

**MINUTES
CITY OF KALAMAZOO
ZONING BOARD OF APPEALS
November 13, 2008 - 7:00 p.m.
CITY COMMISSION CHAMBERS**

Members Present: David Artley, Karl Guenther, Karl Freed, Rachel Hughes-Nilsson, Thomas Stolz

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. Stolz moved to approve the minutes of October 9, 2008 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.

Mr. Guenther read the application for 3700 West Michigan Avenue, CCN# 06-19-423-002:

ZBA# 08-11-24: 3700 West Michigan Avenue: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by New Friends Dementia Community LLC, the property owner. The request concerns the property at 3700 W. Michigan Avenue, which is situated in Zone CN-1, (Commercial – Neighborhood District). The request, if approved, would authorize a use variance from Chapter 4, Section 4.1, to allow for an Adult Foster Care Facility for up to sixty (60) residents on this property, where in the CN-1 District only an Adult Foster Care Large Group Home of up to twenty (20) residents is a permitted use.

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

Damian Farrell, architect for the project, stated he was representing the managing partner of the New Friends Dementia Community, LLC. Mr. Farrell stated the existing property has three buildings on it which were previously used as a nursing home. Their intent is to use the three buildings as they exist and license each one as an Adult Foster Care unit to meet the States requirements. Mr. Farrell stated they would license twenty occupants at a time per building, as a campus with one building having a commissary to serve all three. The only change would be repaving the parking lot and painting.

Rex Brueggeman, 806 Allendale, President of Arcadia Neighborhood Association. Mr. Brueggeman stated he was speaking in favor of the variance. The use in terms of character and intensity is appropriate for the property and the neighborhood; the buildings will be left as is.

Gretchen Underwood, 1219 Boswell, commented her back yard is ten feet from their back building. Ms. Underwood stated she was speaking in favor of the request. She's a nurse at Borgess Hospital and patient placement in a facility like this is a lengthy wait. Mr. Farrell stated there would be landscaping between her house and the property. Ms. Underwood stated the facility would be a huge benefit to the neighborhood and community.

Mr. Eldridge commented Mr. Guenther had visited his office earlier in the week with concerns on how the previous facility, Wood Hills Assisted Living was licensed by the State. Mr. Eldridge commented he spoke with a state representative, Ms. Gamber, who stated it was licensed the same as what's being proposed, adult foster care for three twenty-bed licenses. Mr. Guenther questioned the severity of the patients that stayed there. Mr. Eldridge stated it's an adult foster care not a nursing home, when patients come to a point of needing 24 hour nursing care they would have to be relocated to a nursing home facility.

Chair Artley closed the public hearing.

FINDING OF FACT

Mr. Stolz moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 3700 West Michigan Avenue shall include all information included in the notice of public hearing dated October 29, 2008.
- 2.) Two hundred sixty-seven 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, and a survey.
- 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. Damian Farrell, project architect, spoke in favor of the request. Mr. Farrell stated the three existing buildings have historically been used as nursing homes. The intent of the applicant is to license the buildings for 20 occupants; therefore there will be no real change in the use of the property. Rex Brueggeman, President of Arcadia Neighborhood Association, spoke in favor of the request. He stated his understanding was the property was going to be used as it was in the past. He stated the use was appropriate for the property and the neighborhood. Gretchen Underwood, an adjoining land owner spoke in favor of the request. Ms. Underwood stated this use would be beneficial for the community based on her occupation as a nurse. She stated the applicant has been proactive in accommodating the adjacent land owners. Ms. Underwood stated the proposed use would benefit the neighborhood and community. Mr. Eldridge stated in response to some questions posed by Mr. Guenther earlier that the former user Wood Hills Assisted Living was licensed in the same way as the applicant is proposing for this property. Mr. Eldridge also stated the proposed use is an adult foster care facility not a 24 hour care nursing home.

Mr. Guenther supported the Finding of Fact.

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

Mr. Stolz stated the use of the property was consistent with the prior use and the granting of the variance won't affect adjacent land in a material way. The granting of the variance is consistent with the purpose and intent of the ordinance. Mr. Stolz stated he would be voting in favor. Mr. Guenther agreed with Mr. Stolz's rationale.

Mr. Freed questioned if the existing facility had a variance or if the former ordinance allowed them to operate there. Mr. Eldridge replied the former ordinance allowed for assisted living facilities and group homes, but didn't state any numerical limits. Mr. Eldridge stated under the CN-1 zoning district, the former Zone 5, in the use table in Chapter 4 an assisted living facility was not a permitted use and neither was a nursing or convalescence home. An adult foster care for medium to large group home is identified as a permitted use stating seven to 20 residents. Staff's interpretation would be that's the limit for the parcel up to 20 residents. In this case on this parcel they will have 60 residents. Mr. Freed questioned who determined this couldn't be allowed as a special use or that the property couldn't be broken into three legal descriptions to allow the buildings to not require the variance. Mr. Eldridge replied, with the central parking lot it would have been logistically difficult with the layout and location of the buildings. From the planning standpoint, once the properties were on the market there was interest regarding

student rentals. It became clear quickly you'd have to do a demolition and remodel of the site, the buildings are not laid out for apartments, the parking lots small, as the residents of the adult foster care don't have cars. Mr. Freed wanted to find a way too for the use to occur without granting it a variance, the owner should explore other options and a variance should be the last resort.

Attorney Kneas stated the property would not meet the frontage requirements if it was split into three lots. Each lot would require minimum frontage on the road, and with the layout of the buildings, the parking lot and access point, it is not practical. Attorney Kneas commented you couldn't have a land locked parcel either.

Mr. Stolz moved to approve the application, supported by Mr. Guenther.

Chair Artley commented he had concerns regarding the closeness of the buildings in relationship to fire hazards. Mr. Eldridge replied the State Building Inspector will have to return during the licensing process and it would be addressed at that time.

Yes: Stolz, Artley, Guenther, Hughes-Nilsson

No: Freed

Motion approved by roll call vote.

Chair Artley welcomed Ms. Doris Jackson to the Zoning Board as an alternate. Mr. Stolz said goodbye and thanks, stating he would be moving to Portage prior to the December meeting.

Mr. Guenther moved to adjourn the meeting and was supported by Mr. Freed.

ADJOURNMENT

The meeting was adjourned at 7:25 p.m.

Submitted By _____ **Date** _____

Reviewed By _____ **Date** _____

Approved By _____ **Date** _____