

Present: Chairperson, Raeder; Vice-Chairperson, Tillman; Members: Crawford, Gatowski, Jawad, Maxwell, Mitchell, and Oen; Alternate: Keller

Absent: Members: Crossen and Alternate: Gennari

Also Present: Planning and Zoning Administrator, LaPere

Chairperson Raeder called the regular Zoning Board of Appeals meeting to order at 7:30 p.m. in the Village of Beverly Hills municipal building at 18500 W. Thirteen Mile Road.

REVIEW AND CONSIDER APPROVAL OF MINUTES OF A REGULAR ZONING BOARD MEETING HELD DECEMBER 9, 2019

Motion by Crawford, second by Oen, that the minutes of a regular Zoning Board of Appeals meeting held December 9, 2019 be approved as submitted.

Motion passed.

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

None.

Raeder explained the responsibilities of the Zoning Board of Appeals and outlined the statutory requirements for demonstrating a practical difficulty for a petitioner to be granted a dimensional variance.

CASE NO. 1374

Petitioner: Spencer Doty, PLG Properties LLC

Property: 31645 Southfield Rd

Petitioner Spencer Doty, PLG Properties LLC, for property at 31645 Southfield Rd, is seeking an ordinance interpretation and, if needed, a variance from Chapter 22, Section 22.28.020 Off-Street Parking Requirements to accommodate a change of use to a physical therapy office (proposed tenant, HealthQuest) in the existing building.

Interpretation of Text Requested:

The petitioner seeks to have the Zoning Board of Appeals make a determination of the parking standards for this use in accordance with the provisions of Chapter 22, Section 22.28.010, e.

Per Village Ordinance, Chapter 22, Section 22.28.010 e, where a use is not specifically mentioned the Zoning Board of Appeals has the authority to determine the parking requirements in accordance with the most similar use. Administration has interpreted that this use would qualify under the category listed in Section 22.28.020 as “professional offices of doctors, dentists, and similar professions...” and applied the parking requirements of that type of use accordingly. However, the Zoning Ordinance does not explicitly list physical therapy in its parking requirements, nor does the Ordinance define physical therapy office. Therefore, the ZBA shall determine the most similar use to regulate the parking for this use.

Jeff Cuthbertson, attorney representing the petitioner, provided an overview of the petitioner's argument that the use is most similar to a service office use. He contends that the word professional indicates use by those subject to professional licensing requirements of the state, and that because a physical therapist operates under an occupational license this is more similar to the service office. He also detailed the operational differences between a typical doctor's office versus a typical physical therapy office.

Bill Knight, owner and founder of HealthQuest, provided information regarding the number of patients and staff that they anticipate based on their experience providing these services in other municipalities. He added that they will utilize offsite parking for their staff to ensure parking is not a concern for patients visiting the site. He agreed that with staff and patients, 13 spaces on-site was not sufficient.

Tillman noted that medical and dental offices employ persons who treat patients without professional licensing, such as dental hygienists and phlebotomists. She further pointed out that physical therapy is prescribed treatment for health issues and frequently covered by insurance. She contends this use is most similar to medical.

Steven Satovsky, owner of Beverly Hills Club and vacant lot on Gould Ct, expressed his concerns about the existing parking deficiencies on site. He felt this is a professional office use and that the number of staff and patients will require more parking than provided. He detailed visits to other HealthQuest facilities and noted their website refers to patients, care, diagnosis, injury, and similar medical terminology.

Michael Lebow, attorney representing Satovsky, stated that this use is an adjunct to other medical treatments and that cardiologists and orthopedic offices frequently use similar treatment equipment. He also pointed out the parking study and the owner stated differing staff numbers for the site.

Phil Vestevich, owner of 31655 Southfield Road, agreed that this is a medical use. He noted the need for prescription for treatment and that physical therapy is licensed under the health code.

Cuthbertson, on behalf of the petitioner, stated they would withdraw their request for interpretation and accept the Village's categorization of physical therapy as a medical office use for parking requirements.

Variance Requested:

Village Ordinance 22.28.020 Off-Street Parking Requirements. Professional offices of doctors, dentists, and similar professions, and medical and dental clinics require one parking space per 125 sq ft of gross floor area.

Deviation Requested: The petitioner seeks to use the existing building as a physical therapy office with 13 parking spaces where 21 spaces are required.

The property located at 31645 Southfield Road has been a commercial site since the 1960s. In 2004 the existing building was demolished and, subsequently, the current building was constructed upon Village approval of the site with the proposed use described as a professional services office. Since construction, a number of tenants have occupied part or all of the building for a variety of uses. The most recent tenant has been a nail salon which has occupied a portion of the building

since 2011. The petitioner is seeking to fully utilize the existing building as he has been unable to expand the existing operation or lease additional space due to the existing tenant occupying all on-site parking.

The petitioner is requesting the Zoning Board of Appeals grant a variance to allow only 13 parking spaces onsite to accommodate the change of use to a physical therapy office. Section 22.28.020 requires the professional offices of doctors, dentists and similar professions, and medical and dental clinics to provide one space per each 125 square feet of gross floor area. In the initial submittal, the petitioner noted the existing building has 2,604 sq ft of gross floor area which results in requirement for 21 spaces to be provided. The parking study submitted by the petitioner and information from the architect contend the gross floor area is 1,984 sq feet, however the Michigan Building Code defines this as “the floor area within the inside perimeter of the exterior walls of the building under consideration...without deduction for corridors, stairways, ramps, closets, the thickness of interior wall, columns or other features...” and absent satisfactory explanation for the reduction in size, the Village shall use the 2,604 sq foot measurement as the basis for any parking calculations based on gross floor area.

Cuthbertson outlined the following factors which, in his opinion, constitute a practical difficulty for the petitioner to meet the Zoning Ordinance standards:

- The parcel size is smaller than surrounding development;
- A physical therapy use operates in a neighboring business;
- Parking standards are approximately 20 years old and inconsistent with those found in Institute for Traffic Engineers and the International Zoning Code which only require 13 spaces for a medical use for this gross floor area;
- Spirit of the ordinance is met as the parking provided meets third-party standards; and
- Parking study by the petitioner demonstrates sufficient parking is provided.

Dennis and Diane Dahnke, 31964 Alden Ct, spoke in favor of the use and variance request, and noted this will be an improvement from the current parking situation at the nail salon.

Benjamin Coon, 32297 Robinhood Dr, spoke in favor of the request and felt this use would be an asset to the community. He compared the proposed use with the existing nail salon and felt the standards are antiquated.

Jeffery Kucab, 31614 Robinhood Dr, spoke in favor of the request, and pointed to improved aesthetics and potential benefits to the community of this use.

Vestevich contends that the proposed use is too intense for the size of the parcel and noted that the nail salon only occupies half the building and exceeds parking limits.

Satovsky argued that this building was not designed for this type of use, and referred to the differences of hours of operation and traffic patterns of physical therapy compared to a professional office. He expressed concern for traffic safety. He acknowledged towing vehicles parked on his property that are visiting neighboring businesses.

Upon inquiry, Satovsky stated he would not consider a joint parking agreement with the petitioner.

Lebow stated that this problem is self-created because the petitioner could find another use for the building.

Cuthbertson contended that the traffic study submitted demonstrates the 13 spaces provided will meet the peak demand. He noted that the petitioner has submitted a five-year parking lease with a nearby property to ensure there is adequate parking for staff.

Jawad questioned the methodology of the traffic study.

Knight noted that his desire is to have a successful business that does not create parking or other issues. He clarified that the upper level loft will be for staff use only.

Raeder contends that this request was self-created as the petitioner was aware of the site conditions upon purchase of the property. He questions whether this use is appropriate given the size of the building and parcel.

Maxwell agreed that this is a self-created problem.

Tillman argued that staff parking off-site and walking is acceptable and expected in many workplaces and downtown areas. She noted that the use itself is allowable and that denying parking variance unreasonably prohibits the owner use of his property.

Oen agreed with Tillman that the parking variance was warranted and supports the use.

LaPere clarified that the variance is being requested from the number of spaces provided on-site for a medical office use.

Motion by Tillman, second by Oen, that the Zoning Board of Appeals approves the request for a variance from Spencer Doty, for property at 31645 Southfield Road, from Chapter 22, Section 22.28.020 to reduce the number of required on-site parking spaces from 21 spaces to 13 spaces for the proposed physical therapy use with the condition that any change or modification to the use will require approval based on the parking standards in effect at that time, and with the condition that the owner maintain a lease for 15 parking spaces off-site for staff parking.

This variance is granted upon finding that the problem is due to the unique size and location of the parcel, including the placement of the existing building and its size; that the problem was not created by the petitioner; that the strict letter of parking restrictions would unreasonable prevent the property owner from using the land for a permitted purpose; that this is the least variance possible, especially given that joint parking with adjoining parcels was sought and denied by the respective property owners; that the proposed use is harmonious with the ordinance and consistent with the surrounding development, therefore will not negatively impact adjacent property owners or land within the district; and given that the parking standards in effect are under review.

Roll call vote:

Raeder	no
Tillman	yes
Keller	yes
Crawford	yes
Gatowski	yes

Jawad	yes
Maxwell	no
Mitchell	yes
Oen	yes

Motion passed (7-2)

Variance Requested:

Village Ordinance 22.28.010, h, 2, Joint Parking Facilities. All parking spaces are located within three hundred (300) feet of the uses they are intended to serve as measured by the most direct pedestrian access.

Deviation Requested: The petitioner seeks to use joint parking facilities to meet the parking requirements of 21 spaces by use of 15 additional off-site spaces that are located in excess of the 300 foot pedestrian route.

Due to the approval the variance for on-site parking, this request was withdrawn by the petitioner.

REVIEW AND FILE ANNUAL REPORT FOR 2019

LaPere provided an overview of the annual report which detailed the Zoning Board of Appeals activity for 2019 and for the past five years. The Board reviewed the report and appreciated the effort to compile the data into a formal report.

Motion by Tillman, second by Maxwell, to transmit a copy of the report to Village Council and file the annual report as presented.

Motion passed.

PUBLIC COMMENTS

None.

LIAISON COMMENTS

None.

ADMINISTRATION COMMENTS

LaPere reported the Commission and administration continue to work on the PUD language and will begin work on review of the parking requirements. There will be a joint meeting of Planning Commission and Council on February 12, 2020.

LaPere remarked on the unfortunate loss of long time Village resident, former Planning Board member, and part-time employee, A. Robert Bliven.

ZONING BOARD COMMENTS

Raeder announced he will be unable to attend the February Zoning Board of Appeals meeting.

Motion by Oen, second by Mitchell, to adjourn the meeting at 9:34 pm.

Motion passed.

Charles Raeder
Chairperson

Kristin Rutkowski
Village Clerk