

**MINUTES
CITY OF KALAMAZOO
ZONING BOARD OF APPEALS
JULY 11, 2019 - 7:00 p.m.
CITY COMMISSION CHAMBERS**

Members Present: Matt Lager, Dick Skalski, Reed Youngs, Chris Flach, Christina Doane, Beth van den Hombergh Alternate

Members Absent:

City Staff: Pete Eldridge, Assistant City Planner, Clyde Robinson, City Attorney; Deanna Benthin, Recording Secretary

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

MINUTES:

Mr. Lager, moved to approve the minutes of June 13, 2019 as submitted, seconded by Mr. Skalski.

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.

Ms. Doane read the application for 120 Roberson Street, Parcel # 06-15-137-001:

ZBA #19-07-20: 120 Roberson Street: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Mt. Zion Baptist Church. The request concerns the property at 120 Roberson Street in Zone RM-36, Residential – Multi Dwelling District. The applicant is requesting: 1) a dimensional variance from Chapter 7, Section 7.3 A, of 17.5 square feet to authorize a 49.5 square foot freestanding sign where only 32 square feet is permitted in Zone RM-36; and 2) a dimensional variance from Chapter 7, Section 7.2 D, to allow a 43% increase in changeable copy for a total of 68% changeable copy where only 25% of the sign area is permitted to be changeable copy in Zone RM-36.

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

Rev. Christopher M Moore, Sr., Assistant to the Pastor, spoke representing the request stating they were requesting a variance for the sign. They need to inform the community of the events occurring and consider it a community facility. Community is at the heart of what the church is. He spoke of the great relationship with the homeowners around the church, and how they empower people to transform themselves.

Chair Youngs questioned if the footprint of the sign would change. Rev. Moore stated the footprint would stay the same.

Mr. Skalski asked if the existing landscaping would stay. Rev. Moore stated they would leave the trees but clean up the over all look.

Ms. van den Hombergh asked how the neighbors would feel about the flashing lights and if the sign would be off at night. Rev. Moore stated they would control the sign lights, they would be courteous to the neighbors and not have the flashing lights into the night.

Ms. Doane questioned the amount of light the sign would give off. Rev. Moore compared it to the Lincoln Elementary LED sign.

Mr. Eldridge stated the ordinance has a foot candle limit and questioned if the sign had a dimmable photo cell on it. Rev. Moore replied he thought it did.

Attorney Robinson clarified if all the messages would be about the church or for the church and no third-party messages. Rev. Moore stated yes.

Mr. Eldridge stated in addition to what they have for signs they are proposing the removal of the half circle from the top. Approximately twelve square feet of cap will be removed, it's a reduction in the overall sign area and brings the sign height down to a six-foot height.

Mr. Flach asked for clarification on the changeable copy area. Mr. Eldridge stated a conforming sized sign would be 32 square feet and six feet in height and a changeable copy area not more than 25% of the sign area. The sign is still slightly over on the size, they need a variance to change the sign.

Speaking to the request:

Jeff Messer, City resident questioned staff, regarding a comment from a Board Member about the flashing elements of the sign. He stated City Ordinance prohibits the flashing or motion on internally illuminated signs and wanted to clarify that point. The message must be static, commenting for internally illuminated billboards it's ten seconds, but he didn't know if there was one for smaller changeable copy signs.

Mr. Eldridge commented it's an eight second rule for images to be still unless it's a rolling text. He noted that Rev. Moore brought a relative of someone who lives across the street from the church.

Chair Youngs closed the public hearing.

FINDING OF FACT

Mr. Lager moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 120 Roberson Street shall include all information included in the notice of public hearing dated June 26, 2019.
- 2.) Fifty-five 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: Rev. Moore spoke on behalf of the applicant, the vision of Mt. Zion is one that embraces community, the building is not only a church but serves a community facility. It hosts concerts, and community meetings. It's the wish of the church to upgrade to LED to inform the community of upcoming events. The church noted they have a great relationship with neighboring homeowners. The footprint and outside contours will remain the same, the light panel and moveable copy type will be added, the lights in the sign will be controlled by the applicant, the cap on top of the sign will be removed and will reduce the size of the preexisting non-conforming use.

Ms. Doane 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 dimensional variance from Chapter 7, Section 7.3 A, of 17.5 square feet to authorize a 49.5 square foot freestanding sign where only 32 square feet is permitted in Zone RM-36 seconded by Mr. Flach.

Mr. Flach stated he was in favor, the sign existed prior to the ordinance change.

Mr. Skalski was in favor of the request, stating the sign would stay within the same footprint.

Motion approved by roll call vote unanimously.

Ms. Doane moved to approve the application for 2) a dimensional variance from Chapter 7, Section 7.2 D, to allow a 43% increase in changeable copy for a total of 68% changeable copy where only 25% of the sign area is permitted to be changeable copy in Zone RM-36, seconded by Mr. Skalski.

Mr. Lager stated he was in support; a 25% copy area is challenging to read.

Chair Youngs stated he was in favor, the community needs to be made aware of the events, the sign size is not increasing.

Mr. Flach stated he was in support of the request, commenting they are lowering the height and not increasing the size of the existing sign.

Motion approved by roll call vote unanimously.

Ms. Doane read the application for 3700 E. Cork Street Court, Parcel # #06-36-227-001:

ZBA #19-07-21: 3700 E. Cork Street Court: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of by the Amerilodge Group. The request concerns the property at 3700 E. Cork Street Court, which is situated in Zone CC, Commercial – Community District. The applicant is requesting a dimensional variance from Chapter 50-72 1, to authorize 52 parking spaces above allowed maximum number of off-street parking spaces of 58 for a total of 110 off-street parking spaces for the proposed hotel development with 105 rooms.

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

Christie Solderling, with the Amerilodge Group, stated their requesting a variance for a 105-room hotel and need one parking space per room and five spaces for employees. They have no off-street parking available. When sold out they need this amount to serve their guests.

Mr. Skalski questioned if other hotels in the area will have to double the parking spaces needed, commenting maybe the ordinance needs to be looked at.

Mr. Eldridge commented with no on-street or public parking available in that area, they are evaluating the parking requirements. Downtown it meets the intent, but near the highway it doesn't. He asked about the Holiday Inn Express Hotel nearby would be affected.

Steve Aldrige with Amerilodge Group stated the reason they are building a new Holiday Inn, is the existing one is going away within the next year, they bought out their license.

Mr. Skalski mentioned an existing Holiday Inn off West Main St. Mr. Aldrich stated they own those hotels also.

Ms. van den Hombergh clarified the existing Holiday Inn is not renewing their license to operate. Mr. Aldrige replied correct.

Chair Youngs clarified they would be building on the vacant property there. Mr. Aldrige replied correct.

Mr. Flach questioned what was the projected occupancy rate? Mr. Aldrige stated they estimate the first year a 65% occupancy, the second year at 70% and the third year at 75% full.

Mr. Eldridge referenced the table of parking for hotels nearby the highway, the AVID Hotel was before the Board to ask for a variance for parking in March also, he stated staff was in support of the 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 3700 E. Cork Street Court shall include all information included in the notice of public hearing dated June 26, 2019.
- 2.) Seven 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: Christie Solderling with Amerilodge was requesting 52 additional spaces for a 105-room hotel and five spaces for staff. There is no on-street parking or parking garages in the area. Staff reports that the intent of the ordinance was to not enforce a minimum number of parking spots on business that would not be used. Mr. Aldrige spoke stating the existing Holiday Inn would not be renewing their license. They estimate the first year a 65% occupancy, the second year at 70% and the third year at 75% full. Staff reports that request is in range with similar hotels in the area and was in support because it's near a highway and there is no other parking available.

Mr. Lager seconded the Finding of Fact.

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

Ms. Doane moved to approve the application, seconded by Mr. Lager.

Mr. Flach stated he was in favor of the request.

Ms. Doane stated the hotel parking is in range with the others in the area.

Chair Youngs stated he was in favor and referred to the AVID Hotel that was before the Board with a similar request.

Motion approved by roll call vote unanimously.

Ms. Doane read the application for 110 W. Stockbridge Avenue, Parcel #06-22-346-004:

ZBA #19-07-22: 110 W. Stockbridge Avenue: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Virgil Wathel. The request concerns the property at 110 W. Stockbridge Avenue, which is situated in Zone CC, Commercial – Community District. The applicant is requesting a variance from Chapter 4, Section 4.3 J 7, to allow for an outdoor temporary sales use (Barbeque Stand) to operate in the parking lot of J & B Discount Liquor from July 12, 2019 to September 30, 2019 (2.5 months). Recommended conditions of approval include: 1) Grill, table and tent must not be within the right-of-way, 2) Transient Merchant License must be obtained from City Clerk, and 3) Must also have license from the Health Department.

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

Virgil Wathel, applicant for the variance, told the Board he won first place in the 2016 Ribfest Contest, this is his 4th year in this location, prior he moved and lost some of his customer base. He submitted an application to stay in this location.

Chair Youngs commented on a letter regarding concerns with trash not being picked up in the past and that it be cleaned up. Mr. Wathel stated he's had no complaints in the last three years.

Mr. Skalski questioned if the set up would be the same as the photo in the Boards packet. Mr. Wathel stated it's the same setup but questioned if he could have a small tent canopy to stay dry if it rains.

Mr. Eldridge commented Mr. Wathel got the thirty-day administrative approval, to continue to stay he needs the Boards permission. They've received no complaints. The diagram shows where the grill, tent, and items are located, all the cooking and serving items must be on the private property, they can't be in the right of way. He commented the Board could add a fourth condition to pick up his trash and debris from his grilling. This would be for two and a half months. With the parking lot lay out the traffic flow is not affected.

Speaking in Favor:

Bobby White, a friend and helper at the BBQ Stand stated Mr. Wathel is very neat and clean and they keep the area tidy.

Chair Youngs closed the public hearing.

FINDING OF FACT

Mr. Flach moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 110 W. Stockbridge Avenue shall include all information included in the notice of public hearing dated June 26, 2019.
- 2.) Forty-two 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: Mr. Wathel the applicant stated he's had permission from the owner to be in this location for four years. It benefits him to stay in one location longer than thirty days to keep his customer base. Staff mentioned the letter regarding trash concerns from neighbors and the need to keep litter picked up. Staff stated Mr. Wathel has followed all the guidelines necessary for the thirty-day temporary use permit, they have granted longer than thirty-day uses in the past. This will not impede traffic and has ample parking. Mr. White spoke in favor he works with Mr. Wathel and reiterated the area is very clean.

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, with the conditions include: 1) Grill, table and tent must not be within the right-of-way, 2) Transient Merchant License must be obtained from City Clerk, and 3) Must also have license from the Health Department and 4) daily cleanup of trash and litter around the outdoor temporary sales use, seconded by Mr. Lager.

Chair Youngs commented the Board has granted similar requests in the past and he was in favor.

Ms. Doane commented he's been in the same location without any complaints.

Motion approved by roll call vote unanimously.

Ms. Doane read the application for 563 Portage Street, Parcel # 06-22-219-010:

ZBA #19-07-23: 563 Portage Street: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by MTP CRIBS, LLC. The request concerns the property at 563 Portage Street, which is situated in use Zone M-1, Manufacturing – Limited District. The applicant is requesting a use variance from Chapter 4, Section 4.1, to re-authorize the conversion of a ground floor commercial space into an apartment in this building which already contains three other residential units. Where in Zone M-1 no new dwelling units are permitted. A use variance was approved on November 9, 2017 for this conversion, but that approval has since 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 twenty notices of public hearing sent and zero responses were received.

Austin Perry stated he was representing his client Mike Schick. Mr. Perry is the Manager of AIM Corporation, they manage about 400 units in Kalamazoo. He read the letter enclosed in the Boards packet giving an overview of the request for a variance to re-authorize the conversion of a ground floor commercial space into an apartment. He stated the unit has been occupied since he acquired the property and is better suited for residential than commercial space. The area is in transition and is close to Bronson Hospital, WMU Stryker School of Medicine and is attractive to tenants.

Mr. Skalski questioned when Mr. Schick purchased the property. Mr. Perry stated approximately a year ago. The units were occupied and being rented out when it was purchased.

Mr. Eldridge stated Mr. Schick purchased the property in spring of 2017, Mr. Schick contacted the City and it was noted the three dwelling units hadn't been registered or inspected in recent history. The prior owner had let it fall off the system. What they had thought was commercial space was converted into a residential space. Mr. Schick applied to the Board and explained the situation and how he was going to bring everything up to code the Board granted the variance on November 9, 2017. Over a year went by before the matter came up again. He gave a brief background of how it fell off the radar.

Mr. Perry clarified it was the fault of either the owner or of Jacobson's Management Company who had control until April of 2019 that neither registered the property. Mr. Schick came to Mr. Perry with concerns about the previous management company and they reviewed all his properties. They discovered the issue with this property, he told Mr. Schick they wouldn't manage the property unless it was brought up to every standard the City requires. They are working on getting a fire suppression system installed. It's needed and is delayed due to the need for a 4" line required and getting it put in. The units all have smoke detectors and all

safety measures installed. The property was being poorly managed prior to his company taking it over.

Chair Youngs asked if the city rental inspector had inspected the property yet. Mr. Perry stated he's had conversations with Mr. Eldridge and others to make sure Mr. Schick can meet total compliance. To have a City inspection at this time would be a moot point since the fire suppression system is not in and it would fail inspection.

Mr. Eldridge commented there have been permits applied for and discussed the process of inspections. However, the fire suppression required isn't installed. With three or more units it triggers the sprinkling required, they have four. It fell off the radar on rental inspections, but ultimately the building needs to be sprinkled. Mr. Perry stated B.L. Harroun is the contractor they've chosen to do the work.

Chair Youngs commented this building is about the only standalone building left in the area, all other buildings have been bought up.

Mr. Eldridge questioned if there was an approximate timeline. Mr. Perry stated he's called twice to the Water Department and left messages with dispatch and hasn't received a return call. They need to upgrade to a 4" line into the building to install the fire suppression system. Mr. Eldridge stated they can place a timeline on the request for a time for work to begin within a sixty-day period for installation of the sprinkler system

Mr. Lager questioned if there are tenants in the unit. Mr. Perry stated all four units are occupied.

Mr. Eldridge commented it's a cinder block construction, not wood frame construction.

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

FINDING OF FACT

Mr. Skalski moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 563 Portage Street shall include all information included in the notice of public hearing dated June 26, 2019.
- 2.) Twenty 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: Owner Mike Schick was represented by Austin Perry of AIM Corporation. It has been used as an apartment since it was purchased and the unit in question is not suitable for commercial use. Transition area around it is expected to change in the future, but current tenants work downtown. To convert to a commercial unit would require an eviction of the current tenant. On November 9, 2017 it was approved for a four-unit residential. Mr. Eldridge clarified currently there is a fire suppression upgrade to be installed when adequate water service is established. There will be a sixty-day period to comply with the occupancy requirements and conditions.

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, with the condition upon initiating the sprinkler system installation within sixty days, seconded by Ms. Doane.

Mr. Lager commented he was against the request, it doesn't meet the first three requirements.

- *The literal interpretation and enforcement of the terms and provisions of this Ordinance would deprive the applicant for all practical purposes from using the property for a permitted use identified in Sec. 4.1: Use Table, which is a right commonly enjoyed by other land in the same zone district. This is a ground floor unit that could be commercially leased.*
- *There is unnecessary hardship based on special circumstances or conditions that are peculiar to the land or structure for which the use variance is sought that is not applicable to other land or structures in the same zone district. There was no evidence, there is currently a residential unit there.*
- *The special circumstances are not the result of the actions of the applicant. This is the result of the actions of the applicant.*

Mr. Eldridge agreed with Mr. Lager's comments. He'd spoken with Attorney Robinson; the unit was occupied the first time it went to the Board. The regulations read that they expire after one year, there was no action taken in over a year, and it expired, therefore they had to return to the Board. Now they can place a condition to get the sprinkler system in place. The fourth unit has been occupied. It is not rental certified.

Mr. Skalski commented on the entire surrounding area being bought up by a larger entity. This unit being changed to a commercial unit and evicting the tenants would be a hardship.

Chair Youngs commented City inspections should be taken seriously. The fourth unit has been occupied, it's fallen through the cracks. The owner hasn't followed through or taken this seriously. He commented the building is being occupied without certification. Mr. Eldridge replied correct, it's not certified. The Board can require a Housing Inspector do a walk through within the next thirty days. He stated City Inspectors have been in there doing electrical inspections and such, just not a Housing Inspector doing a rental inspection.

Ms. van den Hombergh had concerns with the occupied units' tenants being evicted and giving the sixty-day timeline for the sprinkler system installation. Mr. Eldridge commented the Housing Inspector would be looking at the life safety items, fire extinguisher, smoke detectors, etc. knowing the fire suppression will be installed in the near future.

Mr. Eldridge clarified the permits must be inspected and approved, then the Housing Inspector would go through. The other three units were on the rental registration records around 2010, somehow the units fell off the system and no inspections have occurred. The previous management company left things fall through and the owner didn't either.

Mr. Flach stated if the strict guidelines aren't followed what would be the outcome. Mr. Eldridge stated there would be a notice to vacate by the Building Inspector and the tenants would have to move out until the fire suppression system was installed and inspections done and approved.

Motion approved by roll call vote.

Yes: Skalski, Doane, Youngs, Flach, van den Hombergh

No: Lager

OTHER BUSINESS:

Mr. Eldridge discussed the new zoning ordinance and change from the appendix to Chapter 50. He stated he'd get the Boards' binders updated. Discussion on doing electronic Board packets.

ADJOURNMENT:

The meeting was adjourned at 8:40 p.m.

Submitted By  Date 9/12/19
Recording Secretary

Reviewed By  Date 9/12/2019
City Staff

Approved By  Date 9-12-19
Chair