

**MINUTES
CITY OF KALAMAZOO
ZONING BOARD OF APPEALS
August 14, 2008 - 7:00 p.m.
CITY COMMISSION CHAMBERS**

Members Present: David Artley, Karl Guenther, Karl Freed, Rachel Hughes-Nilsson, Thomas Stolz, Albert Robitaille, Charles Martell (alternate)

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 7:03 p.m.

Chair Artley commented the Board was given additional information regarding each of the requests that had been received via mail.

MINUTES

Mr. Guenther, supported by Ms. Hughes-Nilsson moved to approve the minutes of July 10, 2008 as submitted.

Motion approved by voice vote, Chair Artley abstained from the vote.

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 3030 W. Michigan Avenue, CCN# 06-20-306-129:

ZBA# 08-08-17: 3030 W. Michigan Avenue: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by John Clark. The request concerns the property at 3030 W. Michigan Avenue, which is situated in use Zone RS-5 (Residential – Single Dwelling District). The request, if approved, would authorize a dimensional variance from

Chapter 2, Section 2.2 A5, to allow this dwelling to be rented to four unrelated adults, where a non-owner occupied dwelling may only be occupied by a family or two unrelated adults in the RS-5 District.

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

John Clark, owner of the property stated he had lived in Kalamazoo from 2002 through 2007 while attending WMU. While living there he helped the previous owner of 3030 W. Michigan Ave. maintain the house for three years. When offered to buy the house, he purchased it thinking he would be living in Kalamazoo, but he ended up with a job in Grand Rapids. Mr. Clark stated that with the current gas prices he was spending over \$600 in gas driving back and forth since he purchased his home there. Mr. Clark stated he had three roommates living there with him to help with the expenses. He feels he meets the requirements stating these reasons:

- 1.) The literal interpretation and enforcement of the terms and provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other land owners in the same zone district, and would cause practical difficulty. By renting to only two people it's just not feasible in that area. This is a 2100 sq. ft. home with gas, electric, cable, water and trash the monthly utilities can range anywhere from \$200 to \$400 a person to live there. He's been trying to sell the house since 2006, but hasn't had a serious offer. He's lowered the price to a where he'll actually have to come up with money at closing.
- 2.) There is an unnecessary hardship based on special circumstances or conditions that are peculiar for which the variance is sought. He stated the property is situated at the edge of W. Michigan where 25,000 to 30,000 cars pass this house during peek college time. This is across the street from a fraternity house and directly across the street from a sorority house. To the right and left are all student rentals, no homeowner wants to buy a house surrounded by college students.
- 3.) The special circumstances are not the result of the actions of the applicant or titleholder of the land. Before purchasing the house he lived there with three other students to offset the rent, he never knew the house was not rentable to four people. This is a single family area and they shouldn't have had four people living in it. His circumstances are not unique; they're the result of the market force. In 2006, he probably could have sold the house, now in 2008 people aren't interested in his house for the sale price. People are waiting for him to foreclose, and then they'll purchase it for \$60,000 as an investment. There's a foreclosure two doors down from him.
- 4.) The literal interpretation and enforcement of the terms and provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other land in the same zone district, and would cause practical difficulty. He calculated with four people living there that it would just cover his mortgage and property taxes. The house is vacant; it was inspected to rent to two unrelated

people, meanwhile he is losing between \$700 to \$800 a month. His goal is to sell the house as a single family home.

- 5.) The granting of the variance will not adversely affect adjacent land in a material way. He restated the house is located in the heart of a college town with ample driveway space. He also owns the vacant lot at 3034 W. Michigan. He stated he needs to repaint the house by August 31, 2008. If he's unable to have four occupants he won't have the finances to do it, but will have to somehow.
- 6.) The granting of the variance will be generally consistent with the purposes and intent of this Ordinance. The request is compatible with the surrounding area and will promote the general welfare of the area. He promises to keep the property in good repair until he's able to find a purchaser. His goal is to sell the house. He can't see where a traditional family would want to live there; the house is on one of the busiest streets in Kalamazoo, surrounded by college rentals, across from a frat house. He hasn't had one offer on the house.

Doug Wood, stated he was the owner of the Dobbin Farm at 3316 W. Michigan Avenue. He stated he wasn't present to speak for or against the request. Mr. Wood commented the city needs to address the conditions of the north part of W. Michigan Avenue that's zoned single family. The amount of traffic, college rentals and activity has increased tremendously. It's no longer a single family residential area. Mr. Wood stated he's moved to Muskegon now and has his property up for sale. Mr. Wood asks the Board to consider Mr. Clark's request.

Mr. Eldridge clarified the handout the Board had in their packet showing how many rentals there are along W. Michigan Avenue. There are some two units, a lot of one unit rentals along the frontage, approximately 98%. Mr. Eldridge explained the dots on the drawing show properties where four unrelated adults were grandfathered in. In 2000, the occupant limits were adopted. In the single family zoning district two unrelated adults were allowed, in a duplex four unrelated adults were allowed in that zoning district. Letters were sent out to everyone in those zoning districts with rental properties and anyone with active leases were to provide the city with a copy, upon verification they would receive grandfathered status if they had more than the newly adopted limit on unrelated adults. As of December 2000, after the ordinance change there was 164 grandfathered properties ranging from three unrelated up to having eleven unrelated, because some of these houses had been built out into six bedroom configurations.

Mr. Robitaille questioned what the term of grandfathering was. Mr. Eldridge replied as long as the property owner actively continued to rent to four unrelated adults and the house does not sit idle for over 12 months. It will lose its grandfathering status if it sits empty and must revert back to what's allowed under the current zoning ordinance. Mr. Robitaille clarified if the owner had applied for grandfathering status could he have received it. Mr. Eldridge commented he could have by providing a lease agreement to the city. However, at that time it was under different ownership, as Mr. Clark stated he didn't purchase it until 2006. Mr. Eldridge stated it was registered rental as of Feb. 2001 and there should have only been two unrelated people living there with the owner of the property. Mr. Eldridge stated the goal of the ordinance is to bring the properties

into conformance over time. This particular property is surrounded by rentals yet backs up to owner occupied property. Mr. Eldridge commented this area may need a rezoning in the future.

Chair Artley closed the public hearing.

FINDING OF FACT

Mr. Stolz moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 3030 W. Michigan Ave. shall include all information included in the notice of public hearing dated July 25, 2008.
- 2.) Fifty-nine 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
- 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: John Clark, the owner of the property, spoke in favor of the request stating he had rented the property prior to 2006 when he acquired the property thinking he would eventually live there. Mr. Clark lived there until 2007 when gas prices forced him to move to Grand Rapids where he works. Mr. Clark stated three roommates lived with him while he was at the property, stating renting to two students wasn't feasible due to the size of the house and utility costs. He's been trying to sell the house and indicated he has the house listed approximately \$10,000 lower than he purchased it at in 2006. Mr. Clark commented he's invested in improvements as well. The house is situated on the edge of the RS-5 district, additionally student rentals adjoin the property to the east and the west and a fraternity house is across the street. Mr. Clark stated the previous owner did not indicate to him that the house was not rentable to more than two people when he bought it. He stated the circumstances are beyond his control due to the economy and the housing market. Foreclosure would be worse for the neighborhood than renting to four unrelated people. Mr. Clark stated parking for the tenants would not affect the current free parking situation in the area. He

indicated he's been asked to paint the house by the city, which he'd more able to comply with if he could rent it out. Doug Wood a former 15 year resident of the area spoke to the request indicating that the Zoning Board needed to address the issues associated with W. Michigan Avenue. Mr. Clark indicated based on traffic, student population and recent road improvements they've made this road unfeasible as a single family zone. Mr. Wood also felt the neighborhood had changed significantly since he lived there 15 years ago. Mr. Eldridge stated numerous one unit rentals; approximately 98% rental along the north side of Michigan Avenue. Mr. Eldridge indicated when the ordinance was changed in 2000 the zoning inspector allowed for the grandfathering of residences in this area. Approximately 164 grandfathered sites ranging from three unrelated to 11 unrelated occupants are in the area in this RS-5 zone. Mr. Eldridge commented based on a question by Mr. Robitaille that this house could have been grandfathered since it was registered as a rental in 2001.

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 Mr. Guenther.

Mr. Stolz stated he's usually not inclined to approve requests like this based on a lack of knowledge of the zoning when they purchased the property, or a financial hardship. He feels there are some special circumstances that are not the result of the applicant. Being across the street from a fraternity house would make it a hard place to relocate a family. The granting of the variance will not adversely affect adjacent land in a material way. Mr. Stolz stated seeing a foreclosure on the house would be worse than renting to four unrelated people in his eyes. The granting of the variance will be generally consistent with the purposes and intent of this Ordinance and he would be voting in favor of the request. Mr. Guenther stated he agreed with the comments Mr. Stolz made and he would be voting in favor also.

Ms. Hughes-Nilsson stated she didn't usually like to approve requests of this nature; financial hardship is not a concern of the Board. In looking at the property herself as a family she wouldn't move in with the traffic issues and a frat house across the street. It's a special circumstance with the surrounding property, the location and she would be voting in favor.

Yes: Robitaille, Stolz, Guenther, Hughes-Nilsson

No: Freed, Artley

Motion approved by roll call vote.

Mr. Guenther read the application for 1023 West Maple Street, CCN# 06-28-210-003:

ZBA# 08-08-18: 1023 West Maple Street: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Echo Realty, LLC. The request concerns the property at 1023 West Maple Street, which is situated in use Zone RM-15 (Residential – Multi Dwelling District). The request, if approved, would authorize a dimensional variance from Chapter 7, Section 7.3A, to allow a 32 square foot identification sign for a legal nonconforming office use in the RM-15 District.

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 16 notices of public hearing sent and three responses were received from Margery Batterson, Shawn Mullins and Kevin Dockerty in opposition.

Doug Post, owner of Echo Realty, LLC. stated he relocated his office there. They've done several hundred thousand dollars worth of extensive renovations and landscaping there. Mr. Post stated he's investing heavily in the area there. The signage allows them to advertise their presence and share it with several tenants who need to advertise where they are located at. Mr. Post stated 32 sq. ft. of signage is driven from the sign ordinance in a commercial area, which would be allowable. Now, being rezoned into a RM-15 area changes the allowable sq. ft. Mr. Post stated when he purchased the property there was a brick wall that extended from the front northeast corner to the street that created a visual block. This property is commercial in nature and people would expect to see a sign there. Future land use plans for the City of Kalamazoo identifies this area as institutional, so it appears the City of Kalamazoo is on board and that they believe this area's zoning may be changed accordingly.

Mr. Stolz questioned if the sign was going on the back or front of the building. Mr. Eldridge commented it would be ten ft. back from the property line. Mr. Post stated it would be about five to ten feet from the building itself.

Mr. Freed questioned Mr. Eldridge as to what size sign was permitted in that district. Mr. Eldridge stated it's a multi-dwelling district and if it were an apartment complex it would be allowed a 32 sq. ft. sign. Due to the fact this is a legal non-conforming office building, there is no category for that in the sign regulations to allow for signage. If it was an office building in any other zoning district, a 32 sq. ft. sign 6 ft. in height would be allowed.

Steve Springsdorf, 1001 W. Maple, Executive Director of the YMCA, the neighbor directly east of Mr. Post's business spoke in favor of the signage. Mr. Springsdorf stated he had seen the designs for the sign and Mr. Post's improvements on the building. He stated it enhances the block and remarked the signage wouldn't interfere with any visual driving.

John Garry, 1115 W. Maple, read a letter on behalf of a neighbor:

- Arlene Bennett, of 1110 W. Maple, her letter which is incorporated in these minutes by reference hereto was in opposition. Ms. Bennett's main concern was the increase in business traffic the sign and building would bring. Additionally the new building doesn't fit into the area of the older homes that have been well maintained or remodeled.

Mr. Garry stated the sign is 75% larger than the existing sign of the neighboring church and would detract from the neighborhood. The sign would be located in an area where children attending Maple Street Magnet School and the YMCA regularly cross. Mr. Garry stated the existing lines of sight are already limited and now adding a large sign would further increase the danger to children crossing the street. The State of Michigan requires signs not to block the vision of drivers. Mr. Garry commented on the fact the special circumstances were not the result of the applicant, he feels the purchaser should have been aware of the sign requirements prior to purchasing and asks the Board to vote against the request.

Scott Swope, 1117 W. Maple stated he moved in two years ago and is disappointed in the business aspect of the area and the high amount of traffic. Mr. Swope stated he should have been more aware of it prior to purchasing it. He stated there have been no businesses in the area until now and asks the Board to oppose this request.

Phyllis Thayer, 1201 Cherry Street, stated she's a 20 year resident of the neighborhood. Ms. Thayer stated she walked the neighborhood and measured the current signs that are up and most were 24 sq. ft. or under. Ms. Thayer stated her opposition; she doesn't want to set precedence. She would be o.k. with a sign on the building or one consistent with other signs currently in the area.

Marilyn Garry, 1115 W. Maple, stated she's not in opposition to a sign just not one that large. Ms. Garry commented she would rather see a wall sign on the building. Ms. Garry supplied the Board with letters from neighbors opposing the sign and asking the Board to deny the request:

- Mary Stryker, 1922 Stearns Street, stated in her letter, which is incorporated in these minutes by reference hereto, Echo Realty should have been aware of the zoning ordinance concerning signs before purchasing the building.
- Kristine Wisnieski, 1208 Cherry Street, stated in her letter which is incorporated in these minutes by reference hereto, her concerns regarding the school kids being picked up and having another obstacle for drivers to block their vision. Their building isn't that large to require a 32 sq. ft. sign.

Gabe Dilworth, 1109 Cherry Street, stated he bought 1031 Maple Street to fix up and move into. He commented Mr. Post had done a great job renovating the building he's in. He commented he wasn't in opposition as long as the sign wasn't right up to the road.

Jon Dilworth, 1109 Cherry Street, stated co-owns 1031 Maple Street with his brother. Echo Realty has put a lot of money into their building and they should have a sign, but he's worried about the size of the sign. Mr. Dilworth stated his main concern is with the line of sight and the size of the cultured stone posts.

Chair Artley asked for clarification if the house Mr. Dilworth was moving into was immediately next door to Mr. Posts. Mr. Dilworth replied correct.

Chair Artley closed the public hearing.

FINDING OF FACT

Mr. Robitaille moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 1023 W. Maple shall include all information included in the notice of public hearing dated July 25, 2008.
- 2.) Sixteen notices of public hearing were sent and three responses were received in opposition from Margery Batterson, Shawn Mullins and Kevin Dockerty which are incorporated in these minutes by reference hereto.
- 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, letters from adjacent and surrounding neighbors and owners of properties.
- 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: Doug Post from Echo Realty, LLC. spoke in favor of the request, Echo Realty relocated from Portage to Kalamazoo in 2007 and has invested over \$100,000 in renovations to the building. Echo Realty is committed to Kalamazoo. Current tenants and various commercial enterprises require signage. Echo Realty, LLC. removed a brick wall and dense shrubs in front of the building that was there for years and had received no complaints as to visual barriers to the property. The requested sign would not hinder the view, this is a commercial building and one would expect signage on such a building. Mr. Posts also suggested that the future zoning designation is slated to be institutional zoning. Mr. Stolz inquired as to the position of the sign which was described in some of the documents provided. Steve Springsdorf, resident of Kalamazoo speaking in favor suggested the renovations were all done well; the building is attractive and is an improvement to a tired old building. John Garry spoke in opposition as to the increase in traffic and proximity to family residences, family related businesses and schools. The sign would be bigger than those of surrounding

buildings. Maple Street is a 25 mph speed limit and it is feared this use will add additional pressure to the traffic and make it unsafe for the children at the school and YMCA. Scott Swope spoke in opposition stating he moved into the area two years ago. Stating the traffic is much higher than expected. He didn't want to see more commercial traffic to endanger the children. Speculation on rezoning to commercial is not appropriate. Phyllis Thayer a 20 year resident spoke in opposition stating other signs in the area are smaller than the proposed sign. It would be inappropriate for this building to have such a big sign when all the others are such smaller, and she suggested ignorance of the zoning at the time of purchase is not cause for approval. Marilyn Garry spoke to the variance and presented two letters in opposition from Mary Stryker and Kristine Wisnieski, whose main points were increased traffic. Gabe Dilworth, 1031 W. Maple spoke to the request, he lives adjacent to the property and didn't believe the sign would be a problem as long as it was closer to the building and not closer to the road. John Dilworth also co-owner of 1031 W. Maple, expressed his concern that the sign was much larger than he would like to see and would in fact block his view from entering or exiting the driveway. Other signs in the area for businesses, particularly on Hudson St. are more appropriately sized.

Mr. Freed supported the Finding of Fact.

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

Chair Artley asked for clarification as to what size sign would have been permitted in this district. Mr. Eldridge stated it's in the RM-15 residential multi-dwelling district and it allows for apartment complexes which would be permitted a 32 sq. ft. free standing sign 6 ft. tall that sets back 10 ft. from the property lines.

Motion approved by roll call vote unanimously.

Mr. Stolz questioned Attorney Kneas if the Board could make a motion conditional upon the size of a sign or it being affixed, or within a certain distance of the building. Attorney Kneas replied they could place conditions on the sign approving a lesser variance on the sign.

Mr. Stolz moved to approve the application conditional upon the sign being no larger than 24 sq. ft., being affixed to or extending no more than 10 ft. from the building and must meet the required setbacks, supported by Mr. Freed.

Mr. Stolz commented most of the people have responded from the neighborhood. He stated how unfortunate it was there's a strange multi-residential zoning even though there's no multi-residential businesses in this area and it's a legal non-conforming use. They need to find a middle ground to let a building survive and appease the residents of

the area. Most people agreed a sign was acceptable it was the size people had trouble with.

Mr. Freed stated he agreed with Mr. Stolz' comments and felt it was note worthy the other signs in the neighborhood were of the 24 sq. ft. variety and he would be voting in favor.

Chair Artley thanked Mr. Stolz for making the conditional motion, stating he would not have approved the original request. He feels the Board has done all it could to ensure the spirit of the ordinance, observed public safety and substantial justice has been done and he would be voting in favor of this request.

Attorney Kneas clarified with the condition if it's within 10 ft. it still needs to be within the required setback area. The Board is not granting a variance, the condition is it's either on the building or no more than 10 ft. Attorney Kneas wanted to clarify that the no more than 10 ft. didn't conflict with the required setback. Mr. Post replied he understood and it wouldn't.

Motion approved by roll call vote unanimously.

MISCELLANEOUS:

Chair Artley stated three Board Members and Mr. Eldridge had sat down with Doris Jackson who applied for the open alternate seat on the Zoning Board of Appeals and he deferred to Ms. Hughes-Nilsson for her opinion. Ms. Hughes-Nilsson commented she felt it was a good interview; she showed significant interest in this area and would provide good insight into this area. Mr. Freed commented he was comfortable with Ms. Jackson, but felt she would need some help with the procedures. Chair Artley commented on the fact they needed some type of orientation. Mr. Eldridge commented the Board would make a recommendation to appoint Ms. Jackson as the second alternate to the Board; it would need to be seconded then voted on. Then it would go before the City Commission for approval.

Mr. Freed made a motion to recommend Ms. Doris Jackson as the second alternate to the Zoning Board of Appeals, support by Ms. Hughes-Nilsson.

Motion approved by voice vote unanimously.

Chair Artley commented on the informational handout regarding the program Fair Food Matters, an event coming up.

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

Motion approved by voice vote unanimously.

ADJOURNMENT

The meeting was adjourned at 8:30 p.m.

Submitted By _____ **Date** _____

Reviewed By _____ **Date** _____

Approved By _____ **Date** _____