

**MINUTES  
CITY OF KALAMAZOO  
ZONING BOARD OF APPEALS  
June 11, 2020 - 7:00 p.m.  
CITY COMMISSION CHAMBERS**

\* This meeting of the Zoning Board of Appeals was held on June 11, 2020 at 7:00 p.m. This meeting was held as an electronic meeting under the authority of Executive Order 2020-15 issued by Governor Gretchen Whitmer.

**Members Present:** Matt Lager, Dick Skalski, Chris Flach, Christina Doane, Jeff Carroll, Beth van den Hombergh

**Members Absent:**

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

**Chair Lager called the meeting to order at 7:07 p.m.**

Chair Lager noted the meeting was being streamed live on Facebook and the City's You Tube channel.

Mr. Eldridge stated the public had the ability to call in for audio and the public could call in to 269-226-6573 to leave comments for any of the properties on the agenda.

**MINUTES:**

**Ms. van den Hombergh, moved to approve the minutes of May 14, 2020 as submitted, seconded by Mr. Skalski.**

**Motion approved by voice vote unanimously.**

**NEW BUSINESS:**

**PUBLIC HEARINGS:** Chair Lager summarized the process and explained the Zoning Board of Appeals public hearing rules of procedures. For each request, the secretary will read the application into the public record. The applicant or their representative will have 10 minutes to present their comments, followed by public comments received via phone will be aired for the panelist and audience, by calling 269-226-6573. Then the public hearing would be closed on the request. The Board would then conduct the finding of facts. The Board must approve the Finding of Fact. Therefore, the first vote you here is not a ruling on the request, but the Finding of Fact, then the Board discusses the request in order to determine a ruling. The Board reserves the privilege to ask questions of persons who have already spoken even though the public comment portion is now closed. Once discussion has ended the Board moves onto a

roll call vote. A full board consists of six members and four affirmative votes are required to grant a motion for a non-use or use variance.

Mr. Eldridge read the motion for reconsideration for the dimensional variance for the fence granted at the May 14, 2020 meeting related to the fencing height in the front yard at 1503 Washington Avenue. The dimensional variance was approved by one vote, right after the meeting was done he was contacted by board member Christina Doane who indicated she was having technical difficulties on her end, she didn't intend to support the variance and wanted to put forth a motion of reconsideration. Mr. Eldridge clarified a motion was put forth via email for reconsideration by Christina Doane and was seconded the following day by Ms. van den Hombergh. Now before the Board is a motion made to reconsider to bring the approved dimensional variance back for discussion and revote. The next step is to have a discussion which does not include the applicant, just the Board members discussing the merits of the reconsideration then followed by a roll call vote, then based on that vote, the results stand or they rehear the variance.

Mr. Carroll had no comments and supported a vote:

Mr. Eldridge clarified an affirmative response is to bring the request back before the board;

Attorney Robinson clarified this is a parliamentary procedure, the question before the board is do, they wish to reconsideration their vote: yes is to reconsider the vote: no is to let it stand and not discuss it again.

Yes: van den Hombergh, Lager, Carroll, Doane

No: Skalski, Flach

**Motion approved to reconsider:**

Mr. Eldridge read the request into the record for 1503 Washington Avenue, Parcel #06-23-343-055:

**ZBA# 20-05-08: 1503 Washington Avenue: A dimensional variance from Chapter 6, Section 6.3 A 2, for two feet to allow six-foot fencing in the front yard along Washington Avenue and Division Street where only four-foot fencing is permitted for a residentially zoned property.**

Ms. Harrington, the applicant for the variance; stated they were granted the variance for all three requests at the last meeting.

Attorney Robinson clarified they don't need another motion to be made, the motion and second still stands, they are reconsidering the motion that was made at the last meeting, it' still open, they just need to vote yes or no on the request.

Mr. Eldridge stated Ms. Doane moved approval of the dimensional variance and Mr. Flach seconded the motion.

Chair Lager clarified for Ms. Harrington that Attorney Robinson stated the motion from last month that was made and seconded properly, is back on the table. Prior to the roll call vote he offered Ms. Harrington a chance to refresh the Boards memory on the request.

Ms. Harrington stated the urban agriculture initiative is in the Edison Neighborhood and the request was to have a six-foot fence on that parcel and was denied for the first too and granted the variance for the use on the site. It's going to be a micro nursery and they want to keep the aesthetics, make sure the food and produce is maintained, and create a design for proprietary businesses. She stated down the street on Jackson Street there's a variance for a higher fence.

Mr. Carroll questioned the fence. Mr. Eldridge stated Kalamazoo Public School doesn't require a zoning variance for a fence. Public School Buildings go through the State of Michigan and are not subject to local zoning.

Chair Lager asked if there was a public comment period. Attorney Robinson stated no, it's a procedural matter for the Board.

Chair Lager clarified a yes vote is to support; a no vote is to deny. He'd be voting no, it's in an urban agricultural initiative area, but is still in a residential area, the Boards' been consistent in denying fences in residential areas.

Mr. Eldridge stated he drove by the location, there's no adjacent fences, and discussed the property.

Mr. Flach stated he would be voting in favor. Taking into consideration staffs point that there are no adjacent fences, he countered there are no neighbors' concerns. He feels it's in the spirit of the ordinance.

Yes: Carroll, Skalski, Flach

No: Lager, van den Hombergh, Doane

**Motion denied by roll call vote:**

Ms. Doane read the application for 725 Academy Street, Parcel #06-16-485-001:

**ZBA #20-06-11: 725 Academy Street: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Mike Kiewiet owner of 725 Academy Street, which is situated in Zone CN-1, Commercial – Neighborhood District. The applicant is requesting: 1) A use variance from Chapter 4, Section 4.2 Q3, to allow the relocation of a single family dwelling to the rear of this parcel for residential occupancy where the CN-1 District requires commercial use of the floor space on the ground level; 2) A dimensional variance from Chapter 50 -7.2, for six off-street parking spaces, where two off-street parking spaces is the maximum allowed.**

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-three notices of public hearing sent and one response was received in support from Pamela O'Conner, 471 W. South Street #508.

Curt Ardema, representative for the variance, works for AVB Builders, partners with Hinman Company on the 400 Rose St. project, along with Mike Kiewiet were present. Mr. Ardema stated they had success with the Rose Street project and want to add additional housing at Park and Cedar Street. They are planning to move and save the house on 427 S. Park Street, it's over 100 years old. He spoke to the difficulties with the larger houses at 423 and 429 S. Park Street but will be doing salvage work on those. Working with the historical preservation society to preserve windows, etc., but they want to move 427 S. Park Street. Mr. Kiewiet purchased the property at 725 Academy Street and wants to move the house from 427 S. Park Street built in 1923 to Academy Street. Mr. Ardema stated the Historical Board has approved the move, there was a fire in 2019 at 725 Academy Street, there's still a house on the front of 725 Academy Street, they began work and will be renovating this spring, they want to preserve a historical home, they are requesting a use variance for a first floor residential use. It was the same use as prior to the fire. He gave a brief description of surrounding properties and their uses. He's also requesting a dimensional variance for parking, the site prior had nine parking spaces. The house being restored on the front and the house to be moved onto the back will both be technically a one dwelling unit and will only be allowed one parking spot total, where nine were allowed previously. If they divide the houses, they'd be allowed more parking spots. There's no shared parking in the area, it's on the fringe of downtown. There is on-street parking, the on-street parking there is used extensively already. There are parking lots on adjacent properties, for keeping the sites on the property; they'd be close to the existing.

Mr. Kiewiet stated he'd love to save the house but needs both variances; he's reached out to many of his neighbors and has their support.

Ms. van den Hombergh questioned before the fire if they had ten parking spots. Mr. Ardema stated they didn't own the property prior but could count nine striped parking spots on the aerial pictures. Now there are issues with zoning changes, and they have two parking spaces.

Mr. Eldridge stated the last Chapter 50 text amendment to the ordinance changes had been made to the parking standards, one parking space per dwelling unit. A foot note states per detached or attached dwelling units, or single family homes or town houses up to two spaces are permitted, it would allow for four would be permissible or four would be needed tonight. Mr. Eldridge stated all parking spaces would be accessed from the west side. Mr. Ardema stated the site configuration would be an improvement.

Mr. Carroll questioned conversations with the owners of 729 S. Park Street. Mr. Ardema stated it's an office building to the west, the owner has shared an easement for many decades, when the house burned, there were several issues between the owner of 729 S. Park Street and the previous owner of 725 Academy Street. Mr. Ardema has had conversations with the owner from that property as had Mr. Kiewiet. Mr. Kiewiet stated he's offered to work with Jody Milks, the owner to help improve the property and look of the property. They hadn't been owners of the property; the current status is a hole in the ground with a fence around it. The easement services both properties.

Mr. Carroll asked if they support the variances. Mr. Ardema stated they approve of the residential use but have concerns with the shared access drive.

Mr. Eldridge stated there are items that will have to be dealt with before the house move can occur, but they are not items the Board must deal with. He discussed if the four additional off-street parking spaces is appropriate for the two dwelling units their discussing with five bedrooms in the front building and four bedrooms in the house they'll be moving. The parking lot agreements, surveys and such will have to be dealt with prior to the house move, but don't impact the evidence and factual evidence of supporting granting the two variances before the board.

Chair Lager clarified if they grant the variance for four additional parking spots, there may still be other issues that have to be dealt with but won't affect if they grant the variances.

Mr. Eldridge commented on the number of bedrooms in each dwelling unit and parking. He mentioned a letter of support of both variances from Pamela O'Conner on W. South St. and a statement from the City Planner Christina Anderson talking about the ground street commercial requirement use doesn't always meet all uses, and a correspondence from Jody and Mike Milks from next door that has been discussed. He spoke to the merit of repurposing of the house.

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

## **FINDING OF FACT**

Mr. Carroll moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 725 Academy Street shall include all information included in the notice of public hearing dated May 27, 2020.
- 2.) Seventy-three notices of public hearing were sent, and one response was received in support from Pamela O'Conner from 471 W. South St. #508,
- 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 statement from the City Planner that the variance is congruent with the City's Master Plan and an email from Mike & Jody Milks owners of the office building at 729 Academy Street adjacent to the subject property.
- 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. Ardema with AVB Builders spoke on behalf of the request along with Mike Kiewiet, in 2019 one of the structures was destroyed by fire, the

applicant seeks to move a 1923 built house from 427 S. Park Street to 725 Academy Street, the site before the fire contained nine parking spots confirmed by aerial photos, there are no shared parking lots close to this property per Mr. Ardema.

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

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

**Ms. Doane moved to approve the application, for 1) a use variance from Chapter 4, Section 4.2 Q3, to allow the relocation of a single family dwelling to the rear of this parcel for residential occupancy where the CN-1 District requires commercial use of the floor space on the ground level, seconded by Mr. Skalski.**

Mr. Flach stated he was in favor, a house has main floor residential uses, and it sits back and fits.

Ms. Doane stated the plan looks better than previous and protects a historical house.

Mr. Skalski also spoke in support.

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

**Ms. Doane moved to approve the application, for 2) a dimensional variance from Chapter 50 -7.2, for six off-street parking spaces, where two off-street parking spaces is the maximum allowed, seconded by Mr. Skalski. Ms. Doane amended the spaces to four-off street parking spaces, seconded by Mr. Skalski.**

Chair Lager stated he was in favor; it fits the character of the area.

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

**ZBA #20-06-12: 519 Howard Street: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Ben Bierlein owner of 519 Howard Street, which is situated in Zone CC, Commercial – Community District. The applicant is requesting a dimensional variance from Chapter 50 -7.4 (2)a, to authorize a loading area for the proposed building on the building’s front façade, where loading areas are to be located in the side or rear yard of a building.**

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

Ben Bierlein, the applicant for the variance, owns a construction company in town and his business has grown over the last twenty years, he needs storage for his equipment. He found out the loading dock/overhead door can't be put on the front side of the building; with the width and size of the building it's not feasible to have a side door with the radius of the trucks.

Chair Lager spoke to the site map provided. Mr. Bierlein stated the property is 66-foot-wide by 132-foot-deep; he wants to build a 50-foot building, on one side is a six-foot setback and the opposite adjacent side is a 10-foot setback. He can build on a zero-foot setback, but with the grade drop on the site, it wouldn't work for a loading area. He stated the materials are delivered to the actual residential building site, he'll store bob cats, trailers, and lifts in it, they don't have semi's coming to this site, he's a residential builder. There's an eight-foot elevation from one side of the property to another.

Mr. Skalski stated looking at the site map the maneuvering would be difficult for bobcats on the property.

Chair Lager questioned if his other building across the street has a front facing overhead door. Mr. Bierlein stated yes, he purchased that building as it is.

Mr. Eldridge stated that building was compliant with the code, there's a home on the property, and the storage building is in the rear yard, it's outside of the front yard. This does not apply to residential uses. The ordinance doesn't want dumpsters in the front yard also.

Mr. Bierlein stated they use dump trailers; he won't have an open dumpster anyway. Mr. Flach asked how often cars would be moving in and out of the overhead door. Mr. Bierlein stated they'd be backing a truck up, loading up and leaving for the day. He'd commented he'd like a brick façade on the front to make it look nice.

Mr. Eldridge asked if the garage door would be shorter than his current location across the street. Mr. Bierlein stated it'd be approximately 12 foot high.

Mr. Skalski asked if the door would be closed most of the day. Mr. Bierlein stated mostly 99.9% yes, he loads in the morning and leaves for the day.

Mr. Bierlein asked when the code changed. Mr. Eldridge stated around 2005 the amendments changed as to what and where the loading area could be, out of the front yard. Mr. Bierlein stated he'd like to use the same drawings and not have to pay for additional drawings. Mr. Eldridge spoke to the bump-out over the entry of the building, adding character to the building.

Mr. Flach asked the distance from the proposed building to the road. Mr. Bierlein stated approximately 52 feet. The one across the street is more than 52 feet from the street.

Speaking in favor of the request:

Wendy Horton-Bierema, 605 Howard Street, stated she was in support and stated the building would be a nice addition to the property in the area.

Mr. Bierlein stated she lives approximately two houses to the west of the proposed building.

Chair Lager closed the public hearing.

## **FINDING OF FACT**

Ms. Van den Hombergh moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 519 Howard Street shall include all information included in the notice of public hearing dated May 27, 2020.
- 2.) Twenty-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: Mr. Bierlein is requesting a dimensional variance to authorize a loading dock in the front of the building where loading docks are only allowed in the side or back of the building. Due to the width of the lot at 66 foot by 132-foot-deep it's not feasible to have the overhead door at the side or rear of the building. About You Builders is also owned by Mr. Bierlein directly across the street at 522 Howard Street which has an overhead door on the front of the façade. Since they have building supplies delivered to the construction sites the building overhead door to be installed at 519 Howard Street will be for access for trailers and equipment. It's estimated that 99% of the time the door will be closed. The garage door will be approximately 12-foot-high, not smaller than the overhead door across the street; the overhead door across the street is compliant with the code and didn't require a variance. He received one public comment in support from a neighbor Wendy Horton-Bierema.

**Mr. Skalski 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 Ms. Van den Hombergh.**

Mr. Flach stated he'd be voting in favor; it sets back over 50 feet; it'll be used less than a residential home use.

Ms. Doane stated the shape of the property makes it difficult to place anywhere else on the property.

**Motion approved voice vote unanimously.**

Mr. Eldridge stated he'd attempted to reach the applicant and hadn't been able to for the 112 E. Cork Street request.

Attorney Robinson stated the Board can act on the request, just because the applicant isn't present to make the argument for the request, doesn't preclude the Board to go forward, they can either approve or deny the request. It's an opportunity for the applicant to be heard if they choose. The Board can either defer the request for a month or go ahead with the request since they have all the facts. Attorney Robinson's concern was Mr. Burton's request states he wanted to start on June 12, 2020 through October 15, 2020, the Board may want to proceed or he loses business for a month.

Mr. Eldridge stated Staff didn't have any concerns, no negative feedback from the public, but he'd spoken with Attorney Robinson due to being outside what can be an administrative approval requirement, it requires a special use. The Fire Marshal stated they need a safety inspection, and if there's any seating they need to abide by the social distancing guidelines.

**Mr. Carroll made a motion to allow for an outdoor use for 4 months, with the following conditions, 1) Grill, table and food truck not be within the right-of-way, 2) Transient Merchant License must be obtained from City Clerk, 3) Must also have license from the Health Department, and 4) Clean-up of site must occur daily when in operation, 5) The Fire Marshal does a safety inspection, and 6) If any seating they have needs to abide by the social distancing guidelines, seconded by Mr. Flach.**

Ms. Doane read the application for 112 E. Cork Street, Parcel #06-34-20-003:

**ZBA #20-06-10: 112 E. Cork Street: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of by Terrance and Katisha Burton for 112 E. Cork Street which is situated in Zone CC, Commercial – Community District. The applicants are requesting a variance from Chapter 4, Section 4.3 J 7, to allow for an outdoor temporary sales use (Lil Brothers BBQ TNT) to operate in the parking lot of the convenience store from June 12, 2020 to October 15, 2020 (4 months). Recommended conditions of approval include: 1) Grill, table and food truck not be within the right-of-way, 2) Transient Merchant License must be obtained from City Clerk, 3) Must also have license from the Health Department, and 4) Clean-up of site must occur daily when in operation.**

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

The applicant was not present to represent the variance.

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

Mr. Eldridge commented Mr. Burton had operated on the corner when the building was open and they brought the food inside the store. But since the fire in 2018 the store has been closed,

he wants to continue his business. He was on Riverview Drive and on this corner for a long time.

Ms. Doane clarified there've been no complaints. Mr. Eldridge stated no.

Ms. van den Hombergh stated it's nice to see that a request could be approved if the applicant isn't present to represent themselves.

## **FINDING OF FACT**

Chair Lager moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 112 E. Cork Street shall include all information included in the notice of public hearing dated May 27, 2020.
- 2.) Seventeen 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: The Burtons want to operate a BBQ selling business outside of the property at 112 E. Cork St., they've operated some time when the business was operating, starting on June 12 through October 15<sup>th</sup>, 2020 there's been significant discussions with staff for preparations on these requests, and there've been no complaints.

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

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

Mr. Eldridge clarified Mr. Lager read the finding of fact, Mr. Skalski seconded it. There was voice vote approval on it. Mr. Carroll made the motion to approve the request, seconded by Mr. Flach. Chair Lager stated the motion is on the table with the six conditions.

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

**OTHER BUSINESS:**

**ADJOURNMENT:**

**The meeting was adjourned at 8:45 p.m.**

**Submitted By** \_\_\_\_\_ **Date** \_\_\_\_\_  
Recording Secretary

**Reviewed By** \_\_\_\_\_ **Date** \_\_\_\_\_  
City Staff

**Approved By** \_\_\_\_\_ **Date** \_\_\_\_\_  
Chair