

**MINUTES
CITY OF KALAMAZOO
ZONING BOARD OF APPEALS
September 11, 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 7:04 p.m.

MINUTES

Mr. Stolz, supported by Mr. Guenther moved to approve the minutes of August 14, 2008 as submitted.

Motion approved by voice vote unanimously.

NEW BUSINESS:

Mr. Eldridge noted there was additional information from Mr. Talcott's attorney and follow-up information from the Zoning Department pertaining to the request.

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 1510 Knollwood Avenue, CCN# 06-20-388-001:

ZBA# 08-09-20: 1510 Knollwood Avenue: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Corey W. Talcott LLC, the property owner. The request concerns the property at 1510 Knollwood Avenue, which is situated in use Zone RM-15 (Residential – Multi Dwelling District). The request, if approved, would authorize: A) a dimensional variance from Chapter 5, Section 5.1, to allow a side yard building setback of three feet from the north property line, where six feet is required; and B) a dimensional variance from Chapter 5, Section 5.1, to allow for 72% impervious cover, where 60% impervious cover is the maximum

allowed in the RM-15 District. These variances are being requested to permit the property owner to deed a seven-foot by 132-foot strip of property to the adjacent parcel north of the subject 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 24 notices of public hearing sent and one response was received.

James Shek, 117 W. Cedar Street, attorney for Corey Talcott was present to represent the request. Mr. Shek stated that in 2002 Mr. Talcott constructed an apartment complex, with two buildings containing eight apartments at 1506 Knollwood. Mr. Talcott complied with all the requirements at that time. With the advice of his creditors at 1506 Knollwood he proposed a conversion from residential apartments to condominiums to ultimately remove them from the rental market. Mr. Shek stated at the construction time the necessary concrete retaining wall separating the properties at 1506 Knollwood from 1510 Knollwood was to be constructed on the property lot. Mr. Shek commented this was apparently not constructed and poured in place on the property line, but actually was placed three feet south of the property line. The carports for the complex were constructed immediately next to that. It wasn't an issue at that time because Mr. Talcott owned both properties. Mr. Shek commented the creditor for 1506 Knollwood consented for the conversion to condominiums; the separate creditor from 1510 Knollwood has not consented to the conversion for that structure. Mr. Shek asked the Board to consider the special circumstances along with the closeness in proximity to 1510 Knollwood that makes it unique.

Mr. Eldridge questioned if the retaining wall was inadvertently shifted seven feet to the south by the contractor why is there a large stairwell where the seven foot jog occurs on the retaining wall. Mr. Eldridge commented it was a little more than a variation from the approved site plan. Mr. Shek replied he didn't feel it was a plan to build the retaining wall with the intent of the stairwell.

Gary Wheler, 74632 Marie Dr., stated he's worked for Mr. Talcott for a few years and things have begun to downsize. Mr. Talcott is trying to switch this property into condominiums to become financially stable again. Mr. Wheler commented the staircase leads to a trail which takes you towards school. He asked the Board to grant the request to allow Mr. Talcott to be able to sell this property individually.

Mr. Eldridge commented, during a site visit the parking lot was approximately 70% full of cars. He's been told Mr. Talcott's having trouble renting these units, that's the reason to switch these to condominiums. Mr. Eldridge questioned the level of occupancy. Mr. Wheler replied the occupancy level is between 60% to 70%. Mr. Wheler commented the reason there's a car problem is with the large Knollwood project going on, tenants and contractors are using Mr. Talcott's parking lot.

Mr. Eldridge commented during his site visit he noted the dumpsters in the wrong location, the screening fence is in pieces, there are other little issues, and the site needs attention. Non-compliance with the site plan started some years ago given the retaining wall extends seven feet to the south. Secondly, Mr. Talcott was before the Board in October 2004 with a very similar request for 1315 Fraternity Village Dr. for an oversized parking lot. This lot was built beyond the bounds shown on the site plan, it was denied, had to be torn up and removed to

bring the site back into compliance. Mr. Eldridge commented he was a little troubled to be back in a similar situation with another site that has substantial deviations from the approved site plan.

Chair Artley closed the public hearing.

FINDING OF FACT

Mr. Stolz moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 1510 Knollwood Avenue shall include all information included in the notice of public hearing dated August 27, 2008.
- 2.) Twenty-four notices of public hearing were sent and one response was received from Mr. Shek the applicant's attorney.
- 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, and photographs of the site.
- 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: Jim Shek, Attorney for the applicant, spoke in favor of the request. Mr. Shek indicated he prepared the request on behalf of Mr. Talcott. Mr. Shek stated Mr. Talcott constructed apartments in 2003, on 1506 Knollwood. Mr. Talcott also owned the site surrounding 1506 Knollwood including the property at 1510 Knollwood. Creditors have proposed Mr. Talcott convert the apartments built in 2002 into condominiums. Mr. Talcott is pursuing the option of condominiums instead of apartments. When the apartments were constructed the retaining wall between 1506 and 1510 Knollwood was accidentally constructed seven feet south of the property line for 1506 Knollwood and encroached on 1510 Knollwood. Mr. Talcott's entities owned both sites at the time of the mistake. Therefore, the retaining wall and carports were left intact. Now with the condominiumization of the north adjoining site in process of being completed, the creditor who holds interest in 1510 Knollwood will not allow the property to be part of the condominium project. Therefore, the property associated with the north adjoining site leaves zoning issues. This split is the result of economic factors affecting rental values. Rental of the apartments is no longer economically viable. Therefore, Mr. Shek states there are special circumstances present that are not Mr. Talcott's fault. Mr. Eldridge inquired about the stairwell installed along

with the concrete wall. Gary Wheler, employee for Mr. Talcott spoke in favor of the request. Mr. Wheler testified to the economic hardship Mr. Talcott is under. Mr. Wheler stated the stairwell Mr. Eldridge referred to is actually access to the trail that leads to Western. Mr. Eldridge asked Mr. Wheler about the occupancy at the site specifically about the number of cars in the parking lot when Mr. Eldridge visited the site. Mr. Wheler stated the occupancy is between 60% to 70% at 1506 Knollwood Avenue. The cars at the site are reportedly associated from adjoining sites or contractors that are working on the sites. Mr. Eldridge stated there are some issues present at the property, the dumpster's in the wrong location, a fence is in disrepair and there's litter around the property. Mr. Eldridge stated he'd like to see the property be in compliance with the site plan that's approved. Mr. Eldridge also noted that Mr. Talcott also appeared before the Board in 2004 with an issue that involved deviations from an approved site plan at a nearby site.

Mr. Freed supported the Finding of Fact.

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

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

Chair Artley questioned Attorney Kneas considering the nature of the request if both parts of the request could be voted on at the same time. Attorney Kneas replied he didn't see a reason they couldn't.

Mr. Stolz stated he was having a hard time seeing how the special circumstances are not the result of the title holder or the applicant. He can see how there are economic issues at play, however clearly this is a deviation from the approved site plan, which was approved based on the fact all the setbacks were met.

Mr. Freed stated the applicant is at fault and he can't approve this request and will be voting against the request.

Ms. Hughes-Nilsson stated she couldn't see how he could meet any the criteria on the list of dimensional variances. These circumstances are the result of the applicant whether he physically did it or not. She can't see any special conditions to the property either that would make it necessary to have the wall in the location it's installed in. She would be voting against the request.

Chair Artley commented he would be voting against the request also. He further stated the criterion wasn't met and the special circumstances we're the result of what the applicant had done.

Motion denied by roll call vote unanimously.

Mr. Guenther read the application for 1219 N. Edwards Street, CCN# 06-15-128-024

ZBA# 08-09-21: 1219 N. Edwards Street: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Mt. Zion Baptist Church, the property owner. The request concerns the property at 1219 N. Edwards Street, which is situated in use Zone CC (Commercial – Community District). The request, if approved, would authorize a dimensional variance from Chapter 9, Section 9.5, to allow for the re-use of the existing off-premises freestanding sign frame by the Living Well Fitness Center, where the Zoning Ordinance does not allow a nonconforming sign to be changed or altered.

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

James Jackson, trustee of Mt. Zion Baptist Church, 120 Roberson Street, was present to represent the Living Well Fitness Center, an entity of Mt. Zion Baptist Church who was seeking the variance for an off-premise sign. This sign is to help further identify the location at 1219 N. Edwards St. which is the parking lot for the fitness center.

Mr. Eldridge stated in an e-mail from Mr. Freed he inquired why the request was before the Board. Mr. Eldridge stated the parking lot is obviously associated with the fitness center across the street. The reason this couldn't be administratively approved is due to the fact the public street physically separates the two parcels. The sign ordinance specifically states the sign that advertises the business or service must be on the premises if it's an on-premise sign.

Mr. Stolz questioned if the sign was conforming in size and height otherwise. Mr. Eldridge replied yes, for that zoning district and it complies with the setbacks. The ordinance prior to 2005 allowed for the replacement of sign faces in non-conforming signs. There was nothing to bring this before the Board until Mt. Zion Baptist Church happened to acquire the property, develop it as a fitness center and want to utilize the sign cabinet. Present regulations don't allow for putting new sign faces in it. It's a non-conforming sign, which requires approval from the Zoning Board of Appeals.

Chair Artley questioned if the variance were approved were they going to use the sign face as it exists. Mr. Jackson replied yes.

Attorney Kneas questioned if there was any off street parking on the building site itself for the Living Well Fitness Center. Mr. Eldridge replied no, not on the E. Patterson St. side, there are a few spaces on the Edwards Street side, but there's a bus stop near that location so there's very limited parking. Attorney Kneas questioned if there was sufficient parking under the zoning code on the actual site where the building is for off street parking. Mr. Eldridge replied there is definitely not any space for parking, the building takes up most of the site, leaving room for only a single car to park.

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 1219 N. Edwards Street shall include all information included in the notice of public hearing dated August 27, 2008.
- 2.) Fifty-six 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, photographs and a copy of the applicant's business brochure.
- 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: James Jackson from Mt. Zion Baptist Church spoke in favor of the request stating the church was seeking to rebuild the sign to help advertise for the Fitness Center. Mr. Eldridge stated he'd received an e-mail from ZBA Staff asking why this needed a review from the ZBA. Mr. Eldridge replied, because a public street divides the two properties, therefore it needs to be reviewed by the ZBA. The sign ordinance specifically states the sign needs to be on the premises and where the sign is currently the only thing there is a gravel lot. There used to be a sign there for a tavern and a sandwich shop. Mr. Stolz questioned if the sign was conforming in size and height otherwise. Mr. Eldridge agreed it was. Chair Artley questioned if the sign and the parking lot were acquired at the same time as the property. Mr. Jackson stated they were. Mr. Eldridge stated past sign ordinances allowed for the altering of sign faces in non-conforming signs, but the new ordinance needs approval from the Zoning Board of Appeals. Mr. Artley asked if the sign was to stay as is, for the sign face and Mr. Jackson agreed. Attorney Kneas questioned if there was parking on site enough for the property and Mr. Eldridge stated there was not.

Mr. Stolz supported the Finding of Fact.

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

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

Mr. Stolz commented to the fact that the sign would be conforming were it adjacent to the building, it makes more sense to where the parking for the building is. It won't adversely affect any adjacent property and will actually make the sign look better. He commented he would be voting in favor of the request.

Chair Artley commented the special circumstances are not the result of the applicant and the granting of the variance will not affect adjacent landowners stating he would be voting in favor of the request.

Motion approved by roll call vote unanimously.

Mr. Guenther read the application for 1910 Parkview Avenue / 1923 Whites Road, CCN# 06-29-497-016 / 06-29-497-014:

ZBA# 08-09-19: 1910 Parkview Avenue/1923 Whites Road: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Kerry Trombley on behalf of Speedway Super America LLC, the property owner. The request concerns the properties at 1910 Parkview Avenue and 1923 Whites Road, which are situated in use Zone CN-1 (Commercial – Neighborhood District). The request, if approved, would authorize a dimensional variance from Chapter 6, Section 6.4 C7, to allow a maximum to minimum light ratio of 9.6:1 for the proposed gas station canopy, where the required ratio shall not exceed 10:1 per the Zoning Ordinance. The light ratio refers to the comparison of light at the main source with that at the ground level (usually measured in foot candles). This variance request is for the exterior lights on the canopy ceiling, which will illuminate the gas pumps and vehicle maneuvering area around the gas pumps.

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

Kerry Trombley, 539 S. Main St. Findley, Ohio was present to represent the request, stating he had a question about the wording of the variance. It states they're requesting a light ratio of maximum 9.6:1 under the canopy only when the maximum allowed is 10:1. If you included the side area it's higher than the 10:1.

Mr. Eldridge clarified if it would more accurately reflect the situation if they took the average of parking lot outside the canopy area plus that number and divide them to get an average for the overall site of around. Mr. Trombley replied correct.

Mr. Trombley stated they felt this ordinance is more applicable to a large parking area than to a gas station. Gas stations are unique because they have outdoor fuel sales at night requiring the need for outdoor night lighting. Mr. Trombley stated the canopy needs more light for the safety of the employees and for the customers who are handling gas, which is a volatile liquid. Traffic entering and exiting from the site and walking to and from the store you need lights to see. Employees need a visual at all times and inside glare on the inside window is a hazard. Mr. Trombley stated customers have driven off with the hose still attached to the vehicles which is a safety concern to them. The International Electrical Society has a recommendation for a lighting allowed in gas stations outside, they recommend between 20 to 50 foot candles under the canopy area. They're proposing 31 ½ foot candles under the canopy. Mr. Trombley stated the rest of the parking area excluding the canopy meets the ordinance.

Mr. Freed commented this gas station is on a point, when driving west on Whites Rd. this is in the driving lane and glare from the lights bothered him when driving. He questioned if all the lights on their site would be down lights and stay on the site. Mr. Trombley replied yes, the lights are all faced down and shielded on the sides in addition to being recessed.

Henry Matthews, 539 S. Main St. Findley, Ohio, stated he's the electrical engineer who designed the electrical components for the Speedway stores. They consider safety first, the local codes, International Electrical Society codes, energy consumption, and caution on selecting fixtures. The fixtures are recessed into the canopy and there's no up lighting.

Mr. Eldridge questioned the handout and the recessed lighting fixture shown as to which one was going to be installed. He questioned the service station requirements, their proposing 31 ½ foot candles which fall into the medium to the high range. At the approach area not under the canopy their proposing 2.7 foot candles which is at the bottom end of the low categories. Mr. Trombley replied regarding the entrances and exits where the curbing and landscaping are lowers the averaging a bit.

Attorney Kneas questioned if the lights would be adjusted when the business wasn't open. Mr. Trombley replied it would be open 24 hrs. a day. Mr. Matthews replied the levels represent when the lights are fully on at the absolute darkest. The gas station lights are set to be on four different stages of lighting throughout the day.

Mr. Eldridge identified the 400 watt lights under the canopy have a light ratio of 9.83 and not the 9.66, which is the ratio for the overall site. That means the public hearing notice was sent out for a greater degree of difference than actually proposed. To comply with the 10:1 ratio, what level of wattage would they have to reduce the fixtures too? Mr. Trombley replied they reduced it to 9.96 and had to lower the canopy lighting too an average of 10.3 foot candles which is the maximum. This is below the recommendation of the International Electrical Society and increases the parking lot lights.

Ms. Hughes-Nilsson questioned, even with the increased lighting they're still at less than the .1 foot candle on the property lines. Mr. Trombley replied correct all the light is restrained within their property.

Chair Artley closed the public hearing.

FINDING OF FACT

Mr. Stolz moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 1910 Parkview Avenue / 1923 Whites Road shall include all information included in the notice of public hearing dated August 27, 2008.
- 2.) Twenty-six 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, site plans, internal documents regarding lighting standards and 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: Kerry Trombley with Marathon spoke in favor of the request. Mr. Trombley is requesting brighter light under the canopy, 9.6:1 as opposed to the 10:1 ratio. Mr. Trombley stated the site is a gas station and has special needs due to: 1) the employee's safety, 2) the hazardous substance dispensed at the site, 3) traffic safety, 4) employee responsibility to watch pumps at all times, lower lights outdoor results in greater glare indoors. Mr. Trombley provided pictures of a site in Ohio where inadequate lighting has resulted in minimal views from inside the building. Mr. Trombley provided Illumination Engineering Safety of North American recommendations for lighting and gas stations which indicated 31.5 foot candle average which this site would comply with. Mr. Trombley stated the proposed lighting would be cut by special fixtures that would not leak off-site. Mr. Freed stated the site is on a point between Whites and Parkview. Mr. Freed stated there was a glare issue at the site approximately 20 years ago that was addressed by pointing the lights down. Mr. Freed asked if the lights would point down and Mr. Trombley indicated that they would. Henry Matthews, Electrical Engineer with Speedway spoke in favor of the request. Mr. Matthews reiterated Mr. Trombley's points including the need for safety and IESNA recommendations. Mr. Matthews further described the planned fixtures and the inherent glare control for the lights based on those fixtures. Mr. Eldridge inquired of recessed lights if they would be used under the carports. Mr. Matthews stated they would. Mr. Eldridge also asked about the brightness of the lights under the canopy versus the light in the parking lot. Mr. Trombley indicated the light under the canopy is brighter and outside the canopy is less bright. Attorney Kneas asked if lights would be dimmer when the station was closed. Mr. Trombley stated the station would be open 24 hours a day. Mr. Matthews stated lighting was controlled by an automatic sensor. Mr. Eldridge also stated that the actual average when calculated would be 9.83:1 as opposed to 9.6:1 resulting in less of a variance than noticed. Mr. Eldridge inquired how much would the light need to be lowered to meet the code. Mr. Trombley stated it would be significantly less. Ms. Hughes-Nilsson asked if they would be less than 1 foot candle at the property lines. Mr. Trombley stated that they would and there would be virtually no bleed off from the site.

Ms. Hughes-Nilsson supported the Finding of Fact.

Chair Artley questioned Attorney Kneas if due to the fact the variance is less of a variance than being asked for, does it need to be reposted. Attorney Kneas stated no.

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

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

Ms. Hughes-Nilsson questioned if other gas stations recently built if they followed the 10:1 ratio. Mr. Eldridge stated this is the first gas station to go through this requirement. Mr. Eldridge stated he looked at other site plans that had photometric plans. The Bronson Nursing Home off Gull Road and an office building both met the ratio. Most of the gas stations have the old dome lights that throw the light creating the glare. Mr. Eldridge stated he felt there were other options to creating light around the pumps, other than flooding the area with twelve 400 watt lamps.

Ms. Hughes Nilsson questioned the photographs of the other property showing the glare on the windows, as to what type of lights they had. Mr. Trombley replied he didn't do a ratio there.

Mr. Stolz stated a gas station is a special circumstance, when his wife is pulling up to a gas station he wants to know she's pulling up to a brightly lit area. He wants to know the employees could see if something happened to her. Gasoline is a hazardous substance and people do drive off with pumps still attached to their cars. He doesn't feel the lights will affect adjacent land owners in any material way especially in this location. He stated he would be voting in favor of the request.

Chair Artley stated he would be voting in favor of the request, public safety is being secured and substantial justice is being done. There are no direct neighbors in terms of residences.

Motion approved by roll call vote unanimously.

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

Mr. Eldridge stated the end of September the City Commission will address the Doris Jackson recommendation for the ZBA.

ADJOURNMENT

The meeting was adjourned at 8:18 p.m.

Submitted By _____ **Date** _____

Reviewed By _____ **Date** _____

Approved By _____ **Date** _____