

**MINUTES  
CITY OF KALAMAZOO  
ZONING BOARD OF APPEALS  
August 13, 2009 - 7:00 p.m.  
CITY COMMISSION CHAMBERS**

**Members Present:** David Artley, Karl Guenther, Rachel Hughes-Nilsson, Doris Jackson

**Members Absent:** Karl Freed, Charles Martell (alternate)

**City Staff:** Pete Eldridge, Project Coordinator; John Kneas, Assistant City Attorney; Deanna Benthin, Recording Secretary

**Chair Artley called the meeting to order at 7:00 p.m.**

**MINUTES**

**Mr. Guenther, supported by Ms. Hughes-Nilsson moved to approve the minutes of July 9, 2009 as submitted.**

**Motion approved by voice vote unanimously.**

**NEW BUSINESS:** The Board would discuss the results of the interview with Karen Wellman and an article regarding Non-Use Variances after the requests have been heard.

**PUBLIC HEARINGS:** Chair Artley summarized the process and explained the Zoning Board of Appeals public hearing rules of procedures stating that a full board consists of six members and that approval requires four affirmative votes. Since only four members are present the applicants would have the option to hold their requests over to the next meeting or present their requests with the hopes of getting all four affirmative votes. Chair Artley questioned both parties if they wanted their requests to be heard or if they would like to postpone their request in hopes that more board members would be in attendance at next months meeting. Both parties agreed they wanted to move forward and be heard.

Mr. Guenther read the application for 820 Riverview Drive, CCN# 06-14-121-002

**ZBA# 09-08-12: 820 Riverview Drive: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by City Sign Erectors on behalf of Lee's Famous Recipe Chicken, the property owner. The request concerns the property at 820 Riverview Drive, which is situated in use Zone CMU (Commercial – Mixed Use District). The request, if approved, would authorize a dimensional variance from Chapter 9, Section 9.5A, to allow the replacement of the existing 40 square foot changeable copy board with a 27 square foot digital reader board on this nonconforming freestanding sign. The resulting nonconforming freestanding sign**

**will be 99 square feet in area, where only 42 square feet is allowed per the Zoning Ordinance.**

Please note that this request will not change the zoning classification of the property. This is a request for a variance only regarding the items described above. There were 45 notices of public hearing sent and zero responses were received.

Chair Artley invited the applicants to speak and questioned again if they wanted to proceed with the request. Tracy Rogers replied yes, they wanted to proceed, stating she's with City Sign Erectors and their attempting to clean up the look of the sign. Ms. Rogers stated their proposing to remove the 40 sq. ft. copy board and replace it with a smaller 25 sq. ft. reader board sign. This would bring the sign closer into compliance.

Rob Baldwin with Lee's Famous Recipe stated he's purchased two stores in the area and rebuilt both of them; stating he's trying to improve the area. Mr. Eldridge commented on his concern regarding the lower reader board and stated he couldn't find a sign permit for that added portion. Mr. Eldridge commented on the possibility of adding a condition to the variance that this lower cabinet needed to be removed if the request were approved. It would make an overall reduction of 27% or 37 sq. ft. in sign size.

There were no comments from the public.  
Chair Artley closed the public hearing.

**FINDING OF FACT**

Ms. Jackson moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 820 Riverview Drive shall include all information included in the notice of public hearing dated July 24, 2009.
- 2.) Forty-five notices of public hearing were sent and zero responses were received.
- 3.) A public hearing was held before the board and public comments were accepted.
- 4.) The Zoning Board of Appeals received documents on the request including lot diagrams with boundaries and drawings, pictures, diagrams and the application.
- 5.) The Finding of Fact shall include those documents just described and also all facts and comments made during the public hearing, which are summarized to include without limitation, the following: Ms. Rogers and Mr. Baldwin spoke in favor of the request. They stated they were going to be taking down a 40 sq. for sign and putting up a 25 sq. ft. sign. The sign still wouldn't be in total conformance, but there are other signs in the area and digital signs are allowed. Ms. Rogers stated the property was bought in 2006 and their fixing up the building and cleaning up the

lot area. The advertisement along the bottom of the pole is not permitted according to Mr. Eldridge with the City of Kalamazoo. Mr. Eldridge spoke with Ms. Rogers and the outcome was a 27% overall reduction in signage and the bottom of the board would be removed.

**Mr. Guenther supported the Finding of Fact.**

**Motion approved for the Finding of Fact by voice vote unanimously.**

**Ms. Hughes-Nilsson moved to approve the application with the removal of the lower cabinet sign, supported by Mr. Guenther.**

Mr. Guenther commented he was in favor of the application with the removal of the lower sign cabinet.

Ms. Jackson stated when traveling on Riverview Drive around 5:00 p.m. the flashing digital signs holds up traffic. This is a very busy area; people are trying to read the signs and not watching the road. Ms. Jackson commented she was against the request due to the danger the signs cause.

Ms. Hughes-Nilsson stated she feels the issues come from the location of the drives at the intersection and the inability to turn on some of the roads there. The drives are so close to the intersection there. Ms. Hughes-Nilsson stated her issue is a dimensional variance needs to have all the criteria met in order to be approved. The circumstances are the result of the applicant, but she doesn't feel it will affect adjacent land owners in a material way. She can see that a much smaller sign would clean up what's there.

Chair Artley asked for clarification on the removal of the lower sign. Mr. Eldridge stated the bottom sign is 24 sq. ft., the cabinet above with changeable copy with five lines is 40 sq. ft. and the top panel is 72 sq. ft. The proposal by the applicant is to leave the top panel, reduce the panel below by 13 sq. ft. and remove the bottom cabinet. This would open the line of site, the digital or manual changeable copy boards are permitted by right in the commercial zoning district.

Attorney Kneas commented the Board can't deny the request because it's digital. Chair Artley commented it's 37 sq. ft. less. It would be significantly smaller, 27% overall. Ms. Jackson questioned if the sign stays, would the lower sign stay. Mr. Eldridge commented the lower sign would need to be removed. Chair Artley commented on the net reduction. Due to digital signs being permitted the request cannot be denied for that reason alone.

Attorney Kneas commented the applicant didn't create the existing sign. They purchased the property with the non-conforming sign in place.

Chair Artley commented on the amount of times he travels along that area. Digital signs are not a distraction to him; he's looking at the overall reduction of 27% and 37 sq. ft. In granting the variance he feels the spirit of the ordinance is being observed. The signage is being reduced in a cluttered area. He stated he would be voting in favor of the request.

**Motion approved by roll call vote unanimously.**

Mr. Guenther read the application for 2416 Parchmount Avenue, CCN# 06-01-155-057:

**ZBA# 09-08-13: 2416 Parchmount Avenue: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Rocky Saunders Construction on behalf of Amber Bartholomew, the property owner. The request concerns the property at 2416 Parchmount Avenue, which is situated in use Zone RS-5(Residential – Single Dwelling District). The request, if approved, would authorize a dimensional variance from Chapter 5, Section 5.1, to allow the construction of a new attached garage, which will be located three feet from the side property line, where the required side yard setback is eight feet per the Zoning Ordinance.**

Please note that this request will not change the zoning classification of the property. This is a request for a variance only regarding the items described above. There were 33 notices of public hearing sent and zero responses were received.

Chair Artley invited the applicants to speak and questioned if they wanted to proceed with the request. Rocky Saunders on behalf of Amber Bartholomew replied yes, stating they wanted to proceed. Mr. Saunders stated he'd questioned a city staff member, what the setbacks were on a garage and he was told five feet but, that it could be three ft. actually with a fire wall in it. Mr. Saunders stated he took the quote to the owner who agreed to it. He then came in to Mr. Eldridge to get the property information for a site plan and was told an attached garage needs to be setback eight feet. If it's in the backyard it could be three feet. Mr. Saunders stated the owners put in an above ground pool that took up most of the backyard area and makes a garage in the backyard not feasible. Mr. Saunders stated the elevation of the property causes a problem. The floor of their house is actually six inches lower than the height of their driveway. The existing garage is 19 ft. by 24 ft.; with their vehicles they need more area. It's used for storage and they want to extend it back eight feet and forward eight feet.

There were no comments from the public.  
Chair Artley closed the public hearing.

**FINDING OF FACT**

Ms. Hughes-Nilsson moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 2416 Parchmount Avenue shall include all information included in the notice of public hearing dated July 24, 2009.
- 2.) Thirty-three notices of public hearing were sent and zero responses were received.
- 3.) A public hearing was held before the board and public comments were accepted.

- 4.) The Zoning Board of Appeals received documents on the request including lot diagrams with boundaries and drawings, existing site plans and proposed site plans, elevations and a letter.
- 5.) The Finding of Fact shall include those documents just described and also all facts and comments made during the public hearing, which are summarized to include without limitation, the following: Rocky Saunders spoke on behalf of the owner stating he had spoke with city staff regarding the setbacks and was originally told there was a five ft. setback but, three ft. was allowed with a fire rated wall. Mr. Saunders stated that he later spoke with Mr. Eldridge who stated the setback was actually eight ft. for an attached garage. The owners had recently put in an above ground pool and deck so the garage cannot move into the backyard. The garage and the driveway have finished floor heights of six inches above the finished floor of the house. The existing garage is 19 x 24 sq. ft. They can't put the cars in the garage and open the doors at the same time and they need additional storage as well. The neighbors have told them they are accepting of the proposal. The existing garage is currently three ft. from the property line. The plan is to widen and elongate the existing floor plan.

**Ms. Jackson supported the Finding of Fact.**

Mr. Guenther questioned at what point this garage became an attached garage. Mr. Eldridge replied the roof structure that extends from the house and ties into the garage makes it into an attached garage. Mr. Eldridge stated their considered attached. Mr. Guenther questioned what if they removed the cover, would it still be considered an attached garage due to the close proximity. Mr. Eldridge stated the way the ordinance is written, the required building setbacks, the reduction for an accessory structure to three ft. from the side and rear property line only applies when the structure is in the rear yard. Even if they removed the roof portion that attaches to the garage, because the garage is still beside the home in the side yard the eight ft. side yard setback would still be applicable.

Chair Artley stated he couldn't see how a garage could fit into the backyard.

**Motion approved for the Finding of Fact by voice vote unanimously.**

**Ms. Hughes-Nilsson moved to approve the application, supported by Mr. Guenther.**

**Motion approved by roll call vote unanimously.**

Ms. Hughes-Nilsson stated it would be hard to get a garage into the rear yard even without a pool. It would place the garage right up against the other garage. Its better served sitting in the location it is now.

Chair Artley questioned if the existing garage was in non-compliance. Mr. Eldridge replied it would be deemed non-conforming, being grandfathered in. Chair Artley questioned if a tree

fell on the garage and the garage fell down, could it be rebuilt without a variance. Attorney Kneas agreed it would be in the same situation, it would require a variance to rebuild.

Mr. Guenther commented the stated need for a useable, larger garage is logical. The spirit of the ordinance is being observed, public safety secured and substantial justice is being done.

Ms. Jackson stated she had personal knowledge of having a garage you can't use and stated she doesn't have any problems with the request.

Ms. Hughes-Nilsson stated with the elevation differences they fall under the special circumstances. She stated she would be voting in favor.

Chair Artley questioned if an emergency vehicle could get back there. He feels they'd have to drive down the neighbor's yard. Attorney Kneas stated that happens to a lot of residential homes with pools, it's hard to get any emergency vehicles back to them.

**Motion approved by roll call vote unanimously.**

**Chair Artley welcomed Karen Wellman as a new proposed member to the Board. He stated she would bring a lot of benefits to the board if the board recommends her. Chair Artley stated Ms. Wellman had served in public service in Grand Rapids. Her term would run through 3/31/2010.**

**Ms. Hughes-Nilsson stated she offers a lot of different aspects they don't have on the board at the moment.**

**Karl Guenther made a motion to recommend Karen Wellman to become a member of the Zoning Board of Appeals to the City Commission, support by Ms. Hughes-Nilsson.**

**Motion approved by roll call vote unanimously.**

Mr. Eldridge commented on the article on "Testing the Practical Difficulty of Non-Use Variances" from the Michigan Planner, encouraging the members to read it.

Ms. Hughes-Nilsson moved to adjourn the meeting, supported by Mr. Guenther.

**ADJOURNMENT**

**The meeting was adjourned at 7:50 p.m.**

**Submitted By** \_\_\_\_\_ **Date** \_\_\_\_\_

**Reviewed By** \_\_\_\_\_ **Date** \_\_\_\_\_

**Approved By** \_\_\_\_\_ **Date** \_\_\_\_\_