MINUTES
CITY OF KALAMAZOO
ZONING BOARD OF APPEALS
March 8, 2018 - 7:00 p.m.
CITY COMMISSION CHAMBERS

Members Present: Matt Lager, James Houston, Reed Youngs, Chris Flach, Christina Doane, Jeff Carroll

Members Absent:

City Staff: Pete Eldridge, Zoning Administrator; Clyde Robinson, City Attorney; Deanna Benthin, Recording Secretary

Chair Youngs called the meeting to order at 7:00 p.m.

NEW BUSINESS: Mr. Eldridge provided the Board with a supplemental agenda with one correspondence for the first request and a memo outlining the history for the request.

MINUTES:

Mr. Houston moved to approve the minutes of February 8, 2018 as submitted, seconded by Mr. Lager.

Motion approved by voice vote unanimously.

PUBLIC HEARINGS: Chair Youngs 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. Houston read the application for 3433 Oakland Drive, Parcel # 06-32-235-001:

ZBA# 18-03-05: 3433 Oakland Drive: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Todd and Wendy Trucks. The request concerns the property at 3433 Oakland Drive, which is situated in Zone RS-5 (Residential – Single Dwelling District). The request, if approved, would authorize a dimensional variance from Chapter 4, Section G3, to allow one unit per 6,125 square feet of land area, where 7,500 square feet is the minimum square footage per cluster housing unit in the RS-5 District. The total number of cluster housing units being proposed for this project is eight. Please note this same request was approved on September 11, 2014, but this approval has expired.

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 eighteen notices of public hearing sent and one response was received.

Don Sappanos and Jose Santamaria spoke to the request on behalf of Todd and Wendy Trucks, the proposal has stayed the same except to use the second option from the first plan; the use of a pump station versus hooking into the Country Club's waste line to remove their waste. Mr. Sappanos stated they could not work out a resolution with the Country Club. Nothing else has changed and asked for a renewal of the variance.

Mr. Carroll asked Mr. Eldridge to speak to the applicant's comments regarding the pump house stating that was not mentioned in the variance request.

Mr. Eldridge stated with the original site plan in 2015 it indicated they were working with the Country Club to establish a sanitary sewer connection, that fell through so the only other option was a lift station for the sanitary sewer to link to the line on Oakland Drive. This was one of the reasons the project stalled. Mr. Sappanos stated everything will be contained on their property now.

Chair Youngs questioned what the delay was on this project, he commented if they approved this request he wanted assurances that the property wouldn't be littered with trees and mounds of dirt. Mr. Sappanos stated there were personal and financial issues that contributed to the delay of the project, now they are all settled. He stated Todd and Wendy Trucks are ready to move forward, they will be building two units at once, if approved.

Mr. Carroll questioned the request for eight units and for green space that exceeds the 3% would the Board discuss that. Mr. Sappanos stated they would be under the requirement, actually having more green space than required.

Mr. Carroll asked the applicant to respond to how they met the required criteria:

- *There are special circumstances or conditions (like exceptional topographic conditions, narrowness, shallowness, or the shape of property) that are peculiar to the land or structure for which the variance is sought, that is not applicable to other land or structures in the same zone district.* Mr. Santamaria stated the configuration of the land has a large swale and they will be placing the units to the north. He stated it makes it more financially feasible to have one more unit. It still fits within all the setbacks and requirements. Mr. Carroll clarified that their special use is for financial gain.

- *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.* Mr. Carroll questioned if they only could build seven units what rights would they be deprived of? Mr. Santamaria stated the site allows for the eight units, they would be deprived of financial gain with only seven.

- *The granting of the variance is the minimum action that will make possible the use of the land or structure that is not contrary to the public interest, and that would carry out the spirit of this Ordinance.* Mr. Santamaria stated it meets all the setback requirements. Mr. Carroll questioned if they could use the minimum number of seven units that allows them to use the property as zoned. Mr. Santamaria stated they meet all the zoning setback requirements and exceed the open space requirements. Mr. Carroll stated they exceed the minimum requirement by one unit.

Mr. Eldridge clarified the applicant is stating even with that one additional unit they are still exceeding the development standards with open space.

Mr. Carroll stated they are not being deprived on any rights that anyone else in RS-5 is being deprived of. Mr. Sappanos stated they are being deprived of fully utilizing the property like every other variance, to still meet the setbacks and minimums.

Mr. Carroll commented when they purchased the property they knew the requirements. Mr. Santamaria stated they received the variance prior to purchasing the property. Mr. Sappanos stated they did their due diligence prior to purchasing the property. Mr. Carroll questioned in the Winchell Neighborhood the allowable square footage requirements for clustered housing, on 2500 square foot of land, they could place four houses. Mr. Eldridge clarified the requirements of other examples such as the Crane Park condominiums.

Mr. Eldridge stated this same variance was approved on September 11, 2014 as indicated, they weren't the owner at the time, but applied for the variance prior to purchasing the property. They developed a site plan for review and then ran into development difficulties with the sanitary sewer and other issues. In April 2015, the property was foreclosed upon by the bank in August 2016 the property was acquired by SAMI Investments, it wasn't well kept, the trees were cut down, the root balls and limbs were left on the property. The City Forestry Department notified the City that eight oak trees were removed in the right of way when the clear cutting occurred. Zoning enforcement started in November 2016 before reaching a resolution with the site being cleaned up and new trees being planted. There was a lot of time spent getting this property cleaned up and restored. If this goes forward and a variance is granted Staff asked that certain conditions are tied to a motion to make sure the project stays on track. The conditions are:

1.) The eight oak trees required to be planted last year by the City must remain on the site and alive. They may be transplanted elsewhere on the property if City approves of relocation.
2.) The developer must receive from the Kalamazoo Country Club's board of governors a temporary construction easement to enter onto and use the Club's property during construction.
3.) Site plan approval and issuance of required permits must occur prior to any site work commencing.

There was site work going on without proper soil erosion permits in place. These conditions if not followed would nullify any variance the Board grants.

Mr. Sappanos stated the easement wouldn't be an issue they were going to cut in their own secondary entry as to not have to use the Country Club's entry. Mr. Eldridge commented he wanted that condition to remain.

Chair Youngs stated the Country Club did give a letter in opposition to the variance.

Mr. Flach questioned how many people can occupy a unit? Mr. Eldridge stated this is in the RS-5 District, only single family or two unrelated adults are allowed. He stated the only letter in opposition was from the Country Club, they were against the cluster housing development project, it will impact the quiet enjoyment of the use of their property, and the location is situated 100 feet north of the fifth green of the Country Club's property. He stated the property owner has a right to develop the property and suggested the Country Club could put up screening in areas of concern.

Mr. Houston asked for clarification if the applicant puts in their own drive they wouldn't need to use the Country Club's easement. Mr. Eldridge stated the condition covers their inadvertent use of the Country Clubs drive if it begins to occur. Mr. Houston stated only if they have to use the Country Club's drive they would have to seek an easement from the Country Clubs board of governors. Mr. Eldridge stated correct, this is to address the short comings of the first attempt to develop the site.

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

FINDING OF FACT

Mr. Lager moved the Finding of Fact as follows:

1.) The Finding of Fact for 3433 Oakland Drive shall include all information included in the notice of public hearing dated February 20, 2018.

2.) Eighteen notices of public hearing were sent and one response was 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: Don Sappanos and Jose Santamaria spoke on behalf of the applicant they indicated the proposal is the same as the one approved by the ZBA in 2015 except the plan for the sanitary hookup has changed. The project

was delayed due to personal legal matters separate from the development. The applicant is prepared to proceed with the development of the first two units. The project meets the green space requirements, the configuration of the land is said to be unique and eight units fits on the property and creates a more economically feasible project. The project meets all setback requirements and without the variance the applicant would not be able to create eight units, but only seven units. The applicant received the original variance in 2015 prior to closing on the property. The original variance was to create the eight units as proposed again now. Mr. Eldridge noted it's the same variance as granted in 2015 and provided that after the property was acquired by the applicant the property was foreclosed, trees were removed and enforcement action was taken by the City and restoration of the trees occurred. In light of the delay and tree situation the City has suggested three conditions described fully in the memo from the City to the Board dated March 8, 2018. 1). The eight Oak trees required to be planted last year by the City must remain on the site and alive. They may be transplanted elsewhere on the property if City approves of relocation. 2). The developer must receive from the Kalamazoo Country Club's board of governors a temporary construction easement to enter onto and use the Club's property during construction. 3). Site plan approval and issuance of required permits must occur prior to any site work commencing. The applicant responded that they are creating their own ingress and egress and may not need the easement from the Country Club. Mr. Eldridge noted the opposition letter from the Country Club. Mr. Eldridge clarified on the easement the developer must receive the easement to enter onto and use the Country Clubs property if they need to use it they have to go through the formal process of getting approval from the board of governors.

Mr. Houston seconded the Finding of Fact.

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

Mr. Houston moved to approve the application with the stated conditions, seconded by Mr. Flach.

Mr. Houston stated the last variance was approved and compared to what was previously on the property this would be an improvement, there's a school next door, commercial across the street and he's in favor.

Chair Youngs commented he was in favor the first time it came before the Board, and if he has the opportunity to maximize the property and return on his property it's the applicant's choice.

Mr. Flach questioned how they were going to ensure the previous problems don't reoccur, even with the City's conditions in place, how have they changed their process. Mr. Sappanos stated the clearing of the trees and leaving of the dirt was on his shoulders. He commented the lender that foreclosed was present, and stated the developer was paying cash for the property

and the development of the first two units. He didn't want to have to respread the dirt and plant the trees, because they'll have to now remove all of that, the trees won't survive, so they'll have to replant new trees. They've put too much money into this development to not move forward. Mr. Flach stated he's in favor of development in Kalamazoo.

Mr. Carroll questioned the sale price of the houses. Mr. Sappanos stated around $500,000.

Mr. Lager commented he was in favor, the request was granted in 2015 by the Board.

Mr. Carroll stated he was against the request; he reviewed the criteria conditions that must be met to qualify and stated they don't meet any of the standards.

- *There are special circumstances or conditions (like exceptional topographic conditions, narrowness, shallowness, or the shape of property) that are peculiar to the land or structure for which the variance is sought, that is not applicable to other land or structures in the same zone district.* He stated there are no special circumstances for using the property as zoned and they could build only seven units.

- *The special circumstances are not the result of the actions of the applicant or titleholder of the land.* The same applies as above.

- *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 lives in RS-5; they are not being denied any rights another homeowner isn't in that same district.

- *The granting of the variance is the minimum action that will make possible the use of the land or structure that is not contrary to the public interest, and that would carry out the spirit of this Ordinance.* He stated the Country Club believes they will be negatively impacted by the development.

- *The granting of the variance will not adversely affect adjacent land in a material way.* Adjacent landowners would be affected by a 23% increase in density.

- *The granting of the variance will be generally consistent with the purposes and intent of this Ordinance.* He stated if the City and ZBA doesn't adhere to ordinances, then why have them; he stated there are areas that allow for this type of development. He stated the ordinance made the decision for him. By math the ordinance allows approximately seven units. A 23% increase is an overreach.

Mr. Eldridge stated this request was before the Board once, in 2014 they received an option to purchase the property, were granted a variance, and then they acquired the property. They did everything properly. Mr. Lager stated are there really any different changes in circumstances than what was before the Board in 2014. In Mr. Lager's opinion no there wasn't.

Mr. Carroll questioned if the title had changed hands since the foreclosure. Mr. Eldridge stated it is now under SAMI Investments.

Motion approved by roll call vote with conditions.

Yes: Houston, Youngs, Lager, Doane, Flach
No: Carroll

Mr. Houston read the application for 2309, 2315, 2343, 2349, 2401 Angling Road, Parcel #06-32-451-001, 06-32-466-001, 06-32-461-001, 06-32-455-001, and 06-32-389-122:

ZBA# 18-03-06: 2309, 2315, 2343, 2349, 2401 Angling Road: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by the Kalamazoo Nature Center. The request concerns the properties at 2309, 2315, 2343, 2349, 2401 Angling Road, which are situated in Zone RS-5 (Residential – Single Dwelling District). The applicant is request the following: 1) A dimensional variance from Chapter 6, Section 6.1 H 1, to allow gravel parking areas, where the surfacing requirement for drives and parking areas concrete or asphalt; and 2) A dimensional variance from Chapter 7, Section 7.3 A, to install a 20 square foot freestanding sign where only a two square foot name plate is allowed in Zone RS-5.

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

Jenn Wright, representative of the Kalamazoo Nature Center stated they were donated 22 acres in fall of 2015 and added to their current eight gives them a total of thirty acres. For the last 57 years their goals has been connecting people with nature, the use of this property it's through the gravel drive off Angling Road. The plan is to turn one homes garage to a visitor's center. The hope is to instead of paving the drive keep it as a gravel parking lot, it'd be impervious and they would take care of the water run off issues. People expect them as an organization that protects nature to not cover over nature. The second request is for the sign; they would like the opportunity to place the sign with downward lighting for illumination at night. In 2014 the Board approved a similar variance for the Bow in the Cloud's property the Southwest Michigan's Land Conservancy on Nazareth Road. She stated they'd meet all requirements for a fire truck to drive on it.

Chair Youngs questioned the Bow in the Cloud's location. Mr. Eldridge clarified their location and that they had barrier free parking, they have walking trails and were a nature preserve also.

Mr. Wright stated the drive would be off Angling Road, they have three houses on the property and discussed their locations. The trails will be open during the days for hiking and gates closed at night. The visitor's center will have a small patio area.

Mr. Houston stated it would be very fitting to the area. Ms. Wright stated this will be Phase 1; they can't afford to build a bridge that a fire truck could use to cross the stream. This would allow people to come onto the property and use the trails.

Chair Youngs questioned the distance from the creek. Ms. Wright stated the gravel area is approximately 40 to 50 feet from the creek.

Mr. Eldridge commented on the two concrete parking spaces and an ADA accessible public restroom at the visitor's center.

Mr. Carroll questioned the signage they proposed. Ms. Wright commented on a 20 sq. ft. panel with the Stryker Nature Preserve on both sides with lights on both side. Mr. Eldridge referred to the examples provided in their packets.

Mr. Eldridge mentioned this is similar to the other walking paths set up at the Nature Preserve Bow in the Clouds, the Planning Staff looked at this as a positive way to address it, they are using the existing drive into the property, they are creating a secondary drive, the turnouts are the least impactful to create the parking spaces, the Planning Staff didn't want visitors parking on Angling Road causing congestion problems. There are no homes directly across from the drive, no lite trails, fire trucks have access, there's barrier free access and public restrooms.

Ms. Doane questioned why gravel isn't allowed. Mr. Eldridge stated in other areas of the City they have storm water management in place, and commercial parking lots have to have the water captured and treated prior to being released into the ground, and described how they had to contain it. This property is like being out in the country he stated the planning staff saw no problems with this request.

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

FINDING OF FACT

Ms. Doane moved the Finding of Fact as follows:

1.) The Finding of Fact for 2309, 2315, 2343, 2401 Angling Rd. shall include all information included in the notice of public hearing dated February 20, 2018.

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: Jenn Wright representative of the Kalamazoo Nature Center stated in 2015 they were

given 22 acres to give them a total of 30 acres. Gravel would be more porous and more nature friendly. The second request is for the sign addition for easy access and direction. The Board has approved similar requests on other properties on Nazareth Road in 2014 for the Bow in the Clouds. They will have posted hours and lock the gate for security after hours. They will build up the property with a visitor's center with restrooms, hence the need for signs. She stated no harm will come to the creek; the gravel will be 50 feet from the creek. There will be a 20 ft. panel sign with a light facing down on it. Gravel on such a small scale is not seen as a danger in regards to run off and storm water concerns.

Mr. Lager seconded the Finding of Fact.

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

Mr. Lager moved to approve the application for part 1) A dimensional variance from Chapter 6, Section 6.1 H 1, to allow gravel parking areas, where the surfacing requirement for drives and parking areas concrete or asphalt, seconded by Mr. Carroll.

Motion approved by roll call vote with unanimously.

Mr. Lager moved to approve the application for part 2) A dimensional variance from Chapter 7, Section 7.3 A, to install a 20 square foot freestanding sign where only a two square foot name plate is allowed in Zone RS-5, seconded by Mr. Houston.

Mr. Eldridge clarified the requirements on allowable signage only allows for a two square foot name plate, the Board can clarify a height maximum. They already have to apply to the five foot setback from the property line. Ms. Wright spoke to the area the sign would be placed in and at a decline; they don't want to obstruct vision to the west.

Mr. Lager moved to amend the motion approve the application for part 2) A dimensional variance from Chapter 7, Section 7.3 A, to install a 20 square foot freestanding sign, <u>to not exceed 10 feet in height,</u> where only a two square foot name plate is allowed in Zone RS-5, seconded by Mr. Houston.

Motion approved by roll call vote with unanimously.

OTHER BUSINESS:

Mr. Eldridge commented the Board had interviewed applicants, but wanted to speak with the Director of the Department before filling the one spot.

ADJOURNMENT:

Motion approved by roll call vote unanimously.

The meeting was adjourned at 8:20 p.m.

Submitted By Deanna Benthin **Date** 4/12/18
Recording Secretary

Reviewed By Peter C Eldridge **Date** 4/12/2018
City Staff

Approved By [illegible] **Date** 4-12-18
Chair