

Jackie Mitchell, the applicant for the variance, stated the property was initially zoned commercial with a residential use upstairs. She proposes a micro grocery store and café with a sustainability program. She purchased the property in 2017 with her daughter. They want to upgrade the property stating she lives in the area also. She proposes to provide healthy food services and indoor farming.

Chair Youngs questioned if they'd grow produce outside also. Ms. Mitchell stated only indoor on one side of the building.

Mr. Flach clarified when she purchased the property it was originally zoned for her intended use as a grocery store? Ms. Mitchell stated she intended to provide programming for the community for healthy living options. She personally grows produce at home also and has been through the KVCC Farming program.

Mr. Skalski clarified there was a party store nearby, but it doesn't sell any fresh produce. Ms. Mitchell stated no they didn't sell fresh produce there.

Mr. Flach questioned the zoning ordinance change. Mr. Eldridge stated it's a multi dwelling zone district. He didn't believe there was a change; the building was built commercially with an apartment above. The Upholstery Store was the last operating business. It's zoned residential, but had a commercial use for decades, there's been no zoning change.

Mr. Lager questioned the intended traffic flow. Ms. Mitchell thought around ten to fifteen people expected, they are more focused on the micro grocery side than the youth programming. Further down the road she would like to add a commercial kitchen in the back of the building to serve the food to the community, coffee, juice bar, items within the café. Mr. Lager asked if the neighbors were in support. She stated yes, they were.

Ms. Doane questioned the available parking. Ms. Mitchell stated in the back it's pea gravel but found out they can't use those eight parking spots for parking. They have two parking spots out front but propose to black top the back portion eventually.

Speaking in favor:

Nelson Nave, stated this is a small building next to a commercial node, there's commercial on every corner, it's always had an apartment upstairs.

Richard Stewart, 828 Portage spoke in support, it's a small business and it's a great location for it.

Jim Lighthizer, this will be a plus to the neighborhood, it will give new life to the neighborhood and be a good fit.

Anita Worfield, with the Urban Farming program at KVCC, stated Ms. Mitchell has been through the program and works well within the community.

MaryAnn Lavendar, works with the urban farms at the Veteran's Home and supports the community. Ms. Mitchell works hard and hopes the Board supports her.

**MINUTES
CITY OF KALAMAZOO
ZONING BOARD OF APPEALS
September 12, 2019 - 7:00 p.m.
CITY COMMISSION CHAMBERS**

Members Present: Matt Lager, Dick Skalski, Reed Youngs, Chris Flach, Christina Doane, Jeff Carroll, 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. Skalski, moved to approve the minutes of July 11, 2019 as submitted, seconded by Mr. Lager.

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. Carroll read the application for 1116 Lake Street, Parcel #06-23-304-147:

ZBA#19-09-24: 1116 Lake Street: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by J & J Property Investments, LLC. The request concerns the property at 1116 Lake Street, which is situated in Zone RM-15, Residential – Multi Dwelling District. The applicant is requesting a use variance from Chapter 4, Section 4.1, to authorize the reuse of the nonconforming ground floor commercial space for a small grocery store and café in this residential zone 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 eighty-six notices of public hearing sent and zero responses were received.

Speaking in Opposition:

Kenneth Kidulas, 1116 James St., a neighbor spoke of his concerns with loitering, having a parking lot in his back yard, lights from the parking lot going into his yard.

Mr. Eldridge commented there was no record of a zoning change, this commercial structure predates the zone district structure. It has been mixed use, Ms. Mitchell proposes to use it as mixed use with an apartment above and micro grocery store/café below. There was discussion on rezoning versus a variance, and the future land use plans doesn't call for expanding the commercial zoning in this area. Ms. Mitchell has been working with the Small Business Staff, she has a business plan completed. The building does need a lot of renovation inside and out. The site plan review would address all screening, lighting and parking issues.

Mr. Skalski asked what the hours of operations would be. Ms. Mitchell stated they hadn't been set yet, but would focus on the breakfast and lunch period. Any evening hours she would be on site tending to the plants. He had concerns with adjacent neighbors. Ms. Mitchell commented they were proposing a tall galvanized fencing to place grow boxes all around the fence, and it would block the light.

Chair Youngs closed the public hearing.

FINDING OF FACT

Mr. Flach moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 1116 Lake St. shall include all information included in the notice of public hearing dated August 27, 2019.
- 2.) Eighty-six 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: Jacki Mitchell of J & J Properties purchased the property in 2017, bought it with the intent of commercial use, a grocery store and sustainable urban farm, farming will take place inside and growing outside, Mr. Eldridge commented the building was always mixed use and predates the City's zoning. Staff considered rezoning the property, but it did not fit with the Master Plan and they wanted to make the variance specific to the

applicant's request. Traffic will be limited, parking will be extended in the future. Plans are subject to site plan review, potential hours are morning to lunch time, there will be screening, and fencing added. Mr. Nave, Mr. Stewart, Mr. Lighthizer, Ms. Worfield, Ms. Lavendar all spoke in favor saying it would be a perfect addition for the neighborhood, and a lot of training and time has been put into this. Mr. Kidulas spoke in opposition speaking of loitering and parking lot lights as concerns.

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, seconded by Mr. Skalski.

Mr. Skalski stated he was in support, he grew up in a similar community with commercial on the lower floor, and residential upstairs. He'd walk down to the area and the City is returning to being more walkable.

Mr. Flach commented it's a mixed-use structure that's been there for a long time.

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

Motion approved by roll call vote unanimously.

Mr. Carroll read the application for 824 and 842 Portage Street, Parcels #06-22-286-002 and #06-22-286-001:

ZBA #19-09-25: 824 and 842 Portage Street: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Richard Stewart. The request concerns the properties at 824 and 842 Portage Street, which are situated in Zone M-1, Manufacturing – Limited District. The applicant is requesting the following: 1) A dimensional variance from Chapter 7, Section 7.2 D, to authorize an electronic changeable copy sign that is equal to 66% of the overall sign where changeable copy area is limited to 25% of the wall sign area, and 2) A use variance from Chapter, Section 4., Section 4.1, to authorize a dwelling unit on the first and second floor of the existing building in Zone M-1.

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

Mr. Lager stated he had a conflict of interest and would be abstaining from voting.

Richard Stewart, applicant for the variance, clarified his mailing address is 828 Portage St. He was before the Zoning Board of Appeals one year ago and presented the same floor plan drawing, he submitted to the Board. He thought the Board had approved his request to owner occupy the building, however, it was limited to the upper floors, and not the two bedrooms on the first floors. He was uncomfortable disclosing his medical reasons for wanting first floor bedrooms, but supplied the Board with a copy of his certificate of disabled business owner. A main floor bedroom would be a benefit not have to climb the stairs. It was a vacant building for approximately ten years before he purchased it, he resides in the upstairs, he's made repairs, painted, new gutters/soffits, new roof, it's an owner-occupied home office use, he runs an online real estate business. He's asking to use two downstairs bedrooms, one for personal use and one for a sibling in the future. He currently has a sign for his office, but to qualify for the sign he wants, he's asking for a smaller sign than what was approved. His intent is to use an 8' x 4' digital sign, but it requires an 8' x 12' fixed sign, he's asking for a 2' x 8' sign instead. He provided the Board with pictures of other digital signs he was told he couldn't use size wise, he didn't want a fixed sign. He showed pictures of the Piano Bar sign, the Park Trades Center sign, a school on Westnedge's sign, a digital only sign on a marihuana store and Schupan Aluminum sign. He has an unusual zoning for a real estate business with home an office in a manufacturing zone, while not using it for manufacturing use.

Mr. Eldridge stated the Board would have to vote separately on the two requests. He commented on the changeable copy sign. The zone district is Manufacturing Zone District, it is not a Commercial Zone District, a commercial zone district allows for a larger changeable copy sign, manual or digital copy. This property remains in a manufacturing zone district, it limits certain types of signs, like changeable copy signs. When Mr. Stewart approached the City, they said there are limitations, given the fact this is a wall sign, the building is extremely long, a diagram presented shows exactly what the distance from the back of the building to the front of the building is, it's in the range of 150'. Using the calculations that would allow a 200 square foot wall sign, given the size of the building that's what allowed. Mr. Stewart applied for a sign permit to balance out the percentage requirement that the changeable copy in the manufacturing zone district doesn't exceed more than 25%. It's not the City that requires Mr. Stewart to place a giant sign, it's the way the ordinance is written, the intent was you didn't have users like this in a manufacturing zone district, they typically need a larger fixed sign. There are other examples of signs around the City, the Park Trade Center sign received a variance, Schupan's sign had a variance and is near King Highway on a business loop and zoned M1. Each circumstance is looked at independently. The planning staff prefers to see smaller signs on buildings, the building is closer to the road, a 128 square foot sign isn't needed on the north and south sides of the building. Staff concurs and could provide support to reduce the size of the fixed message portion of the sign to a 2' x 8' or 16 square feet from the larger 96 square foot size required by the ordinance to offset the large changeable copy. The sign for the Piano Bar is the downtown district. The use variance when it came before the Board last year it came to the Board with traction, Mr. Stewart had put together the background of the ambulance business and how they used the second floor of the building as temporary living quarters, the intent was not to turn most of the building into residential. City Staff was specific in stating the use variance last year was for the second floor. Given the fact that Mr. Stewart is making improvements on the property and has future use for his business in the front part of the first floor and a need for bedroom on the lower level, staff can support that. It sounds like it's part of his personal living space, one dwelling unit in the building and should be clarified before being voted on.

Chair Youngs asked for clarification on the living unit space as single or family. Mr. Eldridge suggested to clarify the use of bedrooms on the first and second floor of the existing building with the applicant.

Mr. Carroll questioned the use of the building. Mr. Stewart stated the building is not set up for a multi-unit use, the stairway is in the center of the building, he's using it as a single family with home office. Would he accept the motion with the requirement of it remaining a single-family use? Mr. Stewart replied yes. Mr. Carroll questioned DDRC letter of approval for a larger sign. Mr. Eldridge clarified that the sign review went through the DDRC approval process and zoning review process. The DDRC stated it met their requirements to be approved.

Mr. Stewart clarified the digital sign is 4' x 8' fixed, and is not an issue, the issue is an 8' x 12' sign that must go with it, he only wants a 2' x 8' one.

Chair Youngs closed the public hearing.

FINDING OF FACT

Ms. Doane moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 824 and 842 Portage Street shall include all information included in the notice of public hearing dated August 27, 2019.
- 2.) Thirty-nine notices of public hearing were sent, and zero responses were received.
- 3.) A public hearing was held before the board and public comments were accepted.
- 4.) The Zoning Board of Appeals received documents on the request including lot diagrams with boundaries and drawings, aerial photographs, site plans, elevations and a letter and photographs of signs.
- 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: Richard Stewart stated he was before the ZBA last year, he's requiring downstairs living space, he lives on site currently, and made on site improvements, it's an owner occupied home office property. The sign he wants is not the 8' x 12' fixed, he wants a 2' x 8' fixed sign. He showed examples of signs in Kalamazoo. Mr. Eldridge stated the manufacturing zone district limits allowed signage per ordinance. The Park Trades and Schupan signs were approved with variances. Planning Staff would prefer smaller signs, the building position makes larger sign unneeded, and staff would support the 2' x 8' or 16 square foot. The use

variance last year was approved with evidence presented about the second floor living space, so the variance was approved for use per ordinance. It would still be used as single-family housing, it is not set up to be easily divided for multi-family.

Mr. Skalski seconded the Finding of Fact.

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

Mr. Carroll moved to approve the application 1) A dimensional variance from Chapter 7, Section 7.2 D, to authorize an electronic changeable copy sign that is equal to 66% of the overall sign where changeable copy area is limited to 25% of the wall sign area, seconded by Chair Youngs.

Yes: Skalski, Carroll, Youngs, Doane, Flach

No:

Abstained: Lager

Motion approved by roll call vote.

Mr. Carroll moved to approve 2) A use variance from Chapter, Section 4., Section 4.1, to authorize the use of the first floor of the dwelling unit to be used as residential and remain single family, owner occupied, and second floor of the existing building in Zone M-1, seconded by Mr. Skalski.

Mr. Eldridge clarified there are two specific bedrooms shown on the lower level, it should be stated to authorize two bedrooms on the first floor and bedrooms on the second floor for use by the residents in this building in zone M1.

Mr. Carroll amended the motion to read: 2) A use variance from Chapter, Section 4., Section 4.1, to authorize a dwelling unit which includes two bedrooms on the first and bedrooms on the second floor of the existing building in Zone M-1, seconded by Mr. Skalski.

Mr. Stewart wanted to clarify the wording, he can only use 10% of the building for business space. He wanted flexibility to use the upper and lower floors for residential. He stated he must install sprinklers to protect between the uses.

Mr. Carroll asked for clarification on the motion. Mr. Eldridge clarified the amended motion was to authorize two bedrooms on the first floor and bedrooms on the second floor for the residents in the building in Zone M1. This is supported by the floor plan submitted by the applicant, Mr. Stewart. He stated staff was not comfortable leaving the motion wide open. Mr. Carroll stated his motion was to leave it owner occupied and would leave the motion stand, seconded by Mr. Skalski.

Yes: Flach, Doane, Youngs, Carroll, Skalski

No:

Abstained: Lager

Motion approved by roll call vote.

Mr. Carroll read the application for 2842 Virginia Avenue, Parcel #06-02-461-043:

ZBA #19-09-26: 2842 Virginia Avenue: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Robert Kelly. The request concerns the property at 2842 Virginia Avenue, which is situated in Zone RS-5, Residential – Single Dwelling District. The applicant is requesting a use variance from Chapter 4, Section 4.1, to authorize the construction of a duplex on a vacant single-dwelling zoned lot.

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

Robert Kelly is requesting to build a duplex, it's in a R5 zone district, the lot would be better served with a duplex than two smaller residences, it would be a two story. The duplex would be owner occupied by himself. He also currently owns the property at 2838 Virginia with a sale pending, it was condemnable when purchased, and he brought it up to all current codes. The last house built in the area was a Habitat for Humanity house.

Mr. Carroll questioned what the neighbors have said. Mr. Kelly stated they had concerns with rentals in the neighborhood. This lot has sat vacant since the 1940's, he purchased it in 2001.

Mr. Carroll questioned the residence at 2838 Virginia. Mr. Kelly stated he purchased it and it has a home on it. The property at 2842 is a vacant lot.

Mr. Lager questioned if there would be separate entrances to the duplex. Mr. Kelly stated yes, there are two doors, the look is more of a single-family appearance than a duplex to fit the neighborhood.

Mr. Flach questioned what the benefit of a duplex is to a single-family home. Mr. Kelly stated to invest in Burke Acres for a single-family home, he couldn't recoup his money. To make it affordable he needs to make it a duplex. There are other duplexes and rentals in the area.

Speaking in Opposition:

Robert Townsend, 2922 Virginia, commented he's lived in the neighborhood for over forty years. He owns the property at 2921 Virginia also, this is neighborhood of a single-family homes that attract first time home buyers and young professionals. He doesn't want a duplex in the neighborhood and asked the Board to deny the request.

Patti Townsend, 2922 Virginia, stated several other neighbors are in opposition. She's lived in the neighborhood for over forty years and is invested into the neighborhood. It's a diverse neighborhood made up of both young and older home owners, a duplex would add nothing to the neighborhood and asked the Board to deny the request.

Mr. Eldridge referred to the handout showing the location of rentals and duplexes in the surrounding area. This block doesn't have any duplexes on it and the character of the surrounding properties, a duplex doesn't fit in. Staff didn't find a hardship either for the request.

Mr. Flach questioned the duplex and eight unit in the area how long they were there. Mr. Eldridge stated Burke Acres was a late annex into the City in the late 1950's.

Chair Youngs closed the public hearing.

FINDING OF FACT

Mr. Skalski moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 2842 Virginia Avenue shall include all information included in the notice of public hearing dated August 27, 2019.
- 2.) Thirty-two 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: Robert Kelly, described the request, stating he owns the property at 2838 Virginia since 2011 and proposes a duplex on a single-family lot, a two story duplex, it would have two entrances, centered on the lot, giving it more of a setback than adjacent single-family home properties would provide, he's removed some unsightly trees, but comments in opposition from Robert Townsend at 2922 Virginia, stated there's still some trees and vegetation in the rear of the lot remaining. Patti Townsend spoke in opposition, commenting this is a single-family neighborhood and a duplex would be contrary to the existing homes in the general area.

Mr. Flach seconded the Finding of Fact.

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

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

Mr. Lager stated he was in favor of the request, looking at the standards

- *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.* He doesn't feel for all practical purposes it would not be economically rational to build a single-family home there. Under the economics of home building and the value it wouldn't be practical to build on this lot except for this purpose.
- *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.* To own a property but to be unable to build on it due to economics is a hardship.
- *The special circumstances are not the result of the actions of the applicant.* This is not the result of the applicant.
- *The granting of the variance is the minimum action that will make possible the use of the land or structure that is not contrary to the public interest, and that would carry out the spirit of this Ordinance.* This is the minimum action, going from single-family houses in the neighborhood having a couple duplexes, it's the minimum that can be done.
- *The granting of the variance will not adversely affect adjacent land in a material way.* He feels this is a judgement call and respects the neighbor's opinions, it will fit the neighborhood.
- *The granting of the variance will be generally consistent with the purposes and intent of this Ordinance.* This will make sure that houses in the area meet the general character.

Mr. Carroll stated he disagrees and feels the applicant doesn't meet any of the requirements for the variance.

- *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.* Other people have a single-family home, they couldn't build a duplex because it isn't zoned for a duplex.
- *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.* The ordinance isn't depriving him of anything, he knew the zoning when he purchased the single-family zoned property. There's no hardship, just because it's not economically feasible isn't a reason. He can build a single-family home there.

- *The special circumstances are not the result of the actions of the applicant. They are the result of him purchasing the property, he bought it as single-family.*
- *The granting of the variance is the minimum action that will make possible the use of the land or structure that is not contrary to the public interest, and that would carry out the spirit of this Ordinance. The minimum action is they do nothing and leave the zoning alone.*
- *The granting of the variance will not adversely affect adjacent land in a material way. The infrastructure wasn't built for multi-unit use either, and it would adversely affect adjacent land.*
- *The granting of the variance will be generally consistent with the purposes and intent of this Ordinance. It would not meet the intent of the ordinance in his opinion.*

Motion denied by roll call vote.

Yes: Lager

No: Carroll, Skalski, Youngs, Doane, Flach

OTHER BUSINESS:

Mr. Eldridge stated they are going to be going to an electronic version of the Board's packet.

ADJOURNMENT:

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

Submitted By Deanna Benkeni Date 10/10/2019
 Recording Secretary

Reviewed By Peter C. Eldridge Date 10/10/2019
 City Staff

Approved By Rand J. [Signature] Date 10-10-19
 Chair