

MINUTES
MARSHALL CITY ZONING BOARD OF APPEALS
THURSDAY – April 15, 2010
7:00 P.M. – COUNCIL CHAMBERS

CALL TO ORDER

This meeting was called to order by Acting Chairman, Doug Murch at 7:00 p.m.

ROLL CALL

Present: Board Members DeGraw, Murch, Byrne, Council Liaison Williams, and 1st Alternate Davis

Absent: Board Member Ryan, and 2nd Alternate Dominique

Staff: Natalie Huestis, Director of Community Services

APPROVAL OF MINUTES

Motion by Byrne, supported by DeGraw, to accept the minutes of the October 15, 2009 meeting with the following changes to be made:

- Page 13 – change Murch’s “nay” vote to “aye” vote on the north setback variance.
- Page 14 – change “Motion by Murch” to “Motion by Davis” for the 15 foot east setback variance.
- Page 14 – change “Motion by Murch” to “Motion by Dominique” for the use variance.

On a roll-call vote-ayes: Murch, Byrne, DeGraw, and Davis; nays-none. **Motion carried.**

APPROVAL OF AGENDA

Motion by Byrne, supported by DeGraw, to accept the agenda of the April 15, 2009 meeting as submitted. On a roll-call vote-ayes: Byrne, DeGraw, Murch, and Davis; nays-none. **Motion carried.**

AUDIENCE PARTICIPATION

No public comment.

OLD BUSINESS

None

NEW BUSINESS

CASE #10.01

Robert Dye, owner of 305 South Sycamore Street, is requesting a variance from:

§ 156.221 (D)(1) and (D)(2), Accessory Structures and Uses, for a garage to be built within 3 feet of the rear and side lot line and for the garage to be built within 4 feet of an existing principle structure.

Mr. Dye explained why he would like the board to approve his variance to build a 20x20 garage. Mr. Dye stated that because of his lot size, there is no other place to locate the garage. He stated there is currently a slab in the location where a garage used to be and he would be reusing this slab. He is not sure why the original garage was demolished. He stated there would be enough space between the lot lines and the garage to keep the lawn maintained.

Public Hearing Open

No public spoke on this issue. Staff didn't receive any written communication supporting or opposing the requested variance.

Public Hearing Closed

Motion by Davis, supported by DeGraw, to approve case #10.01 to allow a variance from §156.221 (D)(1) and (D)(2), Accessory Structures and Uses, for a garage to be built within 3 feet of the rear and side lot line and for the garage to be built within 4 feet of an existing principle structure.

Using the Dimensional Variance Worksheet, the board cited the following items pertaining to these variances:

- Strict compliance with the specified dimensional standard(s) will deprive the applicant of rights commonly enjoyed by other property owners in the same zoning district, create an unnecessary burden on the applicant, or unreasonably prevent the owner from using the property for a permitted purpose. ***The board agreed that to deny the construction of the garage would deprive the home owner the pleasure of owning a garage.***
- The variance will do substantial justice to the applicant, as well as to other property owners, and a lesser variance than requested will not give substantial relief to the applicant or be consistent with justice to other property owners. ***The board agreed that it was not the home owner's fault that the original garage was demolished, or that the lot is so small.***
- The need for the variance is due to unique circumstances peculiar to the land or structures involved that are not applicable to other land or structures in the same district. ***The board***

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agreed that because of the small lot size it presents unique circumstances to the home owner.

- The problem and resulting need for the variance has not been self-created by the applicant of the applicant's predecessors. **The board felt that because no one knows the history of the demolition of the original garage, it would be unfair to deny the variance.**
- The variance will not cause significant adverse impacts to adjacent properties, the neighborhood or the City and will not create a public nuisance or materially impair public health, safety, comfort, morals or welfare. **The board did not foresee any adverse impacts in allowing the home owner to build garage.**
- The alleged hardship and practical difficulties that will result from a failure to grant the variance include substantially more than mere inconvenience, or an inability to attain a higher financial return. **The board was in agreement that to not allow the variance would possibly result in a loss of property value due to not having a garage.**

On a roll-call vote-ayes: Byrne, Murch, Davis and DeGraw; nays-none. **Motion carried.**

Board Member DeGraw discussed his conflicts with hearing Case #10.02, Oaklawn Hospital's dimensional variance request.

Motion by Davis, supported by Byrne to excuse Board Member DeGraw from hearing Appeal #10.02, dimensional variance from §156.324 (D)(2) Minimum Number of Spaces Required, requested by Oaklawn Hospital, because of conflict of interest. On a voice-vote; **Motion carried.**

Case #10.02

Joanna Tarkiewicz, 220 Lyon Lake, Assistant Director of Plant Operations at Oaklawn Hospital, addressed the Board Members with plans on expanding Oaklawn Hospital's Surgery Center. Oaklawn is requesting a dimensional variance from §156.324 (D)(2) Minimum Number of Spaces Required, to reduce the number of existing parking spaces on the hospital and Wright Medical Building site by 43 spaces. Mrs. Tarkiewicz stated the surgery addition is needed to comply with the Michigan Department of Community Health requirements on room sizes. The state mandated room size for operating rooms is a minimum of 600 square feet, and for pre and post operating rooms is 100 square feet. The proposed new operating rooms will be 625 square feet and the pre and post operating rooms will be 130 square feet. All of the rooms will be "same handed", which means having all equipment either on the right or left side of the room. This helps with staff preparations and provides less opportunity for mistakes. There is a ceiling height requirement to all newly built surgical units. The operating rooms need large booms in the ceiling to hold computers, monitors, integration systems and medical gases. The rooms are required to have a minimum of 16 feet floor-to-ceiling height to provide enough room for the booms.

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Mrs. Tarkiewicz also stated that with the surgery addition, the hospital's new entrance will be level with the current entrance and will have a canopy for patient drop-off. There will be no ramps or steps for patients to use. In the new addition will also be a grand lobby, coffee shop and larger gift shop. The hospital conducted several space planning sessions and were told they needed 24,800 square feet to have a new code compliant emergency department with the four operating rooms and 3,700 square feet for an adjacent sterile processing department. The current surgery department is 12,000 square feet. Oaklawn Hospital's current footprint does not allow them to double their space. The only way to provide for the space needed was to expand out into the parking lot. Mrs. Tarkiewicz stated the hospital is able to accomplish these goals and still remain in the HCHSD district with the plan submitted.

Bruce Rasher, 614 East Drive, Board Chair of Oaklawn Hospital, talked about his leadership role with the hospital and as a private citizen in Marshall. His role as a board member is to guide and lead the members in terms of making decisions and to look at the future. He stated that 30 years ago things were much different, in 1990 there were around 200 community hospitals in Michigan and now there are only about 140. This decline was due to the healthcare reimbursements. Oaklawn Hospital is very fortunate to have become a premiere regional healthcare facility. Mr. Rasher stated that with the rise in technology and diagnostics, Oaklawn has been able to grow and become more sophisticated, while still being able to maintain their small town character. Oaklawn Hospital is rated by patients as being in the top 5% of hospitals in the country. He also stated the hospital has 860 employees and is a vital economic entity in the city. Mr. Rasher finished by stating that the hospital board is unanimously and enthusiastically supporting this project.

Rob Covert, CEO & President of Oaklawn Hospital, stated that Oaklawn has been on the site it occupies for about 85 years. They have invested 80 million dollars so far into the hospital and after this project it will be 110 million dollars. To keep Oaklawn Hospital as a state of the art hospital, the surgery addition is necessary. The new Health Care Law that will be passed will cut the hospital's reimbursement by 16 million dollars over 10 years. Mr. Covert stated that the hospital needs to have every patient that they can have to help with the loss of reimbursement they will be receiving. The new surgery center would help in bringing new patients to the hospital as well as more doctors. With the increase of surgery rooms, along with state of the art equipment, Oaklawn can stay competitive and will not have to turn patients away.

It is understood that over the past decade, parking has been an issue for Oaklawn Hospital. With the 81 spaces available on the Ricketson parking lot (being constructed) and 77 more parking spaces available in the parking ramp, this will provide approximately 150 more parking spaces than were previously available, bringing the total to 110 more available spaces for the public. Mr. Covert stated that the hospital is going to have their employees park a few blocks away from the hospital. Mr. Covert is asking for support by the ZBA in order to keep Oaklawn Hospital an outstanding national hospital.

David DeGraw, 609 Hill Road, attorney for Oaklawn Hospital, read from the April 12th issue of the Wall Street Journal. He stated that the article states there will be 150 thousand less doctors in the next 15 years. With the passing of the new health care bill, there will be more people who will have

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health insurance. This shortage of doctors will affect the type of health care that patients will receive. He also stated that the article says that with this shortage, it would mean that patients will be waiting longer to be seen and that there could be limited access to health care. Oaklawn Hospital needs this new surgery center to stay competitive and be able to serve the community and patients with their medical needs.

Mr. DeGraw went over the hospital's opinions on the dimensional variance, the hospital's stated opinions on dimensional variance requirements are as follows:

ZBA Criteria for Dimensional (nonuse) variance

1. *Strict Compliance with the specified dimensional standard(s) will deprive the applicant of rights commonly enjoyed by other property owners in the same zoning district, create an unnecessary burden on the applicant or unreasonably prevent the owner from using the property for a permitted use.*

Oaklawn's Response:

Complying with existing setback requirements, the only portion of buildable land in the HCHSD is the existing parking lots in to the southwest corner of the district. The only alternative is to go upward. Engineers have determined that the existing structure would require significant and prohibitively costly enhancements to withstand the weight of additional structure. A new surgery department is required to stay current with leading edge technology and the only feasible location is where it has been designated.

2. *The variance will do substantial justice to the applicant, as well as to other property owners, and a lesser variance than requested will not give substantial relieve to the applicant or be consistent with justice to other property owners.*

Oaklawn's Response:

This variance will allow Oaklawn Hospital to better serve the community and provide advanced level of care for patients here in Marshall. Denying it would force surgeries to other institutions and hinder proper care as medicine advances.

3. *The need for the variance is due to unique circumstances peculiar to the land or structures involved that are not applicable to other land or structures in the same district.*

Oaklawn's Response:

The case of Jansen v Holland Charter Township Zoning Board of Appeals, 252 Mich App, 197 (2002), held that "the requirement that the land owner's plight be due to unique circumstances does not mean the circumstances must exclusively affect only the single land owner."

This parcel is unique in that it is the only HCHSD in Marshall, Oaklawn Hospital is the only hospital in Marshall, and is the only business facing these unique circumstances. There is no other place in the HCHSD to put the surgery department. The surgery department must be physically connected to other departments that support surgery services.

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This variance would allow Oaklawn Hospital to provide the next level of care for a surgery. Denying it would hinder proper care as medicine advances, training and retention of the best physicians and staff and optimization of patient flow for the surgeons. By the same token, if Oaklawn were granted a smaller variance than it is requesting, it could not build the necessary size needed to keep the surgery department in one space and adjacent to other needed services such as Sterilization. A smaller space now would mean Oaklawn would have constructed an insufficient surgery area that would require additional space in the very near future. This would be an extremely costly, and redundant, dollar per square foot addition in the future and cause unnecessary disruptions to patient care and hospital operations. There is no point in building something that will not meet the need of the facility.

4. *The problem and resulting need for the variance has not been self-created by the applicant or the applicant's predecessors.*

Oaklawn's Response:

The need for a new surgery department is driven by advances in medicine common throughout the industry and cannot be controlled by Oaklawn Hospital. The need to relocate parking is driven by the size and need of a proper surgery department according to today's standards.

Oaklawn has tried to address parking issues in the past with the acquisition of land for additional parking. Those endeavors have included the acquisition of the Kempf property, the construction of the parking structure and the attempted acquisition of the former Marshall Civic Center. Oaklawn now has no choice but to build an addition upon the parking spaces in the southwest corner of the HCHSD.

5. *The variance will not cause significant adverse impacts to adjacent properties, the neighborhood or the City and will not create a public nuisance or materially impair public health, safety, comfort, morals or welfare.*

Oaklawn's Response:

The impact upon the adjacent properties will be minimal. Accommodations are being made for the displaced parking in existing underutilized lots to the south of Michigan Avenue and through a lease agreement with a private property owner. Additionally, in the long term, a significantly larger patient drop-off area at the front of the hospital will compensate for the lack of immediate parking on-site.

6. *The alleged hardship and practical difficulties that will result from a failure to grant include substantially more than mere inconvenience, or an inability to attain a higher financial return.*

Oaklawn's Response:

The ability to perform surgery with the latest technology, according to state and federal law, and in a timely manner, is critical to the ability of a hospital to function as well as the health care services delivered to a community. Forty years ago Oaklawn Hospital was mocked as being nothing more than a "band aid" station. Without this addition, and subsequent parking changes, Oaklawn Hospital will struggle to adequately serve the community's need for a state-of-the-art surgery department and will force a growing number of surgeries out of Marshall to other institutions. Furthermore, it will become increasingly difficult to recruit top surgeons to Oaklawn who demand

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and need a state-of-the-art facility to practice their craft. The hardship that would result from a failure of this variance would be detrimental to our patients and our community.

Public Hearing Open

No public spoke on this issue. Staff didn't receive any written communication supporting or opposing the requested variance.

Public Hearing Closed

Motion by Davis, supported by Byrne, to approve case #10.02, Dimensional Variance being requested from §156.324(D)(2) Minimum Number of Spaces Required, to reduce the number of existing parking spaces on the Oaklawn and Wright Medical Building sites by 43 spaces.

Using the Dimensional Variance Worksheet, the board cited the following items pertaining to these variances:

- Strict compliance with the specified dimensional standard(s) will deprive the applicant of rights commonly enjoyed by other property owners in the same zoning district, create an unnecessary burden on the applicant, or unreasonably prevent the owner from using the property for a permitted purpose. ***The board agreed that to deny the variance would create a burden because they are the only HCHSD property owner in the district. If they want a high level surgery on site they need this variance.***
- The variance will do substantial justice to the applicant, as well as to other property owners, and a lesser variance than requested will not give substantial relief to the applicant or be consistent with justice to other property owners. ***The board agreed that this criterion is not applicable.***
- The need for the variance is due to unique circumstances peculiar to the land or structures involved that are not applicable to other land or structures in the same district. ***The board agreed that since the hospital is the only hospital in the HCHSD district, this criterion does not apply.***
- The problem and resulting need for the variance has not been self-created by the applicant of the applicant's predecessors. ***The board agreed that there has always been parking issues and with the increased medical technology, the hospital needs to make this addition. The board agreed that the petitioner did not create this problem.***
- The variance will not cause significant adverse impacts to adjacent properties, the neighborhood or the City and will not create a public nuisance or materially impair public health, safety, comfort, morals or welfare. ***The board agreed that since the street parking has been removed and with the addition of the Ricketson parking lot, this will create no***

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harm to the downtown parking, and with the hospital looking at leasing additional parking spaces for their employees the board agreed there are no adverse impacts or safety issues. In terms of parking, the board agreed that the hospital is doing the opposite, they are trying to make the parking safe for the community.

- The alleged hardship and practical difficulties that will result from a failure to grant the variance include substantially more than mere inconvenience, or an inability to attain a higher financial return. ***The board agreed that without the surgical unit the hospital will lose patients and would not be able to compete with other hospitals.***

On a roll-call vote-ayes: Byrne, Murch, Davis and DeGraw; nays-none. **Motion carried.**

REPORTS

None

ADJOURN

Meeting adjourned at 8:05 p.m.

Respectfully submitted,

Colleen Webb