

**MINUTES
CITY OF KALAMAZOO
ZONING BOARD OF APPEALS
June 12, 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 7:07 p.m.

MINUTES

Mr. Guenther, supported by Mr. Freed moved to approve the minutes of May 8, 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 823 Simpson Street, CCN# 06-16-275-021:

ZBA# 08-06-13: 823 Simpson Street: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by the property owner Commerce Real Estate, LLC. The request concerns the property at 823 Simpson Street, which is situated in use Zone RS-5 (Residential – Single Dwelling District). The request, if approved, would authorize a use variance from Chapter 4, Section 4.1, to allow the second dwelling unit in this structure to be reoccupied, where only one dwelling unit is permitted 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 fifty notices of public hearing sent and zero responses were received.

Gary Septer, president of Commerce Real Estate, was the applicant for the variance. Mr. Septer stated he purchased the property in March 2008 as a bank foreclosure. The property was empty for an unknown amount of time. Mr. Septer stated it was his error not checking when the certification had lapsed. The property was at one time a duplex, it has two water meters, two furnaces, two electric meters, two electric panels, two water heaters and access to the basement from both units. Mr. Septer stated it was very cut and dry that this was a duplex so they went ahead and purchased it. It wasn't habitable then, so they renovated it from top to bottom. It then was brought to his attention by the City since the certification of the duplex had expired they would have to apply for a variance to re-instate it as a duplex. Mr. Septer stated he did not do the due diligence earlier on or he wouldn't be before the Board tonight. Mr. Septer stated he's put a lot of money into the property, it's like brand new. Commerce Real Estate's been improving that part of the community and owns a couple properties in that area. Commerce Real Estate guts and completely renovates their properties and hopes the Board will grant them a variance.

Ms. Hughes-Nilsson questioned how many other duplexes he owned in the City. Mr. Septer replied he owns six, they own approximately ninety properties total, most are single family homes.

Chair Artley asked if any of the other duplexes required a variance. Mr. Septer replied no, they were all zoned appropriately.

Mr. Eldridge stated he passed out a rental property map showing single family rentals and duplexes in the surrounding area. Chair Artley questioned if the duplexes showing were grandfathered in. Mr. Eldridge replied they are still grandfathered in, their occupancy has not lapsed long enough to require going through a variance process.

Attorney Kneas asked for clarification from Mr. Eldridge when the certification lapsed. Mr. Eldridge replied it was last inspected in October 2003 and would have expired in October 2005 with some ownership changes and vacancies.

Chair Artley commented it had been vacant for approximately three years.

There were no comments from the public.
Chair Artley closed the public hearing.

FINDING OF FACT

Mr. Stolz moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 823 Simpson Street shall include all information included in the notice of public hearing dated May 28, 2008.
- 2.) Fifty 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, interior and exterior photographs.
- 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: Gary Septer, president of Commerce Real Estate, LLC spoke in favor of the request. He stated Commerce Real Estate purchased the property a couple of months ago as a foreclosure and it had been empty for an unknown amount of time. Mr. Septer stated Commerce Real Estate neglected to check on the certification of the property prior to the acquisition. Commerce Real Estate improved the property significantly when the City informed them the property was no longer certified as a duplex. Mr. Septer indicated Commerce Real Estate owns six duplexes and several single family homes in Kalamazoo. Mr. Septer also stated that Commerce Real Estate has never needed a variance before and Mr. Eldridge commented the certification for this duplex use lapsed in 2005.

Mr. Freed supported the Finding of Fact.

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

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

Ms. Hughes-Nilsson stated she didn't see where this request met the criteria to approve the request. There is no unnecessary hardship based on any special circumstances or conditions that are peculiar to the land or structure. The special circumstances were the result of the actions of the applicant, because the due diligence was not completed. Ms. Hughes-Nilsson stated she doesn't see where it qualifies as a use variance and stated she'd be voting against it.

Mr. Stolz stated after looking at the rental property map the closet duplex is three blocks away, several are single family non-rental properties. The rental properties in the area are even single family. The zoning ordinances are trying to change the character of the neighborhoods. Mr. Stolz stated he didn't see how it wouldn't affect the adjacent land in material ways and stated he would be voting against the request.

Chair Artley stated he concurred with the comments made also.

Motion denied by roll call vote unanimously.

Mr. Guenther read the application for 1450 Prospect Hill, CCN# 06-16-318-010:

ZBA# 08-06-14: 1450 Prospect Hill: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by MA Kreps Designs LLC, on behalf of the property owner. The request concerns the property at 1450 Prospect Hill, which is situated in use 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 attached garage within ten feet of the rear property line, where a twenty-five foot building setback is required.

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 forty-one notices of public hearing sent and zero responses were received.

Mike Krepps, MA Kreps Designs LLC, 1849 Cumberland St., and Lee Cook, caretaker of the property at 1450 Prospect Hill, were present to represent the request. Mr. Krepps stated presently at the site there was a single car attached garage that's dilapidated and of no use. Mr. Taylor lives there and requires a handicap style van that doesn't fit in that garage. Mr. Krepp's was hired to design a new two car garage that could accommodate the vehicles. The historical commission gave their approval of the new garage with the requirement that it's attached. To accommodate the van and the caretaker's vehicle they need to request the ten foot variance from the rear property line.

Mr. Eldridge stated they went before the Historical Commission and were approved on April 15, 2008.

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 1450 Prospect Hill shall include all information included in the notice of public hearing dated May 28, 2008.
- 2.) Forty-one 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, letter from the applicant, site plans, aerial photo's, existing site photo's and plans, proposed site plan, proposed elevations and a letter of the approval from the Historical District Commission.
- 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: Mike Krepps designer for the project spoke on behalf of the applicant, stated that the property was located in the West Main Hill historical district. The existing garage is a single car garage and is need of repair. The owner requires a handicap size van and needs a new garage to accommodate the size of the van. The Historic District Commission had approved the plans, stating the garage must be attached to the house due to the historical nature of the area. The closest existing building located near the garage will be a neighbor's garage. Lee Cook the caretaker for the property spoke in support of the application. Mr. Eldridge pointed out the plans had been reviewed and approved by the Historical District Commission.

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 stated the similarities of the narrowness of the lots in this neighborhood. It's more of a historical issue in this area. Mr. Stolz pointed out that;

- The literal interpretation and enforcement of the terms and provisions of this Ordinance would deprive the applicant for all practical purposes from using the property for a permitted use.
- The unnecessary hardship based on special circumstances.
- The special circumstances are not the result of the actions of the applicant it's more due to the character of the neighborhood. The fact that it's approved by the Historic District Commission he doesn't feel it would adversely affect adjacent property in any way.
- The granting of the variance is the minimum action that will make possible for Mr. Taylor to use the land and stated he would be voting in favor of the request.

Mr. Freed asked for clarification as to why the garage needed to be setback into the rear yard setback. Was it because the handicap van couldn't park in the area in front of the garage if it were less than 30 ft. Mr. Krepp's replied it was for access into and around the van for the wheelchair and the nature of the disability. This would allow them not to have to go into the street or butting up to the garage. The van itself is 22 ft. long.

Chair Artley questioned what the weight of the Historic District Commission was in regards to the Zoning Boards. Mr. Eldridge replied they look to see if the request meets the HDC's requirements and conformity with the neighborhood. Mr. Eldridge was just pointing out that was one of the steps they needed to go through.

Attorney Kneas commented they look at each application, the HDC requires that the garage be attached versus detached. The old garage was attached and that's a factor for this Board to consider.

Motion approved by roll call vote unanimously.

Mr. Eldridge updated the Board on 813 W. South St. regarding the Spaman Jeweller’s sign. The HDC gave him approval for a sign, but when erected the text on the sign was different then approved. The placement was different and caused some concern. It was the largest sign in the three block area of West South St. It was referred back to the HDC with a result of Mr. Emig returning the sign to the original location where the previous freestanding sign was, approximately ten feet off the front porch of the structure, instead of two feet away from the sidewalk. The important thing is the sign was moved back from the street. Mr. Emig voluntarily lowered the sign by one foot, leaving only the issue of the text and the possibility of forcing Mr. Emig to remove the hours of business on the sign. Mr. Stolz questioned if Mr. Emig’s variance request was mainly based on “by appointment only.” Mr. Eldridge stated Mr. Emig had stated most of his business was by appointment, but he does take walk-in traffic. The Historic District Commission feels that advertisement is too much. Chair Artley questioned if the neighbors were happier with this change. Mr. Eldridge stated the neighbors were happier with the sign being moved back and lowered a foot. Mr. Stolz asked if the variance was conditional. Attorney Kneas stated it was an interpretation and wasn’t really a request for a variance. Mr. Eldridge stated it was an interpretation and not a variance, however the factual information presented to the Board can still be used to gauge his business, so he can’t deviate from how he represented his business when he was before the Board. Mr. Eldridge clarified clearly in a decision letter to Mr. Emig what his limitations for operation were.

Mr. Eldridge stated the Diamond Auto Wash at 5303 Portage Street with the light pole height variance issue sent a letter. The property owners stated in the letter that they would reduce the height of the poles within the next sixty days.

Chair Artley questioned how the boarding house occupancy was going. Mr. Eldridge replied the boarding house at 1027 Clinton owned by Eliakim and Kimberly Thorpe had been given permission to operate a one unit rental with only four unrelated people at 1027 Clinton Ave.

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

ADJOURNMENT

The meeting was adjourned at 7:47 p.m.

Submitted By _____ **Date** _____

Reviewed By _____ **Date** _____

Approved By _____ **Date** _____