MINUTES
CITY OF KALAMAZOO
ZONING BOARD OF APPEALS
May 9, 2019 - 7:00 p.m.
CITY COMMISSION CHAMBERS

Members Present: Matt Lager, Dick Skalski, Reed Youngs, Chris Flach, Christina Doane, Jeff Carroll

Members Absent:

City Staff: Pete Eldridge, Zoning Administrator; Clyde Robinson, City Attorney; Beth Cheeseman, Recording Secretary

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

Mr. Eldridge mentioned that there is a change to the agenda. The second item **ZBA #19-05-13** 1012 S Westnedge Ave. is being held over to the June 13th agenda, the purchasing on the property is not currently closed. There is also an additional item added to other business to discuss interviewing one of the vacancies.

MINUTES:

Mr. Lager, moved to approve the minutes of March 14, 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.

ZBA#19-04-12: 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) **approval of a 'Rehearing' per Section 8.2 of the Rules of Procedure to allow the Board to consider another request for a variance previously denied in February of 2019 for the placement of dumpsters in the front yard setback; and** 2) **If the 'Rehearing' is granted, a variance from Chapter 6, Section 6.3 D, to allow the screened waste receptacles (dumpsters) 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.

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

Brian Webster was the applicant for the variance,

Mr. Carroll read the application for 2805 E. Cork Street, Parcel #06-25-396-002: Which is situated in the use zone M-2 manufacturing limited district. The applicant is requesting one: approval of a rehearing per section 8.2 of the rules and procedure to allow the board to consider another request for a variance previously denied in February 2019 for the placement of the dumpsters in the front yard setback. Their second request is if the rehearing is granted a variance from section 6.3 D to allow the screened waste receptacle dumpster to be located in the in the front yard where screen waste receptacle is required to located in the rear or to the side of the primary structure. Mr. Carroll informed that the request will not change the zoning classification that it is a request for a variance only.

Mr. Eldridge informed that the first part of the application for the approval of a rehearing that it's handled without comment of the applicant. The board will have to determine if there is new or substantial information provided after the request was presented and denied from the board. If the board agrees the board will take a vote to approve the rehearing and move to following steps. He mentioned that the applicant did provide a revised plan for dumpster placement; it is currently shifted back near the building which added quite a bit of landscaping around it and recessed it from the parking lot and the building. The applicant provided alternative layout, showing the placement. In addition, this project is also going through site plan review. The determination is based on the packet submitted by the applicant.

Mr. Flach clarified the information of the rehearing request. That the location of the dumpster was relocated but that it still needs a variance.

Mr. Lager; Supported by Mr. Carroll; Motioned for approval of a 'Rehearing' per Section 8.2 of the Rules of Procedure to allow the Board to consider another request for a variance previously denied in February of 2019 for the placement of dumpsters in the front yard setback. Voice Vote was taken

Mr. Lager explained that he is voting in favor of the rehearing. The layout is different; the board had various comments of the layout of it from the last hearing. He stated that this is response to those comments from the previous hearing.

Mr. Eldridge conducted roll call – vote was unanimous

Brian Webster; from Byce & Associates, 487 Portage St.; He suggested another possible option to the committee that would be possibly more amendable. He suggested an alternate location that would be closer to the building and screened with masonry walls and landscaping. His second suggestion would be to locate the dumpster to the west end of the parking lot, which he believes would be more favorable. The only issue with the second option would be that the spot

would not be accessible for emergency responders which would cause a safety issue. The building will have around the clock monitoring.

Mr Lager clarified that there are two alternative options but the second option that would be located on the Westside of the parking lot would have safety issues in regards to inaccessibility for emergency vehicles. Mr. Lager questioned if this would of the zoning code, Mr. Webster informed him that technically it meets the zoning code. There was also clarification between Mr. Lager and Mr. Webster that the Southside option would need to be approved and it would need a variance.

Mr. Flach questioned Mr. Webster's experience with traffic in the area. Mr. Webster informed them that there is no development there at the moment so there is no traffic currently. There is also no residential in the area.

Mr. Eldridge informed the committee that the other site plan that was submitted for another facility on the Northside of the same road and that will have the dumpsters positioned outside of the front yard.

Mr. Skalski confirmed with Mr. Webster if there will be landscaping around the dumpster. Mr. Webster confirmed that there will be landscaping and a closure of some sort.

Mr. Skalski also questioned the type of service road will there be for the emergency vehicles to assist eliminating damages from the emergency vehicle. Mr. Webster informed the committee that they have requested a paved drive, initially it will be gravel.

Kyle Barker, 1210 Crown St. He is the developer and tenant of the site. He is concerned it will put the employees in unnecessary risk. He does want to see the project move forward in a compliant manner. He wants to make sure his employees are safe, so the visibility of the whereabouts of the employees is important to him for security and safety reasons.

Chair Youngs closed the public hearing.

Mr. Eldridge addressed some issues of the matter on hand. He mentioned that there was no prior mention of safety concerns of the dumpster placement for the employees or any other individuals. He mentioned that the board has the latitude, that if the site plan was to move forward it is important to identify where the dumpster is to be located specifically. He also informed the committee that in order moving forward, the applicant is to provide a site plan that meets all the ordinance requirements. He included the floor plan that is being proposed.

Mr. Carroll questioned if the conforming option, that does not change the footprint of the building. Mr. Webster informed that they shifted the side of the building.

Ms. Doan questioned if the conforming property has fewer front yards and what is different. Mr. Eldridge informed that the other development of the Northside on Full Circle Dr. has an access road that wraps around the building. They placed the dumpsters in the Westside yard of that building.

Mr. Lager questioned if they are voting on 2 different plans. Mr. Eldridge informed them that he is only supplying supplemental information of what has been proved to site plan committee.

Mr. Skalski expressed his preference of locating the dumpster inside the parking lot area. He would not prefer the Westside of the building. He believes it would be a visible problem.

City Attorney Robinson stated that the issue with cannabis is not really known what kind of problems it will create, there does have to be security. The waste will attract individuals who believe there to be traces of remaining debris of substance. The state of Michigan has administrated that the substance has to be impure with other waste like compost when being disposed.

Mr. Skalski questioned the hours of operation for the facility and Mr. Webster informed the committee members that it be a twenty four hour facility.

FINDING OF FACT

Mr. Lager 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 March 26, 2019.

2.) 12 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 of Byce & Associates spoke for the applicant. The property at issue has two front yards on Full Circle Dr. which makes the placement of the dumpsters challenging. The applicant presented a visual of the conforming location of the Westside of the building and noted potential concerns in regards to safety caused by trespassers as well as access for emergency vehicles. He presented a non-conforming location of the Westside of the parking lot that will be voted on. Kyle Barker the developer of the project spoke in favor of the project and noted the safety concerns in regards to conforming placement of the dumpster.

Mr. Carroll seconded the Finding of Fact.

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

Mr. Flach Supported by Mr. Skalski, Motioned to allow the variance from Chapter 6, Section 6.3 D, to allow the screened waste receptacles (dumpsters) 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.

Mr. Eldridge questioned if the motion was due to the diagram that was in the packet. Mr. Flach clarified that the motion was determined by what was included in the packet, no other information.

Mr. Carroll noted he is conflicted with the issue, he explained that the fact there is a conforming design carries a lot of weight toward conforming. He is sympathetic of the safety concern, he is apprehensive as to why it was not disclosed at the prior meeting. The fact the employees are conflicted between safety and no safety concerns, is a matter that he must consider as a neutral situation. He expressed that when it comes to the decision making, whose rights or concerns does the committee need to consider the most, the applicant or the community. He appreciates that they moved the building.

Mr. Flach expressed that he is favor primarily because with the two front yards, geographic restrictions, the safety concerns and the fact this relatively new. He believes the issue in question is very low risk in comparison with what could potentially happen with possible trespassers.

Mr. Skalski is voting in favor because of the issues that were presented. He believes the location could potentially maximize green space. He is looking at the short term benefit as well as protecting some of the green area that could be lost with other alternatives

Mr. Eldridge conducted roll call – vote was unanimous motion passed.

Mr. Carroll read the application for 228 Rose Place, Parcel # 06-22-163-015:

ZBA#19-05-14: 228 Rose Place: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of by Robert and Cheryl Besser owners of 228 Rose Place, which is situated in Zone RM-36, Residential – Multi Dwelling District. The applicants are requesting the following dimensional variances from the setback provisions in Chapter 7 of the Code of Ordinances, Section 7-5 Keeping of Rabbits and Poultry: 1) A dimensional variance to authorize a coop for chickens within 16 feet of the west property line, 2) A dimensional variance to authorize a coop for chickens within four feet of the north property line, 3) A dimensional variance to authorize a coop for chickens within 14 feet of the east property line. Enclosed yards or coops are required to be located not less than 30 feet from the street line (front property line) or any adjacent property line.

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

Mr. Besser was the applicant for the variance,

Mr. Besser, 228 Rose Place; informed the committee that he and his wife have looked into having chickens on their property for a while and stopped because they knew they would not be able to meet the requirement and ordinance with their small plot. They have verified with Skylar Starling, who responded that he had no issues with Hens since they do not have any roosters. They eventually built a chicken coop that houses roughly twelve chickens. If they receive a rooster they place a no crow collar on them, because they are too young to butcher. He mentioned that he did have an issue with a neighbor complaint a few years back due to the fact his daughter were raising a young rooster for an upcoming fair. They have a variety of hens and chickens and they only do this mostly for the eggs. The chicken coop is almost completely barrier proof, they monitor the chickens and they do not get out. They have a hard wire cloth and they built a smaller coop to acclimate the newer chickens.

Ms. Besser mentioned that the eggs they do receive, one of their neighbors places fruits and vegetables on the fence and they feed that to the chickens and they give their neighbors eggs in exchange for the fruits and vegetables, she also exchanges eggs for neighborly favors such as a ride to somewhere since she is blind and cannot drive. They do a lot of composting.

Mr. Besser also included that he has 12' inch bedding that is composed of pine shavings and leaves and makes the hen house odor free. They have fly traps to rid of the fly problems; the hens may make a little noise when they are laying eggs.

Mr. Carroll asked how long they have had the chickens; Mr. Besser responded that it's been roughly three years. Mr. Carroll also asked if they have new neighbors, Ms. Besser mentioned that to their knowledge they do not know if they have new neighbors because of where they are located, they towards the back of the street. They do know there is rental property around the area. Ms. Besser explained that she has spoken with her a lot of their neighbors and made sure that it was acceptable with the matter at hand that no one seemed to have an issue with it.

Ms. Doan questioned if they were in compliance and Mr. Besser explained that he did a lot of research to make sure that he is in compliance with the situation, so to his knowledge he believes he is in compliance.

Chair Youngs opened the public Hearing

Mr. Starling, 224 Rose Place; is opposed to the situation. Initially he was accepting to the matter; his only concerns were the roosters and the smell. He mentioned that since they have built it, there have been numerous of times that his roommates and he have been woken up around three in the morning to the crows of roosters. He admits that Mr. and Ms. Besser have taken appropriate measures to quiet the roosters with the crow collars. Unfortunately that is not satisfactory enough from being disturbed by the roosters. Mr. Starling claims that he has been woken up eighteen day's in a row and they have filed noise complaints because his roommates have been having issues at work from lack of sleep. Mr. Starling presented two written letters from his roommates in regards to the issue. Mr. Starling claims that due to the smell he cannot have his windows open. He also presented a recording of the noise when he filed the complaint. He mentioned he has tried to talk the issue with Mr. and Ms. Besser but there has not been any improvement.

Mr. Carroll asked Mr. Starling that if Mr. and Ms. Besser could comply would it be a problem and Mr. Starling responded that he would not have a problem if they could comply.

Barb Shell, 828 S Rose; she is good friends with Mr. Starling. She and her husband also have chickens. She is in agreement with Mr. Starling that the area is small in Mr. Besser and Ms. Besser property. She agrees that you can smell the chickens and hear them throughout the day and night. She mentioned that other various neighbors have mentioned hearing the chickens. She added that she can also tell they are roosters not hens by the sounds of the crows.

Bobby Shell, 828 S rose; Ms. Shell's husband. He explained that he discussed with Mr. Starling that if this matter is approved he would assist in building a fence on his property to give him some privacy. He would like there be some sort of compromise amongst all the neighbors.

Chair Youngs closed the public hearing.

Mr. Eldridge mentioned that a copy of the zoning violations is included in the presented packet. He mentioned that the board has not approved any variances for chicken coop violations; he would like the board to take that into consideration with their deliberations.

FINDING OF FACT

Ms. Doan moved the Finding of Fact as follows:

1.) The Finding of Fact for 228 Rose Place shall include all information included in the notice of public hearing dated April 23, 2019.

2.) 106 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.): Two letters from Skylar Starling's roommates, Matthew Camden and Vanessa Chase

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: Mr. Besser one of the applicants, spoke in favor, and the small plot prevents them from being in compliance. He has primarily hens and that he avoids roosters. The chickens are secure and taken care of, has taken steps to prevent odor. He has spoken with his neighbors; Mr. Bloom and Mr. Starling report no issues and number of empty nearby of rental property as well. Applicant reports that beyond property size they are in compliance. Mr. Starling opposed, originally had no issues overtime reports noise

concerns from the chicken on a frequent bases. Mr. Starling reports occasionally smell and filed a noise complaint on March, 2019. Ms. Shell opposed, agrees that the applicant does not have sufficient space and she can hear the chickens. Mr. Shell opposed, the yard is too small to keep chickens, also the noise and lack the ability to ignore the chickens due to privacy issues. The City staff also reports that the board has not approved a similar case in the past.

Mr. Lager seconded the Finding of Fact.

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

Mr. Eldridge mentioned that given the size of the property, the three votes should either be taken in one group or separate.

Attorney Robinson mentioned that it is hard to tell the property line and the rear of the house.

Chair Youngs, second by Mr. Carroll Motioned for the approval of a dimensional variance to authorize a coop for chickens within 16 feet of the west property line

Mr. Eldridge conducted roll call – Vote was unanimous motioned denied

Chair Yougs, second by Mr. Carroll motioned for the approval of a dimensional variance to authorize a coop for chickens within four feet of the north property line,

Mr. Eldridge conducted roll call – Vote was unanimous motioned denied

Chair Youngs, second by Mr. Carroll motioned for approval of a dimensional variance to authorize a coop for chickens within 14 feet of the east property line. Enclosed yards or coops are required to be located not less than 30 feet from the street line (front property line) or any adjacent property line

Mr. Eldridge conducted roll call – Vote was unanimous motioned denied

Mr. Carroll read the application for 525 Pleasant Home Court, Parcel # 06-33-484-002:

ZBA# 19-05-15: 525 Pleasant Home Court: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Galina Emelyanova owner of 525 Pleasant Home Court which is situated in Zone CO, Commercial – Office District. The applicant is requesting a use variance from Chapter 4, Section 4.1, to authorize the placement of Galina's Tailor Shop in the former office building located on the property, where a 'Personal Convenience Service' such as a tailor shop or other personal service type businesses are not permitted in the Commercial - Office 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 20 notices of public hearing sent and one response was received.

Galina Emelyanova was the applicant for the variance,

Ms. Emelyanova, 525 Pleasant Home Court; approached and explained that she has been in business for almost five years and every year her rent goes up and is almost five hundred dollars. She decided to buy her own property to keep the rent price the same. She went to realtor to assist her in finding a property who informed her she can mover her business. She started renovating the property. She is asking to move her business from Westnedge to her personal property at 525 Pleasant Home Court. It would be six hour days and Saturdays would be by appointment. She explained she would take holidays off and school breaks for her son. She won't be working every day.

Mr. Kindig, is her husband; explained that the property would be a tailor office instead of a dental office. The parking agreement is already in place and only need to clean the inside and outside and some minor maintenance.

Mr. Flach questioned if they are going to change the exterior of structure and Mr. Kindig responded they would update the handicap and some landscaping.

Chair Youngs closed the public hearing.

Mr. Eldridge mentioned that he included emails in regards of the property in question into the packet. He explained that commercial office zoned district, personal service use is not included in this zone. The commercial office is designed for low intensity commercial use area; typically offices are utilized most heavily Monday through Friday normal working hours and very minimal on the weekends. He explained that Commercial office is a good transition to residential from the commercial community, their realtor reassured them everything was okay and obviously it wasn't. He presented a zoning map for a visual of the area and that he suggested the applicant contacting their neighbor, at 2250 S. Westnedge to suggest a rezoning who then denied the request. Which now led the applicant to where they are now, requesting a variance approval.

Mr. Carroll questioned if dentist provide personal services. Mr. Eldridge explained that dentist offices are categorized as office uses that are allowed.

Mr. Youngs mentioned that this is an existing facility, and doesn't have any high traffic and the parking lot is already taken care of.

Mr. Lager questioned if it would be possible to have variance that is intended for the business and not for the land. Mr. Eldridge responded that this goes with the land it would be difficult to identify it for the user or business.

Mr. Eldridge explained that if the board is concerned of certain aspects to approving this they can tie contingencies to the approval.

Attorney Robinson requested that if they can prohibit general retail sales for the variance. That it would have to be a personal service type business.

Mr. Carroll asked if the staff have concerns about the hours. Mr. Eldridge explained the hours are limited. Ms. Emelyanova explained the hours that it is by appointment and that you can look at her website. She mentioned a letter she received. Mr. Eldridge asked if there will be products that she will be selling and Ms. Emelyanova replied that she will not be selling any products.

FINDING OF FACT

Mr. Flach moved the Finding of Fact as follows:

1.) The Finding of Fact for 525 Pleasant Home Court shall include all information included in the notice of public hearing dated April 23, 2019.

2.) 20 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: the applicant Galina Emelyanova mission is to move her tailor shop to avoid increased rent and save money on her budget. She purchased her property and was misled by her realtor in believing it was a conforming use when in fact it wasn't. She says that her business is low traffic and she has already started renovations. There will be no retail sales. This will be by appointment the applicant is expecting low traffic. Mr. Kindig explained that there will be no change to the structure of the property only basic maintenance and improvements. Staff said they have tried to rezone that was ineffective. Attorney Robinson requested they restrict retail sales.

Mr. Lager seconded the Finding of Fact.

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

Mr Carroll, second by Mr. Lager use variance from Chapter 4, Section 4.1, to authorize the placement of Galina's Tailor Shop in the former office building located on the property, where a 'Personal Convenience Service' such as a tailor shop or other personal

service type businesses are not permitted in the Commercial - Office District with the condition that retail sales shall be prohibited.

Mr. Flach mentioned that as a realtor himself he sympathized for the applicant and is in favor for the applicant.

Mr. Lager explained that he is in favor and that a tailor shop is much more consistent with the traffic and use that you would see at a dentist office.

Mr. Eldridge conducted roll call – vote was unanimous motion passed

OTHER BUSINESS:

Mr. Youngs metioned that he met with Beth Vandenhomburg in regards to fill the open vacant spot on the board. She works at WMU and lives in the neighborbood. She seems to have the right motivation to serve.

Mr. Eldridge mentioned that she was involved in the fund raising for Freys Park. She has done some project management.

Mr. Carroll, second by Mr. Youngs motioned to recommend to City Commission to place Beth Vandenhomburg on the Zoning Board of Appeals as an alternate. Voice Vote was taken motion passed.

ADJOURNMENT:

The meeting was adjourned at 8:50 p.m.

Submitted By Deanna Benthin **Date** 6/13/19
Recording Secretary

Reviewed By Peter C Eldridge **Date** 6/13/2019
City Staff

Approved By Paul J Young **Date** 6-13-19
Chair