

ZONING BOARD OF APPEALS MINUTES OF FEBRUARY 11, 2014

Meeting called to order by Chairperson Gerl at 5:00 p.m. in the 1st Floor Conference Room, Suite 108, City Hall Plaza.

PRESENT: Ken Bargender, Ed Gerl, Richard Kenyon, Dean Markwardt (arrived at 5:03 pm) and 1st Alternate Todd Zieglmeier

ALSO PRESENT: Planner/Zoning Administrator Miller, Sam Schroeder and Todd Nelson

ABSENT: Robert Lewerenz (excused)

ZB14-01 Motion by Kenyon, second by Bargender to approve the minutes of November 21, 2013 as submitted.

Motion carried

Planner/Zoning Administrator read the variance request from Todd Nelson, representing Dairy Queen, for property located at 1600 South Roddis Avenue, zoned "CMU" Community Mixed Use District, to construct a deck on the north side of the building for outdoor seating, setback of 1 foot from the right-of-way. Section 18-35(7) requires a minimum 15 foot street side setback. The Applicant is requesting a 14 foot variance along the north property line.

Background

Dairy Queen is requesting a 14 foot variance to construct a deck with a 1 foot setback from the north right-of-way, located at 1600 South Roddis Avenue, zoned "CMU" Community Mixed Use Commercial District. The Applicant is intending to use the proposed deck as an outdoor seating area. The Applicant has also applied for a Conditional Use Permit to be approved for an Outdoor Commercial Entertainment Use in the CMU District. This application/request is strictly to reduce the required setback for the proposed deck.

According to the zoning code a deck is a structure that has no roof or walls and is considered part of a building or structure. The setback for a deck is measured from the post of the deck to the property line. The applicant is proposing to construct a deck that is less than 18 inches. Decks that are lower than 18 inches above grade are subject to the setback regulations of a detached accessory building, which are not be permitted within the street side yard. The code was written to allow more flexibility for decks that are 18 inches or less in height, but for street side yards and front yards, the zoning code is more restrictive.

The zoning code requires a minimum front yard setback of 20 feet and a minimum street side yard setback of 15 feet. The existing building is located well within these setbacks, but was constructed prior to these regulations. The zoning code allows for additions of decks and similar structures to be placed up to the existing façade. Therefore the front yard setback along Roddis Avenue is not a factor, but the required setback along 16th Street is 15 feet for street side yard.

Planner/Zoning Administrator's statement of facts regarding the variance request:

1. The property is located at 1600 South Roddis Avenue.
2. The property is zoned "CMU" Community Mixed Use Commercial District.
3. The property consists of one lot, is pie-shaped with the dimensions of 178 feet along 16th Street, 85.3 feet along Roddis Avenue, 160 feet along the side yard, and 5 feet along the rear yard.
4. Sections 18-65(9)(e) and (11) treat decks lower than 18 inches as detached accessory structures which are not permitted in the required street yard.
5. Section 18-73(2)(h) allows the deck to be placed up to the front of the façade along Central Avenue.

6. Section 18-35(7) requires a minimum street side yard setback of 15 feet.
7. The Applicant requests 14 foot variance to the street side yard setback to allow for a deck to be placed at a 1 foot setback along 16th Street.

Summary Responses from Applicant

(How will the variance not be contrary to the public interest?) The cement area that the deck would cover is a significant distance from any other residence or business. The area already has a sign on it, and it is not used by the public for any reason. There is a sidewalk next to it that is used for walking and biking.

(Will substantial justice be done by granting the variance?) By granting the variance, it will allow us to continue to be a viable business on the south side of Marshfield. It will also allow us to compete with the other area businesses that have outdoor seating areas.

(Is the variance needed so that the spirit of the ordinance is observed?) Yes. The existing building has been grandfathered in where setbacks are typically needed. The building has no setback area from the sidewalk area. There is no practical place to offer outdoor seating for our customers other than the north side of the building.

(Due to special conditions, will a literal enforcement of the provisions of the zoning ordinance result in unnecessary hardship?) If the literal terms of the zoning ordinance are enforced, it will make it impossible to offer outdoor seating to our customers in a safe environment at the capacity needed to remain relevant in our neighborhood. The number one complaint that we received this year was that there was no outdoor seating available to our guests.

Markwardt mentioned statement of facts number 5 was wrong, should be Roddis Avenue not Central Avenue.

Zieglmeier asked if this space was currently or previously used for outdoor seating.

Planner/Zoning Administrator Miller explained that it is not currently used for outdoor seating, they have another area located across the drive-thru that is used for an outdoor seating area and the topic of outdoor seating is on the agenda for the Plan Commission meeting next week (February 18, 2014).

Todd Nelson further explained that the area had been used for an outdoor seating area with picnic tables on the concrete prior to the store closing a few years ago.

Bargender asked if the dimensions of the deck are known and what the usable space will be.

Planner/Zoning Administrator Miller explained the exact dimensions are not set in stone but the deck will be approximately 22' wide on one side and 14' wide on the other.

Todd Nelson further explained that Dairy Queen had purchased 4 tables that seat 4, this past fall for this area.

Bargender asked what type of materials would be used to construct the deck.

Planner/Zoning Administrator explained the deck would be constructed out of a composite (plastic) type material.

Gerl asked if the 1 foot setback measurement included the railing.

Planner/Zoning Administrator Miller explained that the 1 foot setback would be to any part of the deck structure and the railing would not intrude into the setback. Miller also mentioned that even though this is a corner lot the vision triangle for vehicular traffic is not of concern because of the layout of the road is not an intersection the road just curves.

Gerl asked which direction the ramp would come from and what would the dimensions be.

Todd Nelson explained that the ramp will likely rise one inch per one foot in length. The deck will likely be 17 inches tall, which would make the ramp 17 feet long.

Zieglmeier asked if there was a traffic concern having an outdoor seating area so close to the right-of-way.

Planner/Zoning Administrator Miller explained traffic on 16th Street is minimal and there are other examples throughout Marshfield with seating in close proximity to the right-of-way such as the Thomas House.

ZB14-02 Motion by Markwardt, second by Kenyon to grant the variance request from Todd Nelson, representing Dairy Queen for a 14 foot variance along the north property line at 1600 South Roddis Avenue to construct a deck on the north side of the building for outdoor seating, setback 1 foot from the right-of-way with the condition that no part of the deck, including the railing, may intrude into the 1 foot setback.

Motion carried

Planner/Zoning Administrator Miller summarized the 2013 Zoning Board of Appeals decisions.

Motion by Kenyon, second by Zeiglmeier to adjourn at 5:23 p.m.

Motion carried

Sam Schroeder
Planning Intern