

STERLING HEIGHTS ZONING BOARD OF APPEALS
REGULAR MEETING
CITY HALL
FEBRUARY 25, 2016

LOCATION: City Council Chambers, 40555 Utica Road, Sterling Heights, MI
SUBJECT: Minutes of the Regular Meeting of the Zoning Board of Appeals held
February 25, 2016.

Mr. D'Angelo called the meeting to order at 7:00 p.m.

Members present at roll call: Derek D'Angelo, Dale Deming, David Graef, Stefano Militello, Nick Najjar, Pashko Ujkic

Members absent at roll call: Raymond Washburn, Excused.

Also in attendance: Chris McLeod, City Planner
Clark Andrews, City Attorney

APPROVAL OF AGENDA

Moved by Militello, supported by Ujkic, to approve the agenda.

Ayes: Militello, Ujkic, D'Angelo, Deming, Graef, Najjar
Nays: Washburn, Excused
Absent: None
Motion carried.

CORRESPONDENCE

Mr. McLeod stated that each commissioner received a new Zoning Ordinance. This is an updated version. Some of the commissioners asked for a new copy so one was made for each commissioner.
No other correspondence.

PZBA15-0028 - HOLY MARTYRS CHALDEAN CATHOLIC CHURCH

Requesting Board approval for a Use Variance to permit an RM-3 (Multiple Family Mid and high Rise) Use in an M-1 (Light Industrial) zone. - East side of Merrill Road **between 19 Mile Road and 19 ½ Mile Road in Section 04.**
Property Address: 43700 Merrill Road

Mr. D'Angelo asked Mr. McLeod to provide background on the case.

Mr. McLeod stated this is the third time this application has been brought before the Board. The first time was in December, at that point being a Use Variance and needing five (5) votes to act on the application. Because and there only being four (4) members present, no action could be taken. The application appeared again in January, where the applicant requested to postpone a decision on the application since there were only five (5) members present and would have needed all five (5) votes to be in the affirmative for approval. It is back again this evening for review.

Mr. McLeod stated that again, this is a 96-unit senior citizen apartment building. The existing church is a non-conforming use on the property. The property is zoned M-1 (Light Industrial) but the applicants are asking for a Use Variance to permit an RM-3 (Multiple Family Mid and High Rise) use to accommodate the senior living. The unit sizes range from 719 square feet to 747 square feet with 84 one-bedroom units and 12 two-bedroom units.

The applicant has, from the previous submittals, significantly increased parking from the previous submittal than what is shown on the plan in whichas parking was a topic of concern at the previous meeting.

Mr. McLeod stated that there are standards contained in the City's Zoning Ordinance which are in the backup of the review, but the Ordinance does contain standards for which the Zoning Board of Appeals must find for a Use Variance to be granted.

The Board may also note that this is not a RLUIPA issue, as the Michigan Supreme Court has held that building an apartment complex is not a "religious exercise" and, even if it were, a refusal to rezone is not a substantial burden on that religious exercise. The United States Supreme Court declined to hear further appeal.

Mr. D'Angelo opened up for the petitioner, Mr. Ruggeri, but stated that based upon what has been discussed, there were some concerns that he would like Mr. Ruggeri to address then open up for any following questions.

Mr. Ruggeri, 43231 Schoenherr in Sterling Heights, on behalf of the petitioner Holy Martyrs Chaldean Catholic Church. He stated he has done research on the one concern that was raised previously, that the use was non-taxable. He stated there are existing facilities in the city itself that are operating under a non-taxable basis but are doing private business. On a smaller level, there are several day care facilities associated with places of worship within the City and they do not pay any taxes. Also he searched any non-profitable organizations, dealing with senior housing, and least five distinct cities surrounding Sterling Heights. One that has been located in the City since 1985, is Schoenherr Towers. Schoenherr Towers is an entity that is owned by the Sterling Heights Housing Authority, which is the city with the address being at the main office. They are an exempt organization that provide an exempt organization that provides senior housing based on 30% of your adjusted gross income and they are in direct competition with all the existing senior housing. They also have a distinct advantage because what you have, have is a governmental agency doing a private job. He stated that what we have with the proposed development, the church, is that the land is not exempt. What, but what is being done is, providing a service to the Chaldean community and indirectly doing what the City of Sterling Heights is doing with Schoenherr Towers, subsidizing. This will be a direct benefit for the city.

Mr. Ruggeri stated that the only other concern made by the residence was the location compared to the road with landscaping and parking. The revised plan moved the building back and also provided additional added more parking.

Mr. D'Angelo asked if Mr. Ruggeri knew anything about how the church was originally approved in this location.

Mr. Ruggeri stated he does not know the reason why but only that it was 1980.

Mr. Father Bojigly, pastor of the church, stated that it was originally a church prior to its expansion.

Mr. D'Angelo asked for any questions from the board. if there were any questions from the Board.

Mr. Deming stated that he also did some research. He asked and asked Mr. Ruggeri that if the comments he made places that he commented on regarding housing citizens that do not pay taxes, are subsidized through the Federal government or a city government? . He stated that when he asked Mr. Ruggeri at the last last meeting if the apartments would be open to public or just members of the faith, and Mr. Ruggeri stated if it was be open to everyone, it would be open, then this would be a business. If it would be just restricted to only those of the themselves to the Chaldean faith, then his objection would go away.

Mr. D'Angelo stated that there is precedence for that in the city and asked if this property was zoned residential multiple family, would they need approval from any zoning board?.

Mr. Andrews stated that if the zoning was correct for the Multiple Family Use and operated by tax exempt organization, it would not be subject for review from the zoning

board. The zoning board is seeing this case because it is for a Use Variance. Mr. Andrews indicated that the zoning board deals with land use issues and he though he understood understands Mr. Deming's thinking, he does not feel it's the basis on makingto make a decision on regarding this application. He does not want the zoning board to propose a condition that may create a legal issue and feels the fair housing laws come into play with these practices.

Mr. Ruggeri stated that he is in complete agreement with Mr. Andrews.

Mr. D'Angelo stated this is outside the scope of what is being presented.

Mr. Graef stated that one of the conditions in the motion to approve is that "the proposed use be limited to no more than ninety-six (96) units and be limited to those persons (and their spouses) who are 55 years and older and who are members of the church on the site. He asks if this would then need to be removed or re-worded.

Mr. Andrews stated he would remove that.

Mr. Deming asked if the church wanted to put up a gas station or another type of business, would the board allow that..

Mr. D'Angelo stated that again if the church owned the property and it was zoned where this could be allowed, then this would become a matter from the assessor's stand point on what is the primary use of the property.

Mr. D'Angelo asked if there were any more questions or concerns from the Board. Seeing Being none, opened up for the public.

Connie O'Malley, 6171 Goth, asked if the issue with the buffer and adding parking spaces was addressed and the plans do reflect this.

No other public participation, Mr. D'Angelo asked for Mr. Ruggeri to address this concern.

Mr. Ruggeri stated that they are in agreement to do this and the site plan will reflect this.

Mr. McLeod stated that the approval condition listed as No. 7 does state that the parking along Merrill Road within the front yard setback shall be removed to comply with zZoning oOrdinance requirements and additional parking shall be provided at the east end of the existing parking lot. This can be stipulated to reflect 25 additional parking spaces.

Mr. D'Angelo asked for any other questions. Being none, called for a motion.

Motion by Militello, supported by Najjar, in the case of PZBA15-0028, Holy Martyrs Chaldean Catholic Parish, 43482-43700 Merrill Road, to approve a use variance to allow an RM-3 (Multiple Family) use within the M-1 (Light Industrial) Zoning District, with the following conditions:

1. That the decision of the Board will remain valid and in force as long as the facts and information presented to the Board in Public Hearing are found to be correct and continue to exist, and that the conditions upon which the motion is based are forever satisfied and maintained as presented to the Board. The petitioner agrees to abide by and comply with all the ordinances of the City of Sterling Heights and the regulations of every lawful agency or governing authority now or hereafter in force;
2. Notice of the approval of the variance shall be delivered to the City Clerk's office within 60 days after the approval date of the applicable meeting minutes for recording with the Macomb County Register of Deeds. Failure to file this notice shall serve as grounds to revoke the variance;

3. A Hold Harmless Agreement, in favor of the City of Sterling Heights, shall be delivered to the City Clerk's office within 60 days after the approval date of the applicable meeting minutes for recording with the Macomb County Register of Deeds. Failure to follow this agreement shall serve as grounds to revoke the variance;
4. That the petitioner shall develop, maintain and operate in compliance with all pertinent codes, ordinances and standards of the City of Sterling Heights, County of Macomb and the State of Michigan;
5. That the proposed use be limited to no more than ninety-six (96) units and be limited to those persons (and their spouses) who are 55 years and older.
6. That the petitioner shall submit all necessary site plans, applications and fees for approval;
7. That the parking along Merrill Road within the front yard setback shall be removed to comply with the Zoning Ordinance requirements and additional parking shall be provided at the east end of the existing parking lot no less than 25 spaces be required;
8. That additional landscaping shall be provided along the Merrill road frontage as well as throughout the site, as required by the Planning and Engineering Departments;
9. That the use and site plan comply with all requirements of the City of Sterling Heights Police and Fire Departments regarding citizen assist responses.

The decision is based on the following findings:

1. The location meets all Special Land Use requirements for a senior citizen apartment facility;
2. The residential use for church members is a logical extension of the church use;
3. The use is less intensive than the surrounding industrial developments and will not impact negatively on adjoining properties;
4. There is a need for senior housing with the City; and
5. The applicant has met all the factors set forth in the City's Zoning Ordinance for granting variances and use variances.

Mr. D'Angelo asked for any discussion on the motion.

Mr. Andrews stated, in regards to condition No. 5, that it should not be limited or intended both the person/resident and their spouse have to be 55 years or older.

Motion by Militello, supported by Najjar, to amend the motion to state "be limited to those 55 years or older and their spouses".

Mr. D'Angelo asked for any other discussion. None

Ayes: Militello, Najjar, D'Angelo, Deming, Graef

Nays: Ujkic

Absent: Washburn, Excused

Motion Carried.

APPROVAL OF MINUTES:

Mr. D'Angelo stated that motions to approve December 17, 2015 and January 28, 2016 meetings minutes are needed.

Mr. D'Angelo asked Mr. Andrews how many that votes are needed for aApproval since the December 17th minutes were listed as "motion failed" due to only having three3 votes at the December meeting.

Mr. Andrews stated that approval of minutes requires a simple majority of members present at this meeting.

Mr. D'Angelo asked for any discussion or updates on the December 17, 2015 minutes. Being none, call called for a motion.

Motion by Militello, supported by Najjar, to approve the minutes of the December 17, 2015 minutes.

Ayes: Militello, Najjar, Ujkic
Nays: None
Absent: Washburn, Excused
Abstain: D'Angelo, Deming, Graef
Motion Carried.

Mr. D'Angelo asked for any discussion or updates to the January 28, 2016 minutes.

Mr. Deming stated that he would like it to be amended that under Old Business, where it states "in his imagination" it should state "in his opinion".

Mr. D'Angelo amended this.

Motion by Graef, supported by Ujkic, to approve the minutes of the January 28, 2016.

Ayes: Graef, Ujkic, D'Angelo, Deming
Nays: None
Absent: Washburn, Excused
Abstain: Najjar, Militello
Motion Carried.

NEW BUSINESS

None

OLD BUSINESS

None

PUBLIC PARTICIPATION

None

MOTION TO ADJOURN

Motion by Militello, supported by Deming, to adjourn.

Ayes: Militello, Deming, Graef, Najjar, Ujkic, D'Angelo

Nays: None
Absent: Washburn, Excused
Motion Carried.

The meeting adjourned at 7:42 P.M.

Respectfully submitted,

Derek B. D'Angelo, Chairman
Zoning Board of Appeals