

**MINUTES
CITY OF KALAMAZOO
SPECIAL MEETING FOR
ZONING BOARD OF APPEALS
FEBRUARY 21, 2019 - 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.

MINUTES:

Mr. Houston moved to approve the minutes of January 10, 2019 as submitted, seconded by Mr. Carroll.

Motion approved by voice vote unanimously.

NEW BUSINESS:

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 4231 Portage Street, Parcel # 06-35-450-387:

ZBA #19-02-03: 4231 Portage Street: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Avanika Patel, the property owner. The request concerns the property at 4231 Portage Street, which is situated in use Zone CC, Commercial – Community District. The request, if approved, would authorize a dimensional variance from Chapter 4, Section 4.2 I 2, of 1,790 feet from the 2,640 foot (1/2 mile) separation distance required from convenience stores, package liquor stores, or gasoline stations which sell alcoholic beverages for off-site consumption. The owner plans to open a new convenience store which would also sell alcoholic beverages (beer, wine and hard liquor) for off-site consumption but the Circle K at 4117 Portage Street already sells alcoholic beverages for off-site consumption.

Please note that this request will not change the zoning classification of the property. This is a request for a variance only regarding the item described above. There were twenty-five notices of public hearing sent and nine responses were received.

Mr. Patel spoke on behalf of Ms. Avanika Patel who owns the property and will run the business. They want to open a packaged liquor store for the following reasons, first there's no store within about a mile radius that sells liquor. The Circle K is within a half mile, it's a gas station that sells gas, candy, and snacks. The proposed new store will not sell gas; Circle K doesn't sell packaged liquor. Second, the building has been vacant, he doesn't want it sitting vacant, and they can make use of the building. The State of Michigan's Liquor Commission has approved the liquor license for this location.

Attorney Gary Tibble, 5144 Gull Rd, commented Mr. Patel's new business would add four to five new jobs. The Patel family has run the former Bronco Mart prior with a good record. The State has approved a new license for this location. The Circle K is a beer store, 9% is beer, a little wine, and they sell gas. Mr. Patel will have no gas. Ms. Patel's new store would be called the Milwood Liquor Store.

Mr. Lager questioned what the special circumstances are. Attorney Tibble commented about a year and half ago the liquor laws changed, they didn't want people buying alcohol and then driving away. Few stores had packaged liquor. Now many convenience stores sell beer and wine.

Speaking in opposition:

Mike Kragt, 5210 Bennett St, Portage, asked that the Board deny the request. He stated his concerns with the existing businesses that will be forced out with this new business. He spoke of the other businesses on or near Portage Road that sell liquor and alcohol, One Well Brewing, and the renovation at 4315 Portage into a supermarket. He had concerns that some residents at apartment complexes didn't receive notices of this request.

Ranelle Smith, owner of 1706 and 1714 Bloomfield Avenue stated she submitted a letter also in opposition; she had traffic and safety concerns leaving the parking lot. There are eight liquor stores in the area already.

Mr. Carroll questioned if the business sold food would she have the same concerns. Ms. Smith stated they wouldn't have the intoxication issues, or fast in and out traffic.

Mr. Eldridge commented the Board had addressed three similar cases with the half mile separation distance where the Board upheld the separation distance requirements. He commented the Michigan Liquor Control Commission changed their regulations, small gas stations can hold an SDM License to sell beer and wine, it has been problematic for the City. The City was supposed to receive notice of everyone going through review, they received some notices soon enough to identify if they were too close to another store selling alcoholic beverages and they didn't meet local ordinances, the State still issued the license because it met the States requirements. The owner then has to deal with the local jurisdiction on the zoning issues. Just because the MLCC has issued a license doesn't give the property owner any standing. The information the MLCC provides states their approval does not supersede the

local zoning and building code regulations, it does make it clear they are subject to local approval too. It's been in effect since 2014.

Mr. Houston questioned if there's a distance requirement between an establishment that sells liquor and a residential home. Mr. Eldridge stated no, there are certain commercial zone districts that allow for those convenience stores that sell alcoholic beverages and packaged liquor as a separate category.

Mr. Carroll questioned if the State has separation distance requirements. Mr. Eldridge commented he's not that familiar with the State's requirements.

Mr. Flach questioned if the State recognizes the difference between the sales of beer and wine versus packaged liquor. Mr. Eldridge stated a SDD license is required for the sale of spirits and a separate SDM license is required for the sales of beer and wine.

Mr. Flach asked if the City of Kalamazoo recognizes the difference between the SDD and the SDM license. Mr. Eldridge stated no, the City looks at the way the ordinance states it as "alcoholic beverage sales" at gas stations and convenience stores. Mr. Flach commented One Well is not included in that ordinance, even though they sell beer there. Mr. Eldridge stated yes.

Mr. Flach asked for clarification as to why the City changed the Ordinance in 2014 to the half mile distance to packaged liquor sales. Mr. Eldridge clarified the history behind it; there was a clustering at intersections that was occurring, convenience stores, and gas stations selling alcoholic beverages. Because they are not a bar or restaurant that closes at 2:00 a.m. they can be open 24 hours and became a Public Safety hotspot for issues. The ordinance disperses the uses to eliminate concentration of them.

Chair Youngs closed the public hearing.

FINDING OF FACT

Mr. Lager moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 4231 Portage Street shall include all information included in the notice of public hearing dated February 6, 2019.

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

- 2.) A public hearing was held before the board and public comments were accepted.
- 3.) 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.

- 4.) 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: Amik Patel spoke on behalf of the applicant, Avaniika Patel intends to open a convenience store that sells beer, wine and liquor. He noted there are no liquor stores within a one mile distance of that store that sell packaged liquor. The Circle K that is within one half miles doesn't sell packaged liquor and is primarily a gas station that sells less alcohol and other products. He stated the building has been vacant for a long time and that the State has approved the liquor license at this location. Attorney Tibble spoke on their behalf and noted the business will create four or five new jobs, the Patel Family had operated and owned The Bronco Mart and ran it successfully until it sold recently. He noted it would solve the vacancy issue at this location. State laws changed recently and the State is granting licenses to gas stations to sell beer and wine. Mike Kragt spoke in opposition stating there are three businesses in the building and they would be forced out of business with this plan, one of the former tenants in this location left as recently as December 31, 2018. He indicated there are a number of alcohol sales establishments along Portage and also believes the residents in the complexes behind this location may not have received notice. Ranelle Smith spoke in opposition, she indicated her main concern was traffic, it's a high traffic area made more complicated by the ramps for the highway being near. Mr. Eldridge commented there have been three recent cases in the past couple years in which the ZBA upheld the half mile rule and noted the conflict between the State licensing rules and local ordinances, the licensing rules do not supersede local ordinances.

Mr. Houston seconded the Finding of Fact.

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

Mr. Lager moved to approve the application, seconded by Mr. Carroll.

Mr. Carroll commented there are no special circumstances and there's a strong history of precedence.

Chair Youngs agreed, there were three other similar requests before the Board and they denied all of them because the Ordinance states there is a half mile distance required.

Ms. Doane stated she finds nothing exceptional that would warrant approval.

Motion denied by roll call vote unanimously.

Mr. Houston read the application for 213 E. Frank Street, Parcel # 06-15-179-010:

ZBA #19-02-04: 213 E. Frank Street: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Dan Kastner the property owner. The request concerns the property at 213 E. Frank Street, which is situated in use Zone Live-Work 2 District. The applicant is requesting a dimensional variance from Chapter 12, Section 12.3, to allow a wall sign which projects 32 inches from the building and is mounted perpendicular to the front wall of the building, where a wall sign is defined as having a sign face projecting not more than 18 inches from the building and the sign face must be on a parallel plane with the exterior surface of the building.

Please note that this request will not change the zoning classification of the property. This is a request for a variance only regarding the item described above. There were thirty-four notices of public hearing sent and zero responses were received.

Dan Kastner, the property owner is asking for a projecting sign for visibility, this building was vacant prior and was a manufacturing building that didn't need signs. Their customers are having trouble finding the building; the flat sign isn't visible enough.

Mr. Eldridge commented as you drive in that area there are other projecting signs, the sign ordinance changed with the 2004 update. He gave a brief history of the intent to focus the projecting signs in the downtown area, where buildings had zero setbacks. He spoke to the projecting signs at 302 E. North St., 708 N. Burdick and Green Door Distilling. He stated this is a re-use of an older building along the thoroughfare. There's no space to put up a freestanding sign.

Attorney Robinson commented if the Board is inclined to grant this variance he suggested to add a condition they obtain a temporary encroachment permit since the sign would hang over the right of way and sidewalk.

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 213 E. Frank St. shall include all information included in the notice of public hearing dated February 6, 2019.
- 2.) Thirty-four 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: Dan Kastner the applicant and owner wanted a projecting sign, stating the reason is the customers have a hard time finding the location, and to increase visibility. Prior to this business, the location was vacant for five years and was a manufacturing facility and now it's more of a commercial retail space. Mr. Eldridge commented in 2004 there was an ordinance change to allow projecting signs in the downtown area, and outside of the downtown, then was changed to downtown area only, the purpose was to note the problem with visibility for zero setback buildings, and the same condition applies in areas north and south of the downtown area where commercial revitalization is occurring. Within the area of the applicants business there are at least three projecting signs already there. Attorney Robinson suggested if the ZBA is inclined to grant this variance it be conditioned upon the applicant obtaining a temporary encroachment agreement from the City.

Mr. Houston seconded the Finding of Fact.

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

Mr. Lager moved to approve the application, with the condition the applicant obtains a temporary encroachment agreement, seconded by Mr. Houston.

Chair Youngs commented on the other projecting signs previously before the Board and the approval of those signs. He reviewed the criteria and stated it's the minimum action required to make use of the structure.

Mr. Houston stated he had a hard time finding the businesses himself, and was in favor of the request.

Motion approved by roll call vote unanimously.

Mr. Houston read the application for 2805 E. Cork Street, Parcel #06-25-396-002:

ZBA #19-02-06: 2805 E. Cork Street: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Byce & Associates Inc. on behalf of Seven Points Supply. The request concerns the property at 2805 E. Cork Street, which is situated in use Zone M-2, Manufacturing – Limited District. The applicant is requesting: 1) a variance from Chapter 6, Section 6.3 D, to allow the screened waste receptacle (dumpster) to be located in the front yard, where screened waste receptacles are required to be located to the rear or to the side of the primary structure; 2) a dimensional variance from Chapter 6, Section 6.3 B 2, to allow eight foot fencing in the front yard, where the maximum fence height is six feet for the front yard or front setback areas; and 3) A variance from Chapter 6, Section 6.3 B 3, to

allow chain link fencing in the front yard where no chain link is permitted in the front yard or front setback area.

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

Brian Webster, Engineer with Byce and Associates spoke on behalf of the applicant Seven Point Supply, he gave an overview of the location and proposal for the site. The site is intended to be in the SE corner of the Davis Creek Industrial Park. The proposal is to have a 20,000 sq. ft. medical marijuana facility, parking on the north side of the building with future expansion to the south and the east are planned encompassing 6.4 acres of property for the development. He spoke of the dumpster location currently on the north side of the building adjacent to the parking that makes the access easy, and is in the most desirable location. The building itself is planned to be of metal siding and split face blocks, the dumpster enclosure would match and screened with landscaping. Mr. Webster stated the way the site lays out they have front yard on Cork St., on the west side of Full Circle Dr. and to the north of the building, three of the four sides are front yards. The zoning ordinance requires the dumpster to be in the rear or side yard which limits the placement of the dumpster enclosure. The owner intends to build in the future to the south and east limiting the placement of the dumpster in those two locations. The west side which is the only side allowed by the zoning ordinance has obstacles, one is the Fire Marshal has requested a future drive for the fire truck access around the west side of the building for future expansions. Mr. Webster commented the second reason is layout of the building, it needs to be there for future growth, puts the office on the west side of the building, the offices are the only location they have windows, and the view of the woods is spectacular, they don't want to look at a dumpster. The third factor is the overall site configuration, the dumpster pad; they can see other dumpsters at surrounding businesses. The request for the chain link fence, due to the nature of the facility, the security is important for the owner, they propose a fenced in enclosure on the north side of the building. It would allow secure access for vehicles. A small van shows up, a gate opens, it enters the fenced in enclosure, the gate shuts, the overhead door to the building opens and the van enters the building securely. The eight foot chain link fence is the desirable size because of the height and a chain link fence has visibility to see through also. It's approximately 20 by 30 feet. The ordinance only allows the chain link fence in the side and rear of the property, which would place it to the west side of the building where the pond and fire truck access needs to be.

Mr. Flach questioned the screening. Mr. Webster stated the screening would match the building and have landscaping.

Mr. Houston commented on other properties across from Full Circle Drive, already staked for future development, would the placement of their dumpster be offensive to them. Mr. Webster commented other dumpsters are already visible at existing businesses, it's a manufacturing district, M2 District, and any future businesses would have to meet the zoning district requirement.

Chair Youngs commented the screening requirements would have to meet the site plan review requirements. Mr. Webster is only requesting the placement be approved.

Mr. Flach questioned other placements of the dumpster, would a large dump truck and a fire truck fit down the road. Mr. Webster stated it would limit the future expansions to the east with the east west requirements and the Fire Departments request for a 26' road. It would compromise future expansions; the existing pond impedes their options. Mr. Flach asked for clarification on the fire lane access, if a dump truck was picking up trash, and there was an emergency, on the future expansions, could a fire truck in his opinion get back to the rear building with the dump truck already back there. Mr. Webster stated he would say no. Mr. Flach clarified it would impede the fireman's ability to do their jobs, by not having clear access to the fire lane.

Mr. Eldridge commented he understands it's the Davis Creek Business Park, and it's the first development going in. However, the dumpster enclosure is not far off the front property line, its two dumpsters, an 8 x 20 walled in enclosure with gates on the front. Coming up Full Circle Drive the first thing you see rounding the building is this dumpster enclosure not too far behind the sidewalk along Full Circle Drive. Planning Staff struggled with this one; there are alternatives on the west side of the building. Mechanical units on the east would be relocated, windows could be shifted, and floor area use on the west side could be altered. If approved the dumpster enclosure would be in the front yard for a long time. On the fencing, it's a significant ways back from the public street; the ordinance allows for a six foot fencing in the front yards, they are asking for eight foot. Its 65 foot back from the front property line, behind the parking lot. The fencing is less of a concern; it's in an industrial area. The dumpster enclosure, they have very specific standards of keeping a dumpster out of the front yard, even a distance of 20' away from a street or public sidewalk, it's far enough away from the property line, but predominant feature in the front yard. There's alternatives for the placement and discussed the frontages on the east, north and southern portion.

Chair Youngs, Mr. Flach and Mr. Carroll discussed several alternatives for placement of the dumpster on the east side, or south side by the building to meet the requirements. Mr. Webster replied by moving the building or placement of the dumpster it would either impede fire truck access of the future building expansions proposed.

Mr. Carroll questioned the uses of the Head House. Mr. Webster stated it has several vegetation rooms, grow/trim rooms, offices, and mechanical spaces. The rooms have specific dimensions for the layouts of the rooms for functionality purposes.

Chair Youngs if Full Circle Drive would be extended to Cork St. Mr. Eldridge stated no, this was a Brownfield site, engineered to create buildable areas. Chair Youngs questioned moving the dumpster to the other side of the parking lot and it would be seen would be a better option. Mr. Eldridge commented it'd be a better fit, the Board can chose to deny this variance, and then they can go back and redesign the dumpster enclosure.

Mr. Eldridge stated since this hasn't been built yet the entrance drive could be moved, for the dumpster access. The primary front yard is on the north side, even with the multiple front yards with the wrapping roadway, the most predominant side is where the parking lot and entrance of the building is. Mr. Flach questioned is the predominant front yard what they are basing the zoning off of. Mr. Eldridge stated they are basing it off "any front yard area" so the dumpster can't be located around the east side of the building, it would still be in the front yard of Full Circle Drive.

Mr. Lager questioned the eight foot fence on the side yard is permissible. Mr. Eldridge replied yes, the height and type of fence is permissible in the side yard.

Mr. Webster stated he had meetings with the City and had talks of the locations for the dumpster, they decided it was the best location for the dumpster placement on the northwest corner. The dumpster in the west side is not the most desirable.

Mr. Flach questioned what meeting the discussion occurred in. Mr. Webster stated the met with Mr. Rob Bauckham and the Site Plan group.

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

FINDING OF FACT

Mr. Carroll moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 2805 E. Cork Street shall include all information included in the notice of public hearing dated February 6, 2019.
- 2.) Twelve 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: Brian Webster, Byce & Associates spoke on behalf of the applicant, the proposed building will be at the northeast corner of the property with future expansion to the south and east. The proposed dumpster on the north side of the build is next to the parking. The screening materials will match the building and will be hidden by landscaping. Three of the four sides of the property are front yards. The west side of the building is not an option because the Fire Marshal has requested a fire lane access, the best view is to the west is desired not to be locked. The applicant informed the Board they can see three neighboring property dumpsters from their site. Security for transportation vehicles is a concern therefore an eight foot see through fence is requested and provides the most security. The enclosure will be 20 by 30 feet. Mr. Eldridge commented this property is not easily compared as it's the first development in the park. The large dumpster enclosure is very visible

upon the approach to the property. They have concerns about the proximity to the road.

Mr. Lager seconded the Finding of Fact.

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

Chair Youngs moved to approve the application for 1) a variance from Chapter 6, Section 6.3 D, to allow the screened waste receptacle (dumpster) to be located in the front yard, where screened waste receptacles are required to be located to the rear or to the side of the primary structure, seconded by Houston.

Mr. Lager commented there are special circumstances peculiar to this property with three front yards in the location of the dumpster will be a challenge with the fire road access on the east. He commented if the granting of the variance would negatively affect adjacent land in a material way. Since the industrial park isn't developed, the visibility of the dumpster from the road. Considering there are alternative spots, he's not in favor of the dumpster location.

Mr. Flach commented the west side allows the dumpster without conflicts; it's not a hardship, only a challenge. There's a fire lane access requested by the Fire Department that needs to be met. There are alternatives.

Chair Youngs reviewed the criteria conditions that must be met to qualify and stated there are options for the dumpster locations.

Motion denied by roll call vote.

Yes: Doane, Houston, Flach

No: Carroll, Lager, Youngs

Mr. Carroll moved to approve the application for 2) a dimensional variance from Chapter 6, Section 6.3 B 2, to allow eight foot fencing in the front yard, where the maximum fence height is six feet for the front yard or front setback areas seconded by Mr. Lager.

Mr. Lager commented it has the same special circumstances with the three frontages, with the fence in the furthest place, and least obtrusive area, and security is an important corner he's in favor of this request.

Chair Youngs reviewed the criteria conditions that must be met to qualify; security is of the utmost importance and stated he was in favor.

Motion approved by roll call vote unanimously.

Chair Youngs moved to approve the application for 3) A variance from Chapter 6, Section 6.3 B 3, to allow chain link fencing in the front yard where no chain link is permitted in the front yard or front setback area seconded by Mr. Houston.

Chair Youngs reviewed the criteria conditions that must be met to qualify, there's a need to see through for safety reasons and stated he was in favor.

Mr. Flach asked about decorative metal fencing. Mr. Eldridge stated metal fencing was preferred.

Motion approved by roll call vote unanimously.

Mr. Houston read the application for 216, 220, 302, 302(Rear), 308, 308 (Rear) and 316 Lake Street / 205 and 209 E. Stockbridge Avenue, Parcel #06-22-344-262, #06-22-344-261, #06-22-415-001, #06-22-415-260, #06-22-415-002, #06-22-415-259, #06-22-410-002, #06-22-349-001 and #06-22-349-003:

ZBA #19-02-07: 216, 220, 302, 302(Rear), 308, 308 (Rear) and 316 Lake Street / 205 and 209 E. Stockbridge Avenue: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by the LIFT Foundation. The request concerns the properties at 216, 220, 302, 302(Rear), 308, 308 (Rear) and 316 Lake Street / 205 and 209 E. Stockbridge Avenue; which are situated in use Zone CC, Commercial – Community District; Zone CN-1, Commercial – Neighborhood District; and M-1, Manufacturing – Limited District. The applicant is requesting a use variance from Chapter 4, Section 4.2 Q.3, to allow residential dwelling units on the ground floor level of each of the three proposed apartment buildings (60 residential units total), where retail or other commercial floor space is required on the ground floor level in Zone CC. Please note that the majority of the land area assembled for this project is located in Zone CC. Therefore, the development regulations for Zone CC are applicable site development standards for the multi-family project.

Please note that this request will not change the zoning classification of the property. This is a request for a variance only regarding the item described above. There were forty-eight notices of public hearing sent and two responses were received.

Attorney Jeff Swenerton, spoke on behalf of the Lift Foundation, the proposal consists of three different buildings, in three different zoning classifications, in the CC District. The zoning ordinance permits mixed use multi-family residential with commercial provided there's commercial on the first floor. They want to do 60 units in the three buildings and are asking for a minor use variance to have residential in buildings two and three that are not on the road frontage. This will permit them to have barrier free housing on the first floors and meets the Master Plan for 2025, working to achieve affordable housing. He spoke of the Lift Foundation and their background. He stated it will be a community asset in the CC Zoning District. The first floor will have a day care center, and may have residential units in back. They have purchased eight parcels and are closing on two other properties. The commercial is in the CC District the three buildings are accessed off E. Stockbridge Avenue and are barrier free. He spoke about the north half of the project, the flooding in this area has been a concern, and this project will not exasperate the flooding concerns, but will reduce those. The bioswale will be dug out, and help the flooding conditions. They could have designed more buildings there, but chose not to at this time. They could build these buildings up to six stories, but will only be

three stories each. The special circumstances are the need for the barrier free to be on the first floor.

Lisa Wilcott, Lift Foundation, 2725 Airview Blvd. Ste #302, commented they redesigned this project after hearing the neighbor's concerns; they have lots of flood retention and will be vetted by the DEQ, and won't be disturbing wetlands. They intend to make it a community asset, with a community garden, a walking trail, they won't disturb wildlife, she had the DNR check the area, there are no endangered species in the area. There will be community space available within these buildings. She spoke of the Lift Foundations work within the community.

Mr. Houston commented the area is a known area to flood, by adding their buildings, what impact will that have. Attorney Swenerton stated overall with the bioswales on the north side it will be an improvement even with the three buildings it would be an improvement to the flooding concerns there. Ms. Wilcott stated the Stockbridge properties are not in the flood plain area. Mr. Houston commented the City has been trying to solve the flooding in this area for over fifty years and they feel they have the solution. Ms. Wilcott stated they have a solution to have more places for the water to go. The bioswales will create a deeper place for the water to go, and the DEQ will have to approve.

Mr. Lager commented the purpose of the variance is to simply allow barrier free access on the first floor.

Chair Youngs clarified the Board is not deciding on any flood plain issues, only to decide if to allow residential units on the ground floor.

Mr. Flach commented the building on Stockbridge will have commercial space. Attorney Swenerton replied correct.

Mr. Flach asked if this meets the future Master Plan. Mr. Eldridge replied yes, from the mixed use development stand point. The City has pushed for commercial on the public street. The Master Plan is for affordable housing. They are doing amendments to the Zoning regulations; they are looking at project that is more than just affordable housing units. It has a day care center on the property; it's not just an affordable housing complex. They are looking at ordinance, the intent was to create mixed use buildings, however, they are finding a lot of mixed use projects aren't 100% commercial on the ground floor. Many projects and variations have come before the Board for variances. They plan to make changes to that ordinance.

Speaking in favor:

David Anderson, member of the Lift Foundation Board, stated they are the largest local non-profit developer of affordable housing in Kalamazoo County; their mission is to create, preserve, manage and own for the long term affordable multi-family housing. They have redesigned the development after hearing the neighbor's concerns. The Stockbridge property doesn't flood and never has the intent will be to help and exceed the requirements. The three story buildings don't have elevators, they aren't required, and needs the barrier free on the ground floor. They are asking for the two interior buildings where a commercial presence wouldn't be appropriate. This is a mixed income project for low to moderate income.

Speaking in opposition:

Richard Stewart, resident and owner of a business in the proposed Southtown Neighborhood, he spoke to the City not recognizing the Southtown Neighborhood. He stated the use variance application by the Lift Foundation is inappropriate and unethical, because other sites are available. On January 3, 2019 The Lift Foundation applied to rezone the same parcels to allow a 90 unit apartment building and the Planning Commission denied the application after hearing neighbors speaking out against the development. Now Mr. Anderson is side stepping the Planning Commissions denial and going before the ZBA with a new revised plan. This plan doesn't overcome the objections, it brings a new safety concern, and the proposed site is four acres of natural greenspace and a water shed. It's the last natural green space, the last natural water shed, the last habitat for wildlife. Flooding is the number one issue they deal with. He spoke to the City connecting the sanitary sewer to a separate sewer system that causes extreme pressures to the neglected systems. The City states each house can get a backflow preventer valve installed in their house. He feels that's a band aid solution to the problem of the high pressure in the sanitary sewer lines. He spoke to the letters of support from people who don't live in the neighborhood. He feels the Kalamazoo Mental Health and the KVCC buildings placed additional burdens on the existing system. He spoke to Mr. Andersons comment on meeting the requirements as KVCC and Kalamazoo Mental Health that has failed. He has health and safety concerns for the retention ponds in the area for children.

Mr. Carroll asked what neighborhood the City says he lives in. He lives in the fringe of Vine and Edison Neighborhoods.

David Greeley, 326 Lake St., stated he has rental properties at 320, 322 and 324 Lake St. that border the 300 ft. radius of this property. He applauded the City wanting to help low income people in the City and commented he rents to low income families too. His concern is with street flooding and the sewers backing up. The streets flood around them, he parks his cars up higher during flooding. The City doesn't have the funds to fix the flooding, but asked that they don't make it worse. Adding more rentals into this area isn't a good choice.

Mike Fleckenstein, owner of property at 935 John St., stated this variance has implications, noting similar variances have been granted. The retention on site of rain and storm water on site is good, but feels you'll see run off. He feels an engineering study needs to be done on the sewage lines.

Ann Brown, 215 Lake St., runs a child care center and has concerns with flooding. Her other objection is this project is proposing a child care center and so is the proposed YMCA center at Lake St. and Portage St.

Vicki Vanos, 326 Lake St., stated she met last month with the Planning Commission and they voted down to change the zoning at this property. There have been two floods in the last five months. She's a limited licensed psychologist in the City of Kalamazoo with children, for over twenty years, she feels everybody deserves the same treatment and had concerns with putting lower income people who work every day, live paycheck to paycheck and house them in a flood plain area, they deserve better. There's housing being built downtown, low income housing units shouldn't have to be built in a flooded area. Upjohn Park is under water, then goes to Bronson Park, look at the difference.

Jeffrey Neal, 1222 John St. he's lived there for over 20 years, and owned a business downtown on the Mall for over 30 years, the downtown business district was extended. He's against the variance for this affordable housing project, traffic, light pollution, crime and decreased property values are a few of his concerns. He understands the needs for affordable housing, and would like to see a project similar to a neighborhood by Farmer's Market, houses where people can take pride. He spoke of Interfaith Homes, a Lift Foundation project, with no hand gun signs, stating no trespassing, illegal activity; this isn't what they want in this area.

Tina McClinton, 310 Lake St., she's lived there for over thirty years, she feels safe, doesn't want to lose the green space, they lost twelve acres with KVCC building, there is a lack of infrastructure. The parcels in this application are the last greenspace in this neighborhood; she spoke of the wildlife that would be disturbed, the flooding in the area. The Planning Commission denied this plan now it's before the ZBA with another request. She's already flooded three times in the last three years, requiring a new furnace and water heater.

Linda Runkel, 307 Stockbridge, stated she owns three other properties on Stockbridge, has a beautiful backyard, she's very upset over this request.

John Davis, 920 S. Burdick, he stated no one would build a house on Lake St or Burdick, they know they have a water problem and it floods, He understands the issue of having a shortage of low income housing so build them housing and put them in an area that's known to flood isn't a good idea. The City has a flooding problem, it will flood again. There are other places to build, the Planning Commission said no, please listen to them.

Jacob Lamphere, 148 Stockbridge, stated Stockbridge floods, he had six inches of water in his basement, the DHS's parking lot floods. He has problems with retention ponds and bioswales supposedly taking care of the problems of flooding.

Mr. Eldridge commented this is a challenging area, from a hydrology standpoint. He received feedback from the Director James Baker, he relayed any development in this area has to demonstrate there is net zero storm water discharged. The storm water created on the property has to be managed on the property. The sanitary sewer capacity the Engineering Staff reviewed it and said there are no issues with capacity to bring 60 more units on line. There's no deficiency. Mr. Baker explained during a flood event the sanitary sewer, when the streets flood and the manholes are submerged there's infiltration of water around the manhole covers and water does get mixed into the sewage and increases the flow, in some cases it reverses the flow, that's the backups that occur. There is a program to install back flow preventers units in homes to address no reverse flowing. Mr. Baker stated there no capacity deficiency for these 60 units. Mr. Baker stated to contact Public Services for any flooding concerns. He stated the original request was for a 90 unit project that was in the flood plain, it's now a 60 unit project that shifted to the south and the three buildings are outside the flood plain. The use variance is for the ground floor usage only. The Board has approved other mixed use variance requests.

Mr. Carroll clarified the original request was denied at the Planning Commission. Mr. Eldridge commented this is a concept plan only; the site plan review committee will have to review the plan next.

Mr. Eldridge clarified if this development had commercial use on all three buildings on the ground level. It would go straight to the site plan review.

Chair Youngs clarified the request before the Zoning Board is for the two buildings to have ground floor barrier free units rather than a commercial use.

Attorney Swenerton stated they were before the Planning Commission to rezone the property only.

Mr. Carroll questioned if residential or commercial use had a higher demand on the sanitation system? Mr. Eldridge stated he'd only be guessing if he answered.

Mr. Carroll clarified the Director Mr. Baker stated there was no issue with the demand on the sewer system. He commented the occupants, being lower income or with accessibility issues, shouldn't they have commerce near them, food, service, etc.

Chair Youngs closed the public hearing.

FINDING OF FACT

Ms. Doane moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 216, 220, 302, 302 (Rear), and 316 Lake Street / 205 and 209 E. Stockbridge Avenue shall include all information included in the notice of public hearing dated February 6, 2019.
- 2.) Forty-eight notices of public hearing were sent and two 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 from the City Planner and minutes from the January 3, 2019 meeting.
- 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: Chair Youngs mentioned a conversation with a person connected to this case, upon referral to the ZBA no further discussion occurred. Attorney Jeff Swenerton, spoke to the request, the Lift Foundation wants a use variance for the housing units on the bottom floor of buildings two and three. It was stated that it fits in with the Master Plan. The new plan includes bioswales to aide in flood minimzation. A total of 60 units in the three buildings. A new plan will have to be approved by the DEQ and be environmentally sound. Staff confirmed the mixed use such as

current request is consistent with Master Plan and is being updated to reflect this. Other exceptions are it's not in a commercial node having been approved. David Anderson, Lift Board member spoke in favor, spoke to the mission, the modified plan to reflect community feedback. It will not have elevators so to be accessible it needs ground floor units. Speaking in opposition; Richard Stewart, spoke to the loss of four acres of green space, it's the last habitat for wildlife, they have problems with sewer lines, and plumbing lines backing up, and standing water. David Greeley, stating sewage and street flooding is already significant would be made worse with the new project and wishes to maintain green space. Mike Fleckenstein, he didn't have objections to the variance itself but had concerns with flooding and related dangers. Ann Brown, concerns with flooding, adding a daycare with another one Lake and Portage being added, making it the third day care in the area. Vicki Vanos, the Planning Commission already denied their application, due to flooding concerns, doesn't feel people should live in high flood areas or less desirable areas. Jeffrey Neal, feels the density, cars, traffic, and crime will be increased by the presences of this project, and the area will be better served by other types of businesses. Tina McClinton, doesn't wish the natural area to be changed, concerns with flooding and increased crime, showed pictures of wildlife and flooding. Linda Runkel, wishes to maintain the greens space, concerns with flooding. John Davis, concerns with flooding, people living in a heavy flood zone, it's not safe, and would be too dense. Jacob Lamphere, concerns about increased flooding on Stockbridge. Mr. Eldridge reports development has to improve the storm water, it will stay on the property and engineering reviewed it, determined it will not overload the sanitary sewer and the backflow preventers will aide in stopping the sewer backup issues. All three buildings will be out of the flood plain area.

Mr. Carroll seconded the Finding of Fact.

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

Mr. Lager moved to approve the application, seconded by Mr. Houston.

Mr. Houston stated he had mixed feelings. The ZBA concerns are with the use only, the site has issues, and he empathizes with the area.

Mr. Lager stated Kalamazoo has a water problem. However, they are discussing the first floor only on the buildings and creating barrier free access, it meets the Master Plan, and the future zoning changes planned. He's in favor of the first floor placement of the residential units.

Motion approved by roll call vote.

Yes: Houston, Youngs, Lager, Doane, Flach

No: Carroll

Mr. Houston read the application for 2400 Portage Street, Parcel # 06-27-428-002:

ZBA #19-02-08: 2400 Portage Street: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by The Heritage Community of Kalamazoo. The request concerns the property at 2400 Portage Street, which is situated in use Zone RM-15, Residential – Multi Family District. The applicant is requesting a use variance from Chapter 4, Section 4.1, to authorize a rehabilitation and therapy clinic operated by Bronson at this location on the Heritage Community of Kalamazoo campus, where medical service uses are not permitted in Zone RM-15. The proposed rehabilitation and therapy clinic will be approximately 2,900 square feet and located in an existing building. It will service both Heritage Community of Kalamazoo residents and outside patients.

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

Jay Prince, CEO of Heritage Community, he's an advocate for seniors; this request is for a small outpatient rehab center for the local community. This center is an internal renovation of an existing structure. It will be on the lower level of the Old Upjohn Nursing Home. They provide internal and external rehab, but will be partnering with Bronson for outpatient services. The seniors will benefit the service of Bronson, also the seniors in Milwood who can come; they have a good relationship with the neighbors.

Susan Blanc, it's about a 3,000 sq. ft. area, it will have three therapists and administrative staff, open Monday through Friday. It will have minor interior renovations.

Matthew VanDyke, Relator with Miller-Johnson, commented the need for the variance is due to being in a RM-15 and rehab centers are permitted, but not the outpatient portion.

Rachael Olmstead, CFO Heritage Community, she stated this will complement the other uses on the campus.

Paul Barber, Vice President of Operations for Heritage Community stated he's in support.

Mr. Eldridge questioned what the number of outside patients they foresee coming in. The applicants couldn't guess, but stated they have seven parking spots for outside patients. Mr. Eldridge spoke to the site plan review from 2002 when they partnered with Borgess and set up a small clinic on site.

Chair Youngs closed the public hearing.

FINDING OF FACT

Mr. Flach moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 2400 Portage Street shall include all information included in the notice of public hearing dated February 6, 2019.
- 2.) Fifty-eight 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: Jay Prince, CEO Heritage Community, small interior remodel, with seven parking spots being added, it will be an asset, a win-win to the community by partnering with Bronson, it will decrease traffic, Matt VanDyke, traffic shouldn't change or even decrease, the ordinance does allow inpatient, but doesn't allow outpatient, Rachel Olmstead, it's in a good location, Paul Barber commented he was in support.

Mr. Houston seconded the Finding of Fact.

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

Ms. Doane questioned why outpatient was excluded. Mr. Eldridge commented it could intensify the use; require more parking would be required.

Chair Youngs moved to approve the application, seconded by Mr. Lager.

Chair Youngs reviewed the criteria conditions that must be met to qualify and stated he was in favor.

Ms. Doane stated the outside traffic would be minimal.

Mr. Carroll stated he was in favor.

Motion approved by roll call vote unanimously.

OTHER BUSINESS:

Mr. Lager made a motion to reappoint Reed Youngs as President and Matt Lager as Vice-Chair. This motion also included Jeff Carroll to be appointed as Secretary. Motion approved by voice vote unanimously.

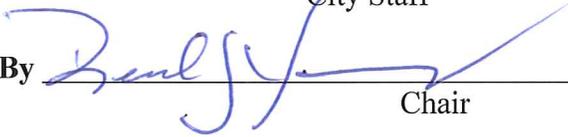
Mr. Carroll made a motion to approve the recommendation of Dick Skalski to the vacant seat, seconded by Chair Youngs.

ADJOURNMENT:

The meeting was adjourned at 10:19 p.m.

Submitted By  Date 3/14/2019
Recording Secretary

Reviewed By  Date 3/14/2019
City Staff

Approved By  Date 3-14-19
Chair