

**MINUTES  
CITY OF KALAMAZOO  
ZONING BOARD OF APPEALS  
June 11, 2009 - 7:00 p.m.  
CITY COMMISSION CHAMBERS**

**Members Present:** David Artley, Karl Guenther, Rachel Hughes-Nilsson, Karl Freed, Charles Martell (alternate), Doris Jackson

**Members Absent:**

**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. Freed, supported by Mr. Guenther moved to approve the minutes of May 14, 2009 as submitted.**

**Motion approved by voice vote unanimously.**

**NEW BUSINESS:**

**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. If 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 commented Ms. Jackson would not be voting on the request for 417 Forest, due to a conflict of interest from being a member of a body with an interest in the request.

Mr. Guenther read the application for 520 Pearl Street, CCN# 06-21-237-003:

**ZBA# 09-06-08: 520 Pearl Street: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Patrick Glocheski, the property owner. The request concerns the property at 520 Pearl Street, which is situated in use Zone RM-15 (Residential – Multi Dwelling District). The applicant is requesting a dimensional variance from Chapter 5, Section 5.1, to authorize three dwelling units on a lot with 4,356 square feet of lot area, where per the Zoning Ordinance 8,700 square feet of lot area (2,900 square feet per dwelling unit) is required.**

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 133 notices of public hearing sent and zero responses were received.

Mr. Glocheski, 915 Westfall, owner of the property provided the Board with a handout. He stated currently it has a one bedroom unit and a five bedroom unit on the main and second level. Mr. Glocheski stated he's been unable to rent it out for over a year and a half and it now is a financial burden to him. He proposes to turn it into two, two bedroom units and one, one unit. This would reduce the number of people living there by one. This would allow for affordable income and make it easier to rent. He plans on being in the business for around ten years.

Ms. Hughes-Nilsson questioned when the house was purchased was it a duplex at that time. Mr. Glocheski replied he purchased it in December 2007 as a duplex.

Mr. Eldridge commented it was a legal non-conforming duplex when Mr. Glocheski bought the property. Mr. Guenther questioned how Mr. Glocheski was going to deal with the shortage of square footage on the lot area compared to what the ordinance requires. Mr. Glocheski stated he had off street parking available behind the home for four to five cars. He stated he also maintains a driveway along with the lit parking lot.

Rosemary Gomes, 518 Pearl, stated she lives in the house to the north of this house. She stated her concerns with the noise level three apartments would bring. Would there be an exterior stairway built to the second floor or more parking added. Ms. Gomes commented there isn't much distance between the houses there.

Chair Artley asked Mr. Glocheski for clarification if there was going to be a second stairway built or expect additional noise concerns. Mr. Glocheski stated if code required a rear external exit he would comply, but currently the other homes in the area didn't have them. Chair Artley questioned Mr. Eldridge if it was required. Mr. Eldridge replied, a two story structure doesn't require a fire escape, only when there are three stories. Mr. Glocheski stated the noise level wasn't coming from the people he rented too. However, it could happen, but if it were his tenants disrupting the neighbors he would evict the tenants.

Attorney Kneas asked Mr. Eldridge for clarification on the legal non-conforming status as a two unit. Would this still be in non-compliance per dwelling unit minimums as it currently exists and as being requested? Mr. Eldridge replied yes. Technically the lot area can only accommodate one dwelling unit, the duplex there is legal non-conforming.

Chair Artley closed the public hearing.

## **FINDING OF FACT**

Mr. Freed moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 520 Pearl Street shall include all information included in the notice of public hearing dated May 27, 2009.

- 2.) One hundred 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, aerial photographs, site plans, elevations, and a hand out from by Mr. Patrick Glocheski was provided to the Board.
- 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: Mr. Glocheski spoke in favor of the request and provided copies of handouts, showing a partial layout of the unit. He explained he cannot rent the property as a five bedroom unit and wishes to change the layout to a one bedroom unit and two, two bedroom units. Mr. Glocheski feels this will provide for affordable housing in the city and is interested in a long term investment. Ms. Hughes-Nilsson questioned when he purchased the property. Mr. Glocheski stated he purchased it around December 2007. Mr. Guenther questioned how he was going deal with the lot area differences. Mr. Glocheski stated he feels there is an adequate area for parking if the variance is approved. Ms. Gomes from 518 Pearl spoke about her concerns with noise and exterior changes in the building appearance. She's one of the few single-family home owners on the street. Chair Artley asked Mr. Glocheski about exterior stairs and noise. He responded, if code required it he would add the rear access. Mr. Eldridge indicated according to the ordinance the two story home didn't require the rear access. Mr. Glocheski feels three dwelling units won't produce anymore noise than the current two and stated he would enforce the noise ordinance as an owner. The city attorney asked about the legal non-compliance issues clarifying the variance request is still being sought for not having sufficient per dwelling square footage and Mr. Eldridge responded he felt that they were being taken care of.

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

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

**Mr. Freed moved to approve the application, supported by Mr. Guenther.**

Mr. Freed stated the property owner only recently purchased the property and didn't create the situation of a five bedroom unit in his building. Mr. Glocheski knew it was a five bedroom when he bought it and should have been aware of these issue's before coming to the Board and asking for changes. Mr. Freed stated some of the fault lies with the owner because he should have been aware of these things.

Ms. Hughes-Nilsson questioned how many multiple units are in the neighborhood. Mr. Eldridge commented it is predominantly rental in that neighborhood, but he didn't have a breakdown of the numbers.

Chair Artley commented this is currently a legal non-conforming property and their being asked to continue the legal non-conforming status from two units to three units. Chair Artley stated there's a responsibility when buying a house to check these items out. Chair Artley stated some criteria is met to qualify for the granting of a variance, but not all are met in granting:

- 1) *The special circumstances or conditions:* It's currently legal non-conforming and he's trying to do some changes for economical reasons.
- 2) *The literal interpretation and enforcement of the terms and provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by others.* He doesn't feel that it's being met; he could still rent it as a five unit.
- 4) *The granting of the variance will not adversely affect adjacent land in a material way.* He strongly supposes it would not.
- 5) *The granting of the variance will be generally consistent with the purposes and intent of this Ordinance.* He doesn't feel it's consistent or not consistent, being a legal non-conforming status already. The Board can't take into consideration economical situations. Chair Artley stated he would be voting no on the request.

**Motion denied by roll call vote.**

Yes: Guenther

No: Martell, Jackson, Artley, Hughes-Nilsson, Freed

Mr. Guenther read the application for 550 W. Crosstown Parkway, CCN# 06-21-487-001:

**ZBA# 09-06-09: 550 W. Crosstown Parkway: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by SEA Wireless Inc., on behalf of the property owner of Crosstown Parkway Apartments. The request concerns the property 550 W. Crosstown Parkway, which is situated in use Zone CC (Commercial –Community District). The applicant is requesting a dimensional variance from Chapter 4, Section 4.2 b), to authorize the installation of telecommunications antennas on the roof of the building, which will exceed the maximum height of 65 feet allowed in the CC District. The building is presently 96 feet in height and the proposed antennas would add 18 feet, for an overall height of 114 feet.**

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 44 notices of public hearing sent and zero responses were received.

Jay Spencer, representative for MetroPCS the wireless telephone carrier spoke for the request. They intend to place their antennas atop of the Crosstown Parkway Building's Penthouse at an 18 ft. level above the penthouse which could be applied for in this zoning district. Mr. Spencer stated the height of the nine story building is a legal non-conforming. Mr. Spencer stated he feels the application conforms to the wireless section of the ordinance in many ways. It applies to the spirit of the ordinance. It alleviates the need to build another monopole or antenna structure in the area, their using an existing structure for the placement of their antenna. Mr. Spencer stated it's the best option in their opinion.

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

### **FINDING OF FACT**

Mr. Martell moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 550 W. Crosstown Parkway shall include all information included in the notice of public hearing dated May 27, 2009.
- 2.) Forty-four 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, aerial photographs, site plans, elevations and a letter, two sets of photo sims, two architectural drawings, and two dimensional variance requests.
- 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: the applicant SEA Wireless Inc., DBA MetroPCS Michigan, Inc. intends to build an 18 ft. antenna on this penthouse which would make a height of 114 ft. Jay Spencer, representative of the wireless carrier spoke in favor stating this was a nine story legal non-conforming height as it exists. MetroPCS plans to provide communications coverage to the Kalamazoo area. To accomplish this, MetroPCS requires a height variance of 18 ft. to place its antennas atop the elevator penthouse. The coverage objective is to provide commercial service along Westnedge Avenue, Park Street, Howard Street and Oakland Drive as well as serving the residential customers in the surrounding areas south of BUS-94, west of Portage St, north of Whites Rd, and east of BUS-131. Mr. Spencer indicated this is in a valley and the topography tends to slope dramatically upwards to the southeast, south, and southwest. This affects the height of the antenna and this will provide

continuous network service. Putting it on the building avoids the need to have a new structure. There was no audience opposition.

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

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

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

Ms. Hughes-Nilsson commented the property and topography is at a disadvantage for telecommunications sites. Putting something on an existing structure like this would minimize the impact on the surrounding neighborhoods and properties. Ms. Hughes-Nilsson stated an additional 18 ft. atop that building won't be noticed by many people. She stated that she would be voting in favor of the request.

Mr. Guenther questioned if the profile would defy the intent of the ordinance as it relates to the height limitations. Mr. Eldridge replied the antenna could be on the building, but couldn't exceed the maximum height for that zoning district which is 65 ft. The building itself exceeds that, plus adding on an additional 18 ft. of antenna's brought about the need for a variance. Mr. Guenther commented he would be voting in favor of the request.

Chair Artley stated if the maximum height of the building is 65 ft. in that zoning district and the building is already 96 ft. is there already some non-conforming status with this building. Mr. Eldridge replied it's legal non-conforming.

Mr. Freed questioned if the legal non-conforming status was due to the new ordinance being passed a few years ago, or did the building have a variance to be built. Mr. Eldridge replied it did not have a variance to be built, at some point and time the zoning allowed for taller buildings in the downtown area.

Attorney Kneas commented the building preceded the ordinance. He questioned if anything attached to the building had to be below 18 ft. if it was attached to the building. Attorney Kneas commented if a communications tower is placed on a building it's limited to the 18 ft., so their complying with that section.

Chair Artley commented he agreed with the other members and the special circumstances are not the result of the applicant. This will not adversely affect adjacent land in any material way and the granting of the variance is generally consistent with the spirit of the ordinance.

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

Mr. Guenther read the application for 417 Forest Street, CCN# 06-22-321-002:

**ZBA# 09-06-10: 417 Forest Street: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Derek Byrd of Sky Productions Inc., on behalf of the property owner. The request concerns the property 417 Forest Street, which is situated in use Zone CO (Commercial –Office**

**District). The applicant is requesting a use variance from Chapter 4, Section 4.3 J3, to authorize four outdoor music festivals annually (each festival lasting two days); where in the CO District temporary uses must be accessory to the primary use on the property. Per Section 4.3 J3, "Except in the Commercial Community District and Commercial Central Business District, each temporary outdoor sales or service use shall be accessory to the permitted primary use of the property." Due to the size of this outdoor festival and off-site parking, this temporary use cannot be considered accessory or incidental to the office/recording studio use on the property.**

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 67 notices of public hearing sent and six responses were received.

Thomas Calvey of C.L. Mahoney Co., 438 Forest Street, Dawne Beougher, 601 Axtell Street, Mary Hoyle, 715 Axtell Street, Andrew Perigo, 433 Forest Street were all in opposition. One letter from Blake Nichols, 628 Village Street was in support. Informational items were received from: Kalamazoo Dept. of Public Safety, an Office Memorandum dated 6-8-09 and an event cleanup plan from Sky Festivals, all on record.

Nicholas Clarkson, part owner of Sky Productions stated Sky Productions is a sound company and wants to provide entertainment in light of the current economic times and would like to help the Vine Neighborhood. He stated there are a lot of empty houses in the neighborhoods and residents are moving out. Mr. Clarkson stated they want to be a new business in the Vine Neighborhood. The festivals are designed to donate proceeds to charities to help community members.

Mr. Martell questioned the criteria requirements; *what the unnecessary hardship was based on special circumstances or conditions that are peculiar to the land or structure for which the use variance is sought that is not applicable to other land or structures in the same district.* Mr. Martell questioned what their hardship was. Mr. Clarkson stated as a company they didn't have a hardship, but not utilizing every avenue available for growth in a community would be wrong in his opinion.

Ms. Hughes-Nilsson asked why they didn't use a festival site. Mr. Clarkson stated Arcadia has a lot of requirements and is very expensive. Ms. Hughes-Nilsson asked about barrier free access to the sites. Mr. Clarkson stated they'd provide access and didn't feel the existing slopes on the site were an issue. She also asked about the hours of the event. Mr. Clarkson stated they were generally from 3:00 to 11:00 p.m. Ms. Hughes-Nilsson asked about the parking with regards to local businesses. Mr. Clarkson stated they were still working on the parking situation with the local businesses and were attempting to work with the Kalamazoo Public Safety Department.

Mr. Guenther asked about the fees and tickets. Mr. Clarkson stated they had planned fee structures, \$5 in advance and \$7 at the door and sponsorships with a \$1 of the proceeds going to a specified charity. Mr. Clarkson stated that clean up would happen at the end of each day.

Chair Artley questioned if there were capacity limits. Mr. Clarkson stated they anticipated around 300 people at each event, maybe up to 2000 over the course of the entire event. Mr.

Clarkson stated they would have a limit of 500 to 1000 people. Chair Artley asked how they planned to deal with the parking for 1000 people if they only had 70 parking spaces secured at this time. Mr. Clarkson stated he believes the residents in the neighborhood would support parking in addition to the parking they were looking for from surrounding businesses. Chair Artley asked how Sky Productions would provide for security. Mr. Clarkson stated that fencing would be provided around the entire site. Security would be provided from A & H Security. Chair Artley asked how he plans to deal with opposing neighbors. Mr. Clarkson stated they have oriented the stage to minimize the noise as much as possible and anticipate the trees will help with the noise as well. Chair Artley clarified the Vine Neighborhood Association discussed the festival but took no formal stance. Mr. Clarkson commented their response was to have a festival, if it's successful they'll support them. Chair Artley asked how they were going to deal with crowd control. Mr. Clarkson stated with help and contact from Public Safety Department, but stated that conversations had not been constructive so far, but he hoped for KPSD presences. A & H Security has been hired; security will help to organize parking, assist with crowd control and traffic flow on Forest Street. Chair Artley had concerns with fire and emergency access to the site. Mr. Clarkson stated no one would be allowed to park on Forest St. except for residents and there is additional access off of Molhoeks Ct. Chair Artley questioned if a fire truck could even get into the site if needed. Mr. Clarkson commented the side entrance on Molhoeks Ct. would provide entry.

Mr. Eldridge asked Mr. Clarkson to clarify his reference to shuttle service being provided. Mr. Clarkson replied the near by churches were going to provide small buses to help shuttle people parking farther away. Sky Productions would also provide signage and directions for people to park and had plans to talk with Kalamazoo Public Schools about using parking and shuttling from there. Chair Artley asked what the options were for non approval. Mr. Clarkson stated that Lawson Arena would be the option for the first festival. They also have an application in to Kalamazoo City Parks and South Westnedge Parks for the additional festivals.

Attorney Kneas asked about the petition signature forms, they did not say anything about the music festival. The people spoken with were given flyers that explained the festivals when they were approached to sign the petition.

Eddie Anderson III, V.P. of Sky Productions, and owner of Fresh & Clean Barber and Beauty, 1200 S. Westnedge, stated a letter was handed to each resident and business explaining the festival and all aspects of the festivals. They felt the hardship of the festival was the current economic times right now. Mr. Anderson stated that live sound has currently been the main business of their company for the last three years. They perform many non-profit events. Mr. Anderson stated their neighbor across the street uses the parking lot, she's wheelchair bound and does not have an issue with accessibility with the current parking lot. Mr. Anderson also stated that handicap patrons could use the handicap accessible restroom within the building during the festival. Mr. Anderson stated there would be advertising for the festival along Park St. He reiterated that Forest St. will be clear for emergency access and access to the site from Molhoek's Ct. KPSD has brought parking concerns to Sky Productions and concerns about crowd control for the festival. Mr. Anderson stated he feels that A & H Security will provide good security and crowd control for the festival. He stated that several contracts were created and signed by local business for acceptance of parking. Mr. Anderson stated they have 35 volunteers to assist with parking lots, trespassing issues, crowd control and such issues. Mr. Anderson said they have tried to contact the KPSD to work out concerns, but have not achieved that yet. The festivals are designed to bring the community together. Chair Artley

reiterated that the Board can only look at the criteria and see if the request meets it or not. Mr. Anderson stated they had applied to the Arcadia Creek festival site for four festivals and only one was successfully accepted. The festivals will help with the marketing of Sky Productions and education opportunities in the community. Mr. Anderson stated that they will have ten security guards on site with more available. Mr. Anderson reminded the Board that the Barking Tuna Festival used to be on Locust St., so festivals are not new to the Vine Neighborhood.

Eric Scott spoke in support of the festival; he works in the Vine Street Barber Shop. He stated that fire access is possible on Forest Street and supports the idea of bringing the community together. Mr. Scott believes some of the attendees will use public transportation, as there are stops nearby and/or ride bikes to the event. Mr. Scott feels the area is barrier free accessible and believes the organizers will do a good job of cleaning up after the festival. Other local businesses such as Martini's Restaurant have live music with success and he believes the music will appeal to local neighbors and the WMU community. He believes the volunteers will help with the traffic concern. He believes the festival will be a positive influence on the community.

Matthew Kern, 416 Forest St. across from the studio believes the festival provides an opportunity to support local businesses in the community.

Mary Chahbazi, 412 Forest St. spoke in opposition, she lives across the street and stated her concerns with proposed security and parking issues. Parking is non-existent in the area. She was informed by KPSD that they predict 1500-3000 people. She has concerns with volumes of people trespassing on property and the possible damage to the properties and would rather see the festival downtown where more parking is available. She stated Sky Productions is the only business of this street.

Richard Weaver, 412 Forest St., stated his opposition is to the location itself and not to the festival. He feels it's inappropriate within a residential neighborhood.

Mr. Eldridge commented he had spoken to different departments within the City of Kalamazoo. The City of Kalamazoo's Traffic Engineer feels the parking plan is insufficient and there will be parking problems with the festival. The Director of Parks & Recreation had concerns and was unaware an employee there had signed a form authorizing the use of one of their parking lots. The Director has concerns about liability on their parking lot and has rescinded their approval. Kalamazoo Public Safety Department has given background information and their main concern is with the noise level and parking. Planning Staff stated they would like to place three conditions on the request if approval is given:

- No noise or nuisance complaints or the variance would be rescinded.
- Sky Productions must produce sufficient parking plans two weeks prior to the event, and a published plan for all shuttle services.
- Security plan must be approved by Kalamazoo Public Safety Department.

Attorney Kneas confirmed the conditions were legitimate and could be placed. If the conditions are not adhered too the variance approval can be rescinded.

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 417 Forest Street shall include all information included in the notice of public hearing dated May 27, 2009.
- 2) Sixty-seven notices of public hearing were sent and six 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, aerial photographs, site plans, elevations and a letter from the applicant, additional information concerning the festival.
- 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: Letters of approval from Plicta Real Estate Investments, the principal of KPS Elementary, the Deputy Director of Kalamazoo Neighborhood Housing Services, the Knights of Columbus Council and a copy of parking lot use approvals from local businesses and support signatures from surrounding businesses and residents. Copy of city correspondence dated May 21, 2009, copy of opposition from city staff correspondence, copy of additional information from Kalamazoo Public Safety Department. Letters of opposition from C.L. Mahoney, from two neighborhood residents, additional letter of support from neighborhood resident. Nicholas Clarkson, part owner of Sky Productions stated that Sky Productions is a sound company and wants to provide entertainment in light of the current economic times; they would like to help the Vine Neighborhood. The festivals are designed to donate proceeds to charities to help community members. Ms. Hughes-Nilsson asked about barrier free access to the sites. Mr. Clarkson stated they'd provide access and didn't feel the existing slopes on the site were an issue. She also asked about the hours of the event. Mr. Clarkson stated they were generally from 3:00 to 11:00 p.m. Ms. Hughes-Nilsson asked about the parking with regards to local businesses. Mr. Clarkson stated they were still working on the parking situation with the local businesses and were attempting to work with the Kalamazoo Public Safety Department. Mr. Guenther asked about the fees and tickets. Mr.

Clarkson stated they had planned for fee structures and sponsorships, all proceeds were to go to the specified charities. Mr. Clarkson stated that clean up would happen at the end of each day. Mr. Clarkson stated they anticipated around 300 people at each event, maybe up to 2000 over the course of the entire event. Chair Artley questioned if there were capacity limits. Mr. Clarkson stated they would impose a limit of 500 to 1000 people as their limits. Chair Artley asked how they planned to deal with the parking for 1000 people. Mr. Clarkson stated he believes the residents in the neighborhood would support parking in addition to the parking they were looking for from surrounding businesses. Chair Artley asked how Sky Productions would provide for security. Mr. Clarkson stated that fencing would be provided around the entire site and security would be provided from A & H Security. Chair Artley asked how they will deal with opposing neighbors. Mr. Clarkson stated they have oriented the stage to minimize the noise as much as possible and anticipate the trees will help with the noise as well. Chair Artley asked how they were going to deal with crowd control. Mr. Clarkson stated with help and contact from Public Safety Department. Mr. Clarkson stated that conversations have not been constructive so far, but he asked for help from KPSD. A & H Security had been hired; security will help to organize parking, assist with crowd control and traffic flow on Forest Street. Chair Artley had concerns with fire and emergency access to the site. Mr. Clarkson stated no one would be allowed to park on Forest St. except for residents and there is additional access off of Molhoeks Ct. City Staff asked if there was shuttle service to be provided. Mr. Clarkson stated yes, provided by near by churches. Sky Productions would also provide signage and directions for people to park and had plans to talk with Kalamazoo Public Schools about using parking and shuttling from there. Chair Artley asked what the options were for non approval. Mr. Clarkson stated that Lawson Arena would be the option for the first festival. They also have an application in to Kalamazoo City Parks, South Westnedge Parks, for the additional festivals. Attorney Kneas asked about the petition signature forms, they did not say anything about the music festival. All the people spoken with were given flyers that explained the festivals when they were approached to sign the petition. Eddie Anderson III, V.P. of Sky Productions stated that a letter was handed to each resident and business explaining the festival and all aspects of the festivals. They felt the hardship of the festival was the current economic times right now. Mr. Anderson stated that live sound has currently been the main business of their company for the last three years. They perform for many non-profit events. Mr. Anderson stated their neighbor across the street uses the parking lot, she's wheelchair bound and does not have an issue with the accessibility with the current parking lot. Mr. Anderson stated that handicap patrons could use the handicap accessible restroom within the building during the festival. Mr. Anderson stated there would be advertising for the festival along Park St. and reiterated that Forest St. will be clear for emergency access and access to the site from Molhoek's Ct. KPSD has brought parking concerns to Sky Productions and concerns about

crowd control for the festival. Mr. Anderson stated he feels that A & H Security will provide good security and crowd control for the festival. He stated that several contracts were created and signed by local business for acceptance of parking. Mr. Anderson stated they have 35 volunteers to assist with parking lots, trespassing issues, crowd control and such issues. Mr. Anderson said they have tried to contact the KPSD to work out concerns, but have not achieved that yet. The festivals are designed to bring the community together. Mr. Anderson stated they had applied to the Arcadia Creek festival site for four festivals and only one was successfully accepted. Mr. Anderson stated the festivals will help with the marketing of Sky Productions and educational opportunities in the community. Mr. Anderson stated that they will have ten security guards on site with more available. Mr. Anderson reminded the Board that the Barking Tuna Festival used to be held on Locust St., so festivals are not new to the Vine Neighborhood. Eric Scott spoke in support of the festival; he works in the Vine Street Barber Shop. He stated that fire access is possible on Forest Street and supports the idea of bringing together community with the arts, and believe some of the attendees will use public transportation, as there are stops nearby and/or ride bikes to the event. Mr. Scott feels the area is barrier fee accessible and believes the organizers will do a good job of cleaning up after the festival. Other local businesses have local music with success and he believes the music will appeal to local neighbors and the WMU community. He believes the volunteers will help with the traffic concern. He believes the festival will be a positive influence on the community. Matthew Kern, lives directly across from the studio believes the festival provides an opportunity to support local businesses in the community. Mary Chahbazi, spoke in opposition, she lives almost across the street and had concerns with proposed security and parking issues. She was informed by KPSD they predict 1500-3000 people and has concerns with volumes of people trespassing on property and the possible damage to the properties and would rather see the festival down town. She stated Sky Productions is the only business on this street. Richard Weaver, spoke in opposition to the request, stating his opposition is to the location itself and not to the festival itself. He feels it's inappropriate within a residential neighborhood. City staff stated they had spoken to different departments within the city of Kalamazoo. The City of Kalamazoo's traffic engineer feels the parking plan is insufficient and there will be parking problems with the festival. The Director of Parks & Recreation had concerns about liability on their parking lot and has rescinded their approval. Kalamazoo Public Safety Department has given background information and their main concern is with the noise level and parking. Community Planning Staff stated they would like to place three conditions on the request if approval is given:

- No noise or nuisance complaints or the variance will be rescinded.
- Sky Productions must produce sufficient parking plans two weeks prior to the event, and a published plan for all shuttle services.

- Security plan must be approved by Kalamazoo Public Safety Department.

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

**Motion approved for the Finding of Fact by voice vote, one abstention, Ms. Jackson.**

**Mr. Martell moved to approve the application with the three conditions, supported by Ms. Hughes-Nilsson.**

Mr. Martell complimented the applicants on their admirable goals, but stated he would be voting against the request. The six criteria needed to approve a request haven't been met. Mr. Martell stated that Mr. Weaver said it well, "he's not opposed to the festival, just the location."

Ms. Hughes-Nilsson commented the guidelines weren't met, but having been to the Barking Tuna Festival in the past it wasn't an issue with the neighborhood. It would support local businesses and charities. She stated her concern was for the location being in a residential neighborhood.

Mr. Guenther commented on his struggling with the criteria not being met. The board is there to make exceptions, but with the three conditions being added he feels comfortable voting in favor.

Mr. Freed stated he couldn't see how this meets any of the criteria and he would be voting no.

Attorney Kneas commented all six of the criteria must be met when granting a use variance. Beneficiaries of the festival are not part of the decision making process.

Chair Artley commented he agreed with Sky Productions passion and wanting to bring the neighborhood together, unfortunately the criteria that must met hasn't.

- 1) *The literal interpretation and enforcement of the terms and provisions of this Ordinance would deprive the applicant for all practical purposes from using the property for a permitted use. A no vote wouldn't do that.*
- 2) *There is unnecessary hardship based on special circumstances or conditions that are peculiar to the land. The land is odd, but it doesn't prevent it from being used for a commercial office.*
- 3) *The special circumstances are not the result of the actions of the applicant. There isn't a way around this one.*

Chair Artley stated he supports what their doing, however he feels the circumstances do come from the results of his actions. He feels there would be some adverse affects in the neighborhood from what they've heard from the neighbors already. Chair Artley stated, looking at what the ordinance states he would be voting against the request.

**Motion denied by roll call vote.**

**Yes: Guenther, Hughes-Nilsson**

**No: Freed, Martell, Artley**

**Abstained: Jackson**

**Chair Artley commented on the resignation of Mr. Schau from the Board.**

Mr. Freed moved to adjourn the meeting, support by Mr. Guenther.

**ADJOURNMENT**

**The meeting was adjourned at 9:27 p.m.**

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

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

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