

**MINUTES  
CITY OF KALAMAZOO  
ZONING BOARD OF APPEALS  
February 12, 2009 - 7:00 p.m.  
CITY COMMISSION CHAMBERS**

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

**Members Absent:** Albert Robitaille

**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 Mr. Freed moved to approve the minutes of February 12, 2009 as submitted.**

**Motion approved by voice vote unanimously.**

**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.

Mr. Guenther read the application for 2460 and 2500 Sprinkle Road, CCN# 06-25-429-003 and 06-25-434-002:

**ZBA# 09-01-01: 2460 and 2500 Sprinkle Road: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Ed's Basic Car Rental LLC. The request concerns the properties at 2460 and 2500 Sprinkle Road, which are situated in Zone M-1 (Manufacturing – Limited District). The request, if approved, would authorize a variance from Chapter 6, Section 6.1 I.1, to allow a 6,660 square foot expansion of the parking lot with a gravel surface, where per the Zoning Ordinance all uses other than industrial are required to have either a concrete or asphaltic all-weather material parking surface.**

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

Edsel Mathews, president of Ed's Basic Car Rental, the applicant for the variance stated his company was small, recently moved to Kalamazoo and was trying to grow and maintain the location during a recession. Mr. Mathews stated he's expanded from a rental company into car sales and truck rentals. The parking lot he wants to put down is for the truck rentals. Mr. Mathews stated the trucks are new vehicles four years or newer with no maintenance issues, if they had any they ship them off to be repaired first. The upgraded surface is to comply with the parking issues. Mr. Mathews stated he's requesting the variance so he can continue his business. His goal is to build on the site in the future and not have it as a parking lot.

Nick Lombard, lead mechanic stated all the Budget trucks on the premises are four years and newer per law with Budget. The issue of oil leaks would be minimal due to the fact the trucks are immediately sent off for repair at a Budget repair facility if any maintenance issues are present. Mr. Lombard stated the loss of Budget's business would make it hard for Ed's Basic Car Rental to stay in business. Mr. Lombard stated they've been approved as a repair facility, but don't have the funding to go ahead with it yet.

Mr. Eldridge commented the 6,600 sq. ft. graveled area, which was reinforced in the site plan approval letter was given pre-approval subject to the granting of tonight's variance. The Engineering Department, per the Well Head Protection Ordinance, identifies an area with 25 vehicles or less is of minimal concern, therefore arriving at the 6,600 sq. ft. or 25 vehicle limit. The engineering department had concerns with oil and fluid leakage from vehicles, this is addressed by the fact that nothing older than four years could be parked in the gravel area if the variance were approved.

Mr. Freed questioned if any city wells were around this site. Mr. Eldridge replied no. Mr. Freed clarified if there is no storm sewer available and they do a leaching basin did it require them to have a trap placed on it to stop the oil from going into the soil. Mr. Eldridge replied correct. Mr. Freed questioned what the depression on the site photo was, if that was intended for the storm water. Mr. Eldridge replied correct, but this would be a gravel lot, stating there were no additional comments on the site plan approval letter regarding that issue.

Mr. Mathews replied the depression shown was the current lots basin which was contained on his lot. During the city's site plan review the city was quite adamant regarding the stipulation only trucks four years and newer be allowed on the lot. The city would not have an issue with it being a natural basin then which also meets Budgets requirements.

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 2460 and 2500 Sprinkle Road shall include all information included in the notice of public hearing dated January 28, 2009.
- 2.) Thirteen 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 from the applicant, proposed site sketch, copy of the letter from the Assistant City Planner.
- 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: Edsel Mathews, the president spoke on behalf of the application stating it's a small business new to Kalamazoo and has expanded creating new business. He stated the proposed lot would be for new trucks four years or newer with no maintenance issues. He would like to build on the site in the future instead of paving the parking lot, but the current economic situation has this on hold. Nick Lombard the lead mechanic with the company stated the new trucks four years or newer is a company policy with Budget also. The trucks are removed from the facility if any leakage issues are present. Ed's Basic Car Rental was recently approved as a repair facility, but they have not implemented that. City Staff approval came from City Engineering with regards to the City Wellhead Protection guidelines that allow for 25 cars or fewer on a lot. They asked for a stipulation that the trucks are four years or newer for any leakage issues. Member Karl Freed asked if there were any wells in the proximity, city staff stated no there are not any, that's why the City's Engineering Staff allowed this request. Mr. Freed asked if they would need to install oil and sediment traps in any new storm structures, staff said yes if they built a whole new development. Mr. Freed also asked about an existing low area for a storm water drainage basin. City staff stated it's an existing low area and as the lot is graveled there wouldn't be surface flow to that low area and stated there were no comments by the Site Plan Review Committee. Mr. Mathews stated the lower area is an existing drainage basin and there is another one on the property. The Site Plan Review Committee felt the site would be adequate for drainage issues and were more concerned with the drainage and age of the trucks.

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

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

Mr. Eldridge asked the Board to consider these three conditions be attached to the motion. 1.) The graveled area is limited to 6,600 sq ft. 2.) The parking of trucks is limited to four years old or newer. 3.) When a building is constructed in the future the remaining graveled area is to be paved.

Mr. Freed questioned if a time line was going to be involved if this was approved. Mr. Eldridge commented it would mean when the development occurs the variance to allow the graveled parking area would go away. Mr. Freed clarified if the building didn't occur for 25 years they could use it for 25 years. Mr. Eldridge replied correct, but they would still be limited to the 6,600 sq. ft. area and allowed only trucks four years old or newer.

**Mr. Guenther moved to approve the application with the conditions, supported by Mr. Martell.**

Mr. Guenther commented he couldn't see any problem with approving this request as outlined with the restrictions attached. He prefers a gravel surface due to the absence of the run off issues from pavement.

Mr. Martell commented with the conditions in place he was in support of the request.

Ms. Jackson questioned with the approval to become a repair facility, where are the vehicles going to be repaired, on the gravel surface?

Attorney Kneas clarified they could not due to the conditions that are suggested in the motion they could not be parked there. Ms. Jackson commented Ed's Basic Car Rental had been approved to be repair facility, but didn't have the funding at this point. When they can start repairing vehicles would they be repairing Budget's trucks on site? Mr. Mathews stated he is not approved to repair Budget's vehicles and never will have a facility capable of it. His repair facility he applied for is for automotive car repair of vehicles they sell.

Mr. Freed questioned if there were other variances approved with gravel lots with no time restrictions placed on them. Mr. Eldridge replied one; a year ago the Board approved a variance on Fulford Street which was in a manufacturing zoned area for a church to use a portion of yard area as a graveled parking lot.

Attorney Kneas commented there are legal implications that restrict the Board from giving time limited variances. If improvements are made on the site as planned, that's not time limited, it's a condition that may alter the condition of the property if a new building is built and an appropriate condition to place on it.

**Motion denied by roll call vote.**

**Yes: Martell, Hughes-Nilsson, Guenther**

**No: Freed, Artley, Jackson**

Mr. Guenther read the application for 2841 Bronson Boulevard, CCN# 06-28-379-001:

**ZBA# 09-01-02: 2841 Bronson Boulevard: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by W. Pennings & Sons, Inc., on behalf of the Mark and Karen Krinock. The request concerns the property at 2841 Bronson Boulevard, which is situated in 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 proposed garage addition within six (6) feet of the side (north) property line, where an eight (8) foot building setback is required by 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 82 notices of public hearing sent and zero responses were received.

Brian Pennings of W. Pennings & Sons and Mark Krinock the homeowner were present to represent the variance. Mr. Pennings stated his company became involved when the Krinock's were going to expand the garage to the east. The Krinock's had discussions with Bronson Woods Association to purchase property to the east, and the addition was designed with the purchase of the property in mind and the plans went out for bid. It was decided purchasing the property wasn't the best choice, but obtaining a permanent easement to extend the use of the property would be a better solution. Mr. Pennings plans already existed to extend the garage six ft. from the property line. He spoke with Assistant City Planner Rob Bauckham to find out if there was any consideration for the fact there was a 50 ft. permanent easement for the property. After discussions it was determined it would be better to pull the side of the garage back to eight ft. to meet the current zoning ordinance. Mr. Pennings stated the poured wall contractor showed up on the job with an earlier print prior to the plan being redesigned. He had been told to use the new plans; he glanced at them and proceeded to pour the walls from the original drawing. Mr. Pennings stated the walls were substantial due to the fact they're stacking one garage on top of another's foundation. The cost to change the foundation, tear it out and replace it would be costly and financially stressful for the poured wall contractor. The liability insurance company stated they would not be responsible for it. This home is on a deadline, it's been entered into the 2009 Parade of Remodeled Homes and their requesting a variance to allow the foundation to stay six feet from the property line instead of eight feet. By the Board allowing the variance the intent is still being met. Mr. Pennings stated there is a letter of support from the Bronson Woods Association and a copy of the permanent filed easement stating no buildings would be constructed within the 50 ft. permanent easement.

Mr. Krinock's stated he started two years ago with this project. In order to purchase a piece of property with Bronson Woods he would have to obtain a signature from every owner inside of the condominium. If the owners live out of state he would have to contact them and obtain their signatures. This altered their plans; they shortened the building, stacked the garage and sought an easement. The appearance from the street is of a two car garage; the house is being remodeled and restored. Mr. Krinock stated when it was determined they would need a variance to build it as first designed they chose to take a different approach and shortened the building and backed the house up. As it turned out, inadvertently the poured wall contractor poured in the wrong area. Mr. Krinock stated it was his choice to come before the Board to try

to avoid having the contractor jeopardize his business by helping him out. There's a land locked vacant wooded lot next to their lot. There's a space that remains completely open with a driveway down to the garage. Any emergency trucks have access. They'd be encroaching on a vacant lot for which they have a permanent easement. Mr. Krinock stated as soon as they discovered there was a mistake all construction stopped.

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 2841 Bronson Boulevard shall include all information included in the notice of public hearing dated January 28, 2009.
- 2.) Eighty-two 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, with dimensions, three photographs, a map, a letter dated January 15, 2009 from the Bronson Woods Association signed by the president, Evans Kokalcs and Douglas Rogers both in favor of granting the variance, a copy of the access agreement and maintenance agreement signed by Karen Krinock
- 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: Brian Pennings spoke in favor indicating W. Pennings & Sons is the building design company. They assumed the property line was going to shift, the purchase of extra property fell through and instead they obtained a 50 ft. wide easement. The poured wall contractor used an old plan and constructed the foundation for the two story garage, the tear down if mandated would be of significant cost. There are some deadlines involved with being on the Parade of Remodeled Homes tour. Mr. Mark Krinock spoke in favor, stating they obtained a permanent easement from Bronson Woods in lieu of a deed. Even though it's a two story structure it appears as though it's a two car garage. The mistake by the poured wall contractor was inadvertent and there appears to be no one in opposition.

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

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

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

Mr. Martell commented everything stated by the builder and owner comes down to a very bad mistake, and there is no apparent opposition.

Mr. Guenther commented the approval of this variance would not do harm to the zoning ordinance, the appeals process, Bronson Woods or any neighbors. He stated he couldn't see any reason to deny it and will be voting in favor of the request.

Chair Artley questioned what the legality of the easement was. Attorney Kneas stated the easement runs in perpetuity with the owner of the property. Attorney Kneas stated the Board in essence should take the size of the easement into consideration when deliberating.

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

Chair Artley commented on the interview that Mr. Eldridge, Mr. Guenther and Ms. Hughes-Nilsson all had with Mr. Schau and their discussions. Ms. Hughes-Nilsson commented it was a good interview stating he had past experience on zoning boards, planning commissions, and other boards within the City of Kalamazoo and seemed to enjoy his time on those boards. Mr. Guenther stated he seemed to be a natural to which Chair Artley agreed.

**Ms. Hughes-Nilsson moved to approve the appointment of Mr. Schau for the vacant board seat, supported by Mr. Guenther.**

**Motion approved by voice vote unanimously.**

**The recommendation will go before the City Commission.**

Mr. Eldridge discussed the annual report and his synopsis of the years activity. There was discussion on the different types of variances the Board dealt with, the different types of use variances and if there were any areas of concerns. The overall numbers of request were down in 2008 due to the amendments made to the zoning ordinance and the economic situation slowing things down.

Mr. Eldridge reported the April 9<sup>th</sup> Zoning Board of Appeals meeting was moved to April 16<sup>th</sup>.

Mr. Eldridge commented the Election of Officers is usually at the February meeting.

**Mr. Freed moved to retain the same officers in their existing positions, supported by Mr. Martell.**

**Motion approved by voice vote unanimously.**

**David Artley will remain as Chair, Rachel Hughes-Nilsson as Vice-Chair, Karl Guenther as Secretary.**

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

**ADJOURNMENT**

**The meeting was adjourned at 7:56 p.m.**

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

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

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

DRAFT