

**MINUTES  
CITY OF KALAMAZOO  
ZONING BOARD OF APPEALS  
October 9, 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. Freed moved to approve the minutes of September 11, 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 300 E. Paterson Street, CCN# 06-15-201-107:

**ZBA# 08-10-23: 300 E. Paterson Street: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Graphic Packaging International Inc., the property owner. The request concerns the property at 300 E. Paterson Street, which is situated in use Zone M-1 (Manufacturing – Limited District). The request, if approved, would authorize a variance from Chapter 6, Section 6.3 B.3, to allow six-foot chain link fencing in the front setback or front yard areas along the four frontages of this parcel. Where the Zoning Ordinance requirement is only decorative fencing, other than chain link, in the front setback or front yard areas.**

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

Todd Batts, Site Plan Designer for Driesenga & Associates, was present to represent the request stating Graphic Packaging was proposing to develop this site to accommodate additional parking. Parking is needed for their current employees as well as for the potential growth of Graphic Packaging. They will gain approximately 140 to 150 parking spaces. Graphic Packaging desires to maintain security on the lot for the employees walking to their cars at night and propose to fence all four sides. Mr. Batts stated the sides are considered front yards and by ordinance are required to be "other" than chain link fence. Mr. Batts stated Graphic Packaging has proposed to place chain link fence of which the removal of the existing parking lot has created a surplus. Most of the surrounding area is owned by Graphic Packaging and have chain link fencing in the front yard. Other properties in the area not owned by them have chain link in their front yards also. The salvaged fencing is aesthetically clean, new looking and they will landscape the area.

Mr. Freed questioned if the rolled up fencing on the property is the salvaged fencing they were discussing. Mr. Bradsher replied correct, it was sorted out and only the best fencing was kept.

Chair Artley questioned what Graphic Packaging's total investment on the site was and how many new jobs were being created. Mr. Bradsher replied 31.4 million with approximately 130 new jobs being created over the next 24 months.

Robert Bradsher, 1421 S. Pitcher St., Plant Manager, stated employee safety is their main concern. Secondly, is employee vehicle damage from rocks and bottles being thrown over the fence. Mr. Bradsher commented there have been multiple grievances against Graphic Packaging from union employees which resulted in requiring a chain link fence in excess of \$250,000 being placed around the parking lot for protection. This is a result of union arbitration along with seven security guards patrolling the grounds in vehicles. Mr. Bradsher stated the parking lot is not residential; it's located in an industrial area. They would landscape and beautify the area. Mr. Bradsher commented on the female employees who walk out to their cars late at night being approached by pan handlers asking for money and the need to provide them safety.

Chair Artley questioned the height of the fence. The photographs supplied show a much taller fence with barbed wired slanted backward on it. Mr. Fowler stated it would be a 6 ft. fence for safety issues and explained the pictures in the packet he provided to the Board.

Ms. Hughes-Nilsson questioned if their fence would have the barb wire on top. Mr. Fowler replied they would not have barb wire on top of the fence. The photographs he provided for the Board showed the location of where the proposed fencing would be placed.

Mr. Freed questioned if Graphic Packaging had looked into any type of black fencing or coated fence. Mr. Freed inquired if they proposed only galvanized fencing or if they were only

looking at using the salvaged fencing. Mr. Fowler replied they were only looking at re-using the chain link fence.

John Thingstad stated he was representing the Kalamazoo Enterprise Center, 225 Parson Street. Mr. Thingstad stated they're enthusiastic about the potential for new business growth on the north side. Most of the properties around Graphic Packaging shouldn't be affected by the chain link fence, it's mostly industrial or parking lots. He commented their business has several parking areas surrounded by chain link fences. Mr. Thingstad commented they have experienced a substantial amount of rock throwing from children walking in the area of the railroad tracks also. Mr. Thingstad said having a see through fence is of great value.

Mr. Eldridge stated he spoke to Mr. Fowler prior to the meeting and was happy to know there's no barb wire proposed for the top of the fence. From a planning standpoint as far as E. Paterson Street goes it's a main thoroughfare and the City desires to have decorative fencing along that frontage and feels it would be an improvement.

Mr. Freed questioned what the City considers decorative fencing, does it consider it to be coated or painted galvanized. Mr. Eldridge replied it's not chain link material; it would be fencing like Pfizer used around their parking lot on Lovell or Bronson Hospital's black wrought iron fencing. Mr. Freed questioned a decorative wrought iron fence with a chain link backing to prevent the throwing of rocks. Mr. Eldridge stated they would have to review the product. Mr. Freed commented he'd seen it in different industrial areas before and wondered if it would meet the requirements.

Chair Artley closed the public hearing.

## **FINDING OF FACT**

Mr. Stolz moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 300 E. Patterson St. shall include all information included in the notice of public hearing dated September 24, 2008.
- 2.) Nineteen 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 site plans.
- 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: Todd Batts,

with Driesenga and Associates the applicants Engineer spoke in favor of the request. Mr. Batts stated Graphic Packaging is proposing to redevelop at the site to accommodate parking needs at the adjoining site, the expansion of which has significantly eliminated parking across the street. This plan will add between 140 to 150 parking spaces. Mr. Batts stated the request is centered on securing the parking lot for employee safety. The site encompasses an entire block therefore all sides are considered "front yard" otherwise chain link would be acceptable. Mr. Batts stated the chain link fence proposed to be used is in good condition and will be recycled from the former parking area on the adjacent site. Most of the surrounding sites are owned by Graphic Packaging and are already equipped with chain link fence. Additionally, Mr. Batts stated six sites not owned by Graphic Packaging within 300 ft' of the property are equipped with chain link fence. The placement of the fence will be aesthetically appropriately with landscaping placed along the perimeter of the parking lot. Mr. Freed asked if the proposed fence is what was currently rolled up on the site. Mr. Fowler, of Graphic Packaging stated yes, the fence had been sorted into re-useable and unusable. Chair Artley inquired about the total budget and job creation associated with the project. Mr. Bradsher, Plant Manager stated approximately 31.4 million is being invested with 130 new jobs being created within the next 16 – 30 months. Mr. Bradsher stated decorative fencing would not provide for the necessary security. Vandalism events to vehicles have occurred in the past. Based on past issues Graphic Packaging has installed \$250,000 worth of fencing to secure the former parking area based on union grievances. Additionally, Graphic Packaging has seven security guards on patrol in the area which is industrial. Mr. Bradsher stated Graphic Packaging takes pride in the maintenance and appearance of their property. Mr. Bradsher provided photographs of past damage, former fencing and the area of the new planned fence. Mr. Artley asked about the height of the fence and Mr. Bradsher stated the fence would be 6 ft. high. Ms. Hughes-Nilsson asked if the top would be angled and have barbed wire. Mr. Bradsher stated it wouldn't be angled or have barb wire. Mr. Thingstad with the Kalamazoo Enterprise Center spoke in favor of the request. Mr. Thingstad stated the project would be good for the area. Mr. Thingstad stated most of the properties in the area are equipped with chain link fence and will not be adversely affected by the proposed fence. Mr. Thingstad stated the security afforded by a see through fence is important. Mr. Eldridge stated the City was pleased barbed wire was not part of the proposed fence. Mr. Eldridge stated decorative fencing along the Paterson frontage is preferred as opposed to chain link. Mr. Freed inquired if coated chain link would be considered decorative. Mr. Eldridge stated that chain link material is not considered decorative. Mr. Freed asked if chain link and decorative would be acceptable. Mr. Eldridge stated it would need to be approved through site plan review.

Chair Artley clarified that the City would prefer decorative fence along Paterson, but not the other frontages associated with the property.

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

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

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

Mr. Guenther commented he was in favor of the proposal as presented based on the safety and security reasons. As a homeowner looking for decorative fencing chain link fence wouldn't be an option. For security reasons chain link is exactly what he'd be looking for and commented he would be voting in favor of the request.

Mr. Stolz stated given the nature of the area a chain link fence wouldn't detract from the adjoining properties and he would be voting in favor of the request.

Ms. Hughes-Nilsson commented the motion didn't mention the decorative fencing along Paterson Street.

**Ms. Hughes-Nilsson made an amendment to the motion to include decorative fencing along the E. Paterson Street frontage, support by Mr. Freed.**

Mr. Freed agreed there were some special circumstances the Board needs to recognize, but under the criteria for providing variances this part doesn't meet the criteria. The owner has created the special circumstances themselves. The Board has to look at the particular requests and individual criteria for every variance and can't sway the criteria for individuals. However, the amendment to the motion pulls the request back into line with some of the criteria and stated he would be voting in favor of the request.

Mr. Stolz inquired which set of criteria this would now be reviewed under. Attorney Kneas commented it would be considered the same as a dimensional variance.

**Yes: Guenther, Hughes-Nilsson**

**No: Freed, Stolz, Artley**

**Motion to approve the amendment was denied by voice vote.**

Mr. Freed commented due to the site not following the criteria he would be voting against the request.

Ms. Hughes-Nilsson commented this request doesn't meet all the conditions and she would be voting against the request.

Mr. Stolz commented he feels the security of the area is not a result of the owner. The applicant wants to create a safe and secure environment for his employees. He doesn't see

how the special circumstances are not being met. The granting of the variance will not adversely affect adjacent land in a material way. The granting of the variance will be generally consistent with the purposes and intent of this Ordinance. He can't see hindering businesses trying to expand in the City that are already patrolling their property and stated he would be voting in favor.

Chair Artley commented he struggled with this request stating the Ordinance is in affect for a reason. Taking into context the area surrounding Graphic Packaging, granting the variance would secure the public safety and he would be voting in favor.

**Yes: Stolz, Artley, Guenther**

**No: Freed, Hughes-Nilsson**

**Motion denied by roll call vote.**

Chair Artley then asked if there was any other business to discuss.

Mr. Eldridge commented the City Commission voted to approve Doris Jackson as the new alternate and she would be sitting in on a couple meetings.

In regards to the Graphic Packaging request, Attorney Kneas stated there were other options such as granting a lesser variance.

Mr. Stolz commented he would like to know what Mr. Bradsher had to say regarding the amendment that failed. Mr. Bradsher stated every time a car is damaged he has to face the employee and tell them their not able to help pay the deductable. Management was asked what they were going to do regarding protecting the employees. If they couldn't protect their vehicles in parking lots attached to the building, how were they going to protect them in a parking lot across the street. As Plant Manager Mr. Bradsher stated he didn't feel very good knowing they weren't going to be able to provide safety and security to their employees.

Chair Artley questioned if the variance were granted with the condition that it have decorative fencing along the E. Paterson side did that make sense to him. He stated he was having a hard time envisioning what it would look like, decorative fencing with a fabric weave behind it. Mr. Bradsher commented he would definitely be willing to work with the City to meet the requirements. He questioned the decorative wrought iron fence with fabric to the back side and a post and spindle design. Attorney Kneas commented the consensus was to have Graphics Packaging work with the City to come up with an acceptable decorative fence, it may not be chain link and protective, but would met both needs.

Chair Artley stated the Board would need a motion to reconsider the main motion from the prevailing side.

**Ms. Hughes-Nilsson made a motion to reconsider the main motion, support by Mr. Freed.**

**Motion approved by voice vote unanimously.**

Mr. Freed questioned Attorney Kneas if the amendment could be stated to consider a proposal between Graphic Packaging and the City. Attorney Kneas suggested the variance request could be structured in a way, which would grant the variance except for the Paterson St. side and allow City staff and Graphic Packaging to decide what meets decorative and security. Attorney Kneas urged the Board members not to limit them to a certain style a fence.

**Mr. Freed made a motion to allow six-foot chain link fencing in the front setback or front yard areas along the frontages of this parcel except for Paterson Street, support by Mr. Guenther.**

**Motion approved by roll call unanimously.**

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

**ADJOURNMENT**

**The meeting was adjourned at 7:57 p.m.**

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

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

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