

**MINUTES  
CITY OF KALAMAZOO  
ZONING BOARD OF APPEALS  
OCTOBER 10, 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:** Jeff Carroll

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

**Chair Youngs called the meeting to order at 7:12 p.m.**

**MINUTES:**

**Mr. Lager, moved to approve the minutes of September 12, 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 1120 and 1132 S. Burdick Street, Parcel #06-22-331-010 and 06-22-331-003:

**ZBA #19-10-27: 1120 and 1132 S. Burdick Street: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by VanderSalm's Flower Shop and Garden Center. The request concerns the properties at 1120 and 1132 S. Burdick Street which straddle three zone districts: RM-36, Residential – Multi Dwelling District; CN-1, Commercial – Neighborhood District and CC, Commercial – Community District. The applicant is requesting a use variance from Chapter 9, Section 9.2 A, to authorize the enlargement or expansion of the nonconforming use (flower shop and garden center) to expand the greenhouses by 2,300 square feet, 900 square feet more indoor storage and expand the outdoor sales area by 3,250 square foot.**

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 seventy-two notices of public hearing sent and one response was received.

Ned VanderSalm, the applicant for the variance stated they want to take down the old green houses, raise the new ones slightly, keeping them above the flooding, the outdoor sales area will not be increased much they already exist, it'll improve the land, and layout.

Chair Youngs commented on the clustered area they are in of different zoning districts making this unique.

Mr. Eldridge stated the greenhouses are going back into the same locations. Mr. VanderSalm stated there are three greenhouses that are 96' long and five others that are 72' long, they will all be 96' long.

Mr. Lager clarified where the outdoor sales would be. Mr. VanderSalm stated to the south and wouldn't remove any parking spots.

Mr. Eldridge referred to the layout in the Board's packet showing the location of the outdoor sales and parking.

Chair Youngs asked if this layout would alleviate the flooding issues they've had in the past. Mr. VanderSalm stated they've been working with James Baker, Public Services Director with the City and the DEQ to raise it to a level to make it user friendly for carts and shoppers. They are raising the elevation around 18". Using the back of the land to make room for the water.

Mr. Eldridge clarified the storage building being expanded will be on the north end of the greenhouses. He mentioned the one correspondence received from Dale Anderson in support of the request. He clarified the three different zoning districts that the property is in, and how it evolved over time. The original greenhouses were built, then other properties acquired, and property was consolidated. They discussed rezoning the property, but it would affect the future uses in the area, and it would be unfavorable to the residences around them. This is a low intensity use, alleviates the issue for flooding, and improves the property. The greenhouses are a 13.5% increase, the storage building will be 67% increase, but the storage building is not very large compared to the greenhouses.

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 1120 and 1132 S. Burdick Street shall include all information included in the notice of public hearing dated September 24, 2019.

- 2.) Seventy-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: Ned VanderSalm wants to improve the layout and cut down on the flooding, the footprint will not increase, and no parking spots will be lost. To cut down on the flooding he will raise the building and make other adjustments. Staff stated the outdoor sales will not be near residences nor affect them, there was a letter of support from the neighbor of Confections with Convictions. They don't want to rezone as some CC uses are not suitable for nearby residential, the current businesses will not impact the area and flood protection and positive changes.

**Mr. Lager seconded the Finding of Fact.**

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

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

Mr. Lager stated he was in favor, it's an improvement in the structures in an area that needs improvements after the flooding's. It meets all the requirements necessary to grant a use variance.

Mr. Skalski stated that VanderSalm's have been committed to the community and are improving the property.

Ms. Doane commented on the recent flooding and this will improve the area.

Chair Youngs stated he was in favor and VanderSalm's is investing into improving the area.

**Motion approved by roll call vote.**

**Yes: Donae, Skalski, Youngs, Lager, van den Hombergh**

**Abstained: Flach (arrived late)**

Ms. Doane read the application for 3825 Stadium Drive, Parcel #06-30-256-001:

**ZBA #19-10-28: 3825 Stadium Drive: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Spartan Partners Services, LLC. The request concerns the property at 3825 Stadium Drive which is located in Zone CC, Commercial – Community District. The applicant is requesting the following variances: 1) A variance from the Natural Features Protection Ordinance, Chapter 50, Section 50-6.2 H.1, to authorize the development proposed to encroach into a protected slope which has a grade greater than 20%. 2) A variance from the Natural Features Protection Ordinance, Chapter 50, Section 50-6.2 H.3, to authorize the development proposed to encroach into the protected slope setback of 10 feet require from the top and toe of all protected slopes. 3) A dimensional variance from the Zoning Ordinance, Chapter 7, Section 7.4, to authorize the placement of an off-premises sign on the existing sign structure at 3821 Stadium Drive to advertise the proposed medical marihuana provisioning center.**

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.

Reid Cooksey, Stonefield Engineering and Design, represented the request, they are proposing a Medical Marihuana Provisioning Center at this location. The existing use is a residential house that doesn't conform with the CC District and will be demolished and replaced with a conforming new building. They are seeking three variances. Regarding the signage, the parcel has a Stadium Drive address but is on a private drive off Stadium Drive. In order to have a business succeed they need signage and are requesting to use the gas station property also owned by the applicant and use the existing gas station sign that is in front of their property. The gas station is currently vacant. They would remove the gas station portion on the sign and advertise their business. The next two variances, they have steep slopes, in order to make it viable they must encroach, they've been working with the City to avoid impacting the natural features and the slopes. The proposed development shows the buffer lines, they can't avoid impacting the slopes, they proposed the smallest building size to make the project viable and minimal loading and trash area. They've been working with the NFP Board to have a minimal impact of the natural features.

Mr. Lager questioned if in the NFP process they agreed with the loading and unloading areas. Mr. Cooksey stated they were the first applicant to go through the process. They worked closely with Ms. McCarthy to have the least impact.

Mr. Skalski questioned the future use of the vacant gas station. Mr. Cooksey stated they currently don't have plans for the gas station. They want to focus on the back property but wanted control of the front property also. They will improve the entrance of the drive adding curb and gutter. In the future they will do something with that property.

Mr. Eldridge introduced Jamie McCarthy, the liaison for the Natural Features Protection Review Board. He gave a brief background, on the ZBA being the appeals Board for anything that doesn't comply with the NFP Standards. The applicant has to go the NFP Board first, and mentioned the results of that meeting they have in their packet.

Ms. McCarthy stated this is a new process, the business has owned the property for a while and was stalled due to the moratorium the City Commission passed in the NFP Overlay District, in June it was lifted, and the applicant came to them with a site plan where they were developing

most of the area. They had to satisfy a couple of requirements due to the new ordinance, they have to preserve 25% of the woodlands on the property. The property is almost all wooded. With a few changes to the site plan they were able to save 50% of the woodlands and pushed the building to the north as much as possible and meet the intent of the 1000' buffer for separation distance. She spoke to the slopes on the road and water run off issues, the woodlands will help with that. The NFP Review Board was created to screen and evaluate the variances and site plans and have a set of members who are experts in the natural resources to help staff and protect the environment and allow development. The NFP Review Board discussed this site in depth, they came up with a good outcome. Parking, storm water issues, and this was the best plan to move forward with. The Board voted in favor of recommending that the ZBA grant the variance for this property.

Chair Youngs asked if there would be a retaining wall by the residential area. Ms. McCarthy stated a retaining wall and fill dirt to build up a flat area for the building and parking. About a 15' wall and rerouting the storm water going into an underground storage chamber.

Mr. Eldridge clarified the radius line that cuts through the property, the medical marijuana regulations approved in 2018 as provisioning centers have a 1000' separation distance between them. It limits the allowable number along Stadium Dr. The applicant submitted a site plan with the building on the rear of the lot, outside of the 1000' separation distance from the north side of Stadium Dr. and received a provisional certificate to proceed. The City began working on the NPF Ordinance and that impacted properties with significant slopes near bodies of water. This property fell within the NFP Overlay District and couldn't move forward, then they had to begin the process of how to develop the property within the bounds of the NPF and Zoning Board regulations. The City Staff and City Planner looked at how to shift the structure towards the front of the lot to not have to clear cut the back of the property. City Planner Christina Anderson granted the relief of 49' which allows a minor encroachment into the 1000' separation distance to push the building forward and miss the city utility easement on the site. It's a challenging site with a private right of way out to Stadium Dr. that the applicant will deal with. Regarding the sign variance, it doesn't have any frontage on Stadium Dr. he asked if the Board chooses to grant that request he asked that a condition be placed, ordinance allows one freestanding sign for the frontage parcel of 3821 Stadium Dr. that the Board considered a condition that the freestanding sign serve the Provisioning Center and future tenants of 3821 Stadium Dr.

Speaking in Opposition:

Dale Campbell, of Sparkle Buggy spoke of his concerns that their drive is his exit from Sparkle Buggy. They own the property in front and asked why they can't move the entrance onto his property. He spoke regarding the bad shape the gas station was in and asked that the drive be moved.

Mr. Eldridge stated that Stadium Drive is under MDOT's control and they won't add another curb cut, but he would talk to the City's Traffic Engineer about traffic flow for the site.

Chair Youngs closed the public hearing.

## **FINDING OF FACT**

Mr. Lager moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 3825 Stadium Drive shall include all information included in the notice of public hearing dated September 24, 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: Reid Cooksey, Stonefield Engineering and Design applicant, stated he proposes to put a medical marihuana provisioning center on this site that will require to demolish a non-conforming residential structure, the property has a unique topography that has steep slopes, it has a Stadium Dr. address but is actually located on a private drive to the rear of the gas station on Stadium Dr. Because the property is behind that property the applicant wants to use the Stadium Dr. sign in front of the gas station. The applicant has worked extensively with the City to find the best way to situate the building due to the unique topography. The request was before the NFP Board and they approved the design and recommended for approval to the ZBA. Jamie McCarthy the liaison from the NFP Board spoke indicating the applicant is preserving 50% of the woodlands on the site and pushed the building as far north as feasible in order to protect runoff and other natural features. The new building is situated to substantially comply with the 1000' separation requirement regarding provisioning centers. The NFP Board fully evaluated the site and vegetation, parking, storm water runoff and other features and is recommending this plan. At the time the applicant first proposed the placement of the provisioning center it did meet the separation requirement but in order to comply with the NFP requirements it was moved, and the City Planner granted a 49' allowance in order to meet the plan as put forth by the NFP Board. The off-premise sign, Mr. Eldridge suggested a condition that only one sign be situated on Stadium Dr. for both the applicant and the future business to locate at the defunct gas station. Dale Campbell, the owner of Sparkle Buggy Car Wash spoke in opposition regarding the driveway that the applicant uses which is also used as an exit for the car wash. He also expressed concern with the wildlife in the area behind the carwash.

**Mr. Skalski 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 the Natural Features Protection Ordinance, Chapter 50, Section 50-6.2 H.1, to authorize the development proposed to encroach into a protected slope which has a grade greater than 20%, seconded by Mr. Lager.**

Mr. Flach commented it was the best alternative, removes the least amount on trees, smallest change of grade and least encroachment on the 1000' distance requirement.

**Motion approved by roll call vote unanimously.**

**Mr. Lager moved to approve the application for 2) A variance from the Natural Features Protection Ordinance, Chapter 50, Section 50-6.2 H.3, to authorize the development proposed to encroach into the protected slope setback of 10 feet require from the top and toe of all protected slopes, seconded by Mr. Skalski.**

Chair Youngs commented the NFP Board gave their approval and recommended the ZBA board approve the request and he was in favor.

**Motion approved by roll call vote unanimously.**

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

**Chair Youngs moved to approve the application for 3) A dimensional variance from the Zoning Ordinance, Chapter 7, Section 7.4, to authorize the placement of an off-premises sign on the existing sign structure at 3821 Stadium Drive to advertise the proposed medical marihuana provisioning center, with the condition the existing freestanding sign serving the Provisioning Center and any future tenant of 3821 Stadium Drive, seconded by Mr. Lager.**

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.**

**OTHER BUSINESS:**

**ADJOURNMENT:**

**The meeting was adjourned at 8:14 p.m.**

Submitted By  Date 10-10-19

Recording Secretary

Reviewed By *Peter Blodige* Date 11/14/2019  
City Staff

Approved By *Randy* Date 11-14-19  
Chair