areas

that are on the front of their buildings facing North Lincoln Road that they use as backdrop as something nice to look at. These buildings are aesthetically pleasing.

Boardmember Hellerman stated these comments would be great to be heard at the Planning Commission Meeting. Mr. Meyer replied that the Planning Commission does not have their agenda for March printed yet. The next Planning Commission Meeting will be 03/14/13. Mr. Meyer stated if the proposed project was turned 90 degrees there would be no concerns that he mentioned.

Mr. Berlin stated the Planning Commission will review the dumpster placement and screening, snow removal and parking. Ex-Officio DeGrave stated the Board of Appeals is hearing a request for a variance on the door orientation.

Boardmember Strom stated they have to consider the spirit of the Zoning Ordinance and consider issues such as public safety and the substantial adverse effect on other property values. The points that Mr. Meyer brought forward are all important considerations. He further stated that a representative from Pizza Hut was not present and questioned whether a big brick wall with a dumpster was going to have a substantial adverse effect on Pizza Hut.

Boardmember Hellerman stated the building could be built with the door facing Lincoln Road, but they choose to build the building with so many parking spots because of the size of the development.

Vice Chairperson Blasier stated Mr. Meyer pointed out two things with one being a nice façade facing the street versus a blank wall and parking. If a semi was on the north side of the building, parking spots would have to be blocked off hours before the truck is due. You would have to give up a minimum of six spots just to get a delivery truck in.

Boardmember Strom questioned what type of variance would be sought in order to place the entrance on the east side of the proposed lot. Boardmember Hellerman stated by building a big building he is creating his own adverse effect.

Chairperson Black stated one of the challenges is the minimum square footage of the building and if it is a condition created by the owner and whether it is the source of a substantial hardship.

Vice Chairperson Blasier stated there is more than likely a formula set by AutoZone Inc. to succeed they have to have a certain number of square feet. He agrees that this is the creation of the AutoZone corporation or franchise.

Boardmember Hellerman stated the lot was purchased knowing that it wasn't big enough.

Ex-Officio DeGrave stated City Administration conducted a pre-site plan meeting and no concerns or issues were brought up.

Vice Chairperson Blasier stated AutoZone could compromise with placing the door on the east side and get a variance for insufficient parking.

Discussed some of the overflow parking taking Super One's designated parking spots. Discussed whether there was a requirement to have parking spots directly in front of the entrance and where the handicap parking spots needed to be located.

Boardmember Strom questioned why the door couldn't be located facing North Lincoln Road. Mr. Berlin stated to get the parking closer to the entrance. Vice Chairperson Blasier questioned whether this was crippling. Mr. Berlin stated it would be in this case as it would be for most developers on this lot.

Bryan Marenger, owner of Red Line Motor Sports and Performance, appeared before the Board and stated he is a citizen and consumer. He said it didn't matter to him that Advanced Auto would be located next to AutoZone Inc. as AutoZone Inc. would bring prices down either way. He stated as a public person's standpoint driving down Lincoln Road and a building has four sides with an access point to the front and usually stocking is from the rear or side. He understands with architectural aesthetics put to this building you will have a semi and loading dock aspect if you are driving south or north. CarQuest has an eyesore to the left of their front door. Most commercial part stores don't make their money from someone coming to the store for a few items, they make money from companies ordering a large amount of parts in the course of a week. It wouldn't matter to him if he needed to walk around the building to gain access as he is going to shop where it is cheaper. A part store is a box and windows are only on so many sides as inventory has to be protected just like a bank as a bank is not made out of glass.

A motion was made by Vice Chairperson Blasier, seconded by Boardmember Hellerman, to deny the variance request to AutoZone Inc. to Section 1907.1.A. Building Orientation as the front door will not face North Lincoln Road.

Upon a roll call vote:

AYES: Vice Chairperson Blasier, Boardmember Hellerman, Boardmember Liss, Boardmember Strom and Chairperson Black.

NAYES: None.

Motion passed unanimously.

Ex-Officio DeGrave stated AutoZone Inc. can appeal the Board of Appeals' decision to Circuit Court. Chairperson Black stated AutoZone Inc. can appeal back to the Board of Appeals if there is new information.

NEW BUSINESS

Adoption of the 2013 Meeting Date Schedule.

A motion was made by Boardmember Strom, seconded by Vic Chairperson Blasier, to approve the 2013 Meeting Date Schedule as presented. Ayes were unanimous.

Public Comment

There were no public comments.

Member/Staff Comments and Announcements

There were no member/staff comments or announcements.

Adjournment

A motion was made by Boardmember Hellerman, seconded by Boardmember Liss, to adjourn the meeting with the time being 7:28 p.m. Ayes were unanimous.

Brian Black, Chairperson
Escanaba Zoning Board of Appeals

Blaine DeGrave, Ex-Officio
City of Escanaba