

**MINUTES
CITY OF KALAMAZOO
ZONING BOARD OF APPEALS
August 13, 2020 - 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

Members Absent: Beth van den Hombergh

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

Chair Lager called the meeting to order at 7:00 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:

Mr. Carroll, moved to approve the minutes of July 9th, 2020 as submitted, seconded by Ms. Doane.

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. 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.

Ms. Doane read the application for 1705 Lay Boulevard, Parcel #06-26-201-009:

ZBA #20-08-15: 1705 Lay Boulevard: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Daniel Edlund owner of 1705 Lay Boulevard, 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 utilize this residential structure as a duplex due to the floor plan and prior use of the structure as a duplex years ago. However, the RS-5 Zone does not permit duplexes.

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

Daniel Edlund, owner of the property stated he purchased the property approximately eighty days ago with the intent to fix it up, the unit has a kitchen upstairs and downstairs, with locking doors upstairs and downstairs. The previous owners didn't clarify it as a two unit when he purchased it, but it appears to be one. Mr. Edlund grew up in Kalamazoo, he lives in California now, but has purchased ten or eleven homes in Kalamazoo to renovate. This house will have hard wood floors, refinished interior, new vanities, new kitchens, bathrooms, and is laid out as two single bedroom units. This is not zoned as a duplex, but he owns another house on Lay Blvd. that is a duplex.

Chair Lager commented from the photographs it looks like a two unit and asked if the units are separately metered. Mr. Edlund stated no, they are not, to add a new meter is too expensive in his opinion, but he'll be putting in another furnace. Chair Lager asked for clarification on the doors and layout. Mr. Edlund clarified the layout and commented the interior doors are locking doors for use as a duplex.

Mr. Carroll asked if there were other duplexes in the area. Mr. Eldridge stated yes, there are four other duplexes and eight single units in that block of Cameron Street and Fulford Street.

Mr. Eldridge clarified the zoning requirements changed in the 1960's to more limited uses allowed in certain zone districts. Mr. Flach commented some duplexes have been there more than 80 years. Mr. Eldridge commented this property had been vacant since July 2006, and removed from the rental registration, prior it was a two unit in the early 1990's.

Mr. Edlund stated there's a need for single units now and has ample parking for at least four cars. Mr. Flach asked if it would be reasonable to return it to a single-family house. Mr. Edlund commented it could be if a kitchen was removed, but the entry way layout would be awkward and hard to fix. Mr. Eldridge commented it was built as a single-family home then changed over.

Mr. Eldridge commented there is a garage on the property with a dedicated driveway, with off street parking. There are other rentals on the block. It's a small lot, 44' x 100' deep lot, with four other duplexes on the block. He spoke to the zoning in the area, it's near a transition area where the zoning changes to a commercial neighborhood zone. It's been registered as a duplex since the 1980's.

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

FINDING OF FACT

Mr. Skalski moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 1705 Lay Boulevard shall include all information included in the notice of public hearing dated July 28, 2020.
- 2.) Seventy-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: Daniel Edlund of 520 Walnut Street proposed this property to be used as a duplex, he purchased it approximately eighty days ago. He was born and raised in Kalamazoo and recently returned from California, the home will have hard wood floors, painting, staining, new bathrooms, each unit has its own lockable entrances, there are other duplexes on the street, prior to 2006 when the property became vacant it was used as a duplex.

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, seconded by Mr. Flach.

Mr. Flach stated he was in favor, it's been vacant, it's been used as a duplex, and there's a need in the area for more units.

Ms. Doane stated there'd be a minimal impact to the neighbors.

Mr. Skalski stated he agreed, it was used as a duplex prior.

Motion approved by roll call vote unanimously.

Ms. Doane read the application for 810 Ray Avenue, Parcel #06-15-244-034:

ZBA #20-08-16: 810 Ray Avenue: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Nickson Kinyele owner of 810 Ray Avenue, which is situated in Zone RMU (Subarea 5), Residential – Mixed Use District. The applicant is requesting a use variance from Chapter 3, Section 3.7-1, to utilize the property for used car sales, which is not in alignment with Subarea 5 of the Riverfront Overlay for the RMU District. This Subarea does not permit any automotive-related businesses or vehicles sales. Subarea 5 is intended for parks and open space due to significant flooding along this portion of the river.

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

Nickson Kinyele, the applicant for the variance stated he wants to use the property for a used car dealership. It has four garage doors with parking spaces, asphalt and more parking in the rear. An area to tow cars and area to work on, near to an Auto Parts Store and a Muffler Store. It's his first time buying a building and he didn't know to check on the limitations of building first. Mr. Kinyele shared a drawing of his proposal of what his plan was to keep the flood out, a concrete wall under two feet in height to block the wall with a support. He discussed the parking for eight cars and customers parking. He would have offices, a bathroom, a hoist, a bay for fixing cars, with a total of six cars to be stored inside with two entrances. He discussed the layouts for cars out front. With 4,500 sq. ft. area in the rear.

Chair Lager asked if the rear lot is paved. Mr. Kinyele stated it is not concrete, but the front side is paved.

Mr. Carroll questioned if Mr. Kinyele had all the licenses to sell automobiles. Mr. Kinyele stated he must have a building first, and then he can apply for the licenses.

Mr. Flach questioned Mr. Kinyele about the flooding. Mr. Kinyele clarified his drawings to answer Mr. Flach's question.

Mr. Eldridge commented the front property line runs on an angle. The bigger issue is the zoning, the property has sat idle because it's in the residential mixed-use zone district, it's classified under the Subarea 5, put in place in 2009 when rezoned, due to flooding in the area, the entire street floods. It was intentionally zoned for allowances in Subarea 5, the intent is to be used for park areas and open space along the Kalamazoo River, existing homes can remain and shall be deemed conforming land uses, but new principal and accessory structures shall apply with all applicable design standards. Basically, if you wanted to put on an addition or a garage; it would have to be elevated to keep the floor level out of the flood plain. All these properties are within the 100-year flood plain area. Subarea 5 further states if an existing industrial or commercial use terminates or is abandoned or relocates out of Subarea 5, no industrial or commercial use shall occupy any part of such property, it's very specific language built into the ordinance to preclude commercial and industrial uses from moving back into the area when and if the buildings are vacated. This was built in 1966 for an auto service garage and fleet repair, it's an auto service garage, this project if approved would then go through site plan review; it would be looked at by the site plan review committee. The use of the building,

upgrades, parking, etc. The ordinance is very specific to the buildings in the area, there are less than a handful of residential structures or fewer buildings occupied.

Chair Lager asked if any variances had been granted. Mr. Eldridge stated not the only variance asked for was for a garage and it was denied.

Mr. Flach asked what the City wants. Mr. Eldridge stated the owner should have kept the use going, now it's under the uses in the clauses, now the City wants it to go to open spaces. There are no legal businesses there now. Mr. Flach asked how long the building has been vacant. Mr. Eldridge stated approximately eight years from looking at the history.

Mr. Skalski asked if any taxes are being assessed and about other uses for the property. Mr. Eldridge stated yes. Libraries, museums, Kalamazoo Public Substations, and parks are all permitted. This came about because of environmental concerns, and development along the river and along by the river.

Mr. Carroll asked if the City works with any Conservancy groups to help residents with their properties. Mr. Eldridge clarified the existing uses could continue to be used, but once they ceased, they just couldn't return. The contaminants going into the river are trying to be reduced in this subarea.

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 810 Ray Avenue shall include all information included in the notice of public hearing dated July 28, 2020.
- 2.) Twenty-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, documents shared on screen by the applicant.
- 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. Kinyele spoke on behalf of the request, the property is well suited for car sales due to ample front and rear parking and four bay garage, there are two nearby auto parts stores to compliment his car sales, he has a flood water

mitigation plan, detailed zoning language attempts to prevent continued development or modification of existing structures now that the use of the property has ceased by approximately eight years the city's intention for the property is to become open space or green space in order to address environmental concerns.

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 Mr. Carroll.

Mr. Carroll stated he wanted to vote yes, but the City is against the request.

Mr. Flach commented the property is making it impossible to sell.

Motion denied by roll call vote unanimously.

No: Carroll, Skalski, Doane, Flach, Lager

Ms. Doane read the application for 3401 Nazareth Road, Parcel #06-01-407-001:

ZBA #20-08-17: 3401 Nazareth Road: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by the Southwest Michigan Land Conservancy owner of the Bow in the Clouds Preserve at 3401 Nazareth Road which is located in Zone RS-5, Residential – Signal Dwelling District. The applicant is requesting a variance from the Natural Features Protection Ordinance, Chapter 50, Section 50-6.2 H, to authorize the development of trails in the preserve which will encroach into the protected slopes which have a grade greater than 20%.

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

Mitch Lettow, the applicant for the variance is the Stewardship Director for the Southwest Michigan Land Conservancy. Ken Peregon was present from OCBA Architects; he stated this property was a donation of land from the Congregation of St. Joseph with the hope to make it accessible to the public. It's about 57 acres, with streams, wetlands, forests, there's parking, free to the public, they want access to as many people as they can with a goal for better access for the physically impaired. In 2011 there was vandalism, to the manhole covers from the city sewers had blockage and sewage got into the wetlands, they realized the need for maintenance vehicles to gain access. The applicant brought up a map and showed the property layout and spoke about the city and township boundaries. Mr. Lettow spoke to the 2019 Phase One plan and the new trail accessibility they are planning. There are about five natural features they must be sensitive to those features; they must meet the NFP requirements. He spoke to the buffer along the creek, a vacuum truck could use to get to manhole covers. He discussed the stream buffer, a wetland buffer, there's also woodlands present on site, The NFP allows an applicant to remove a small amount for a development (12 to 20 trees). The one standard they

can't meet in the NFP, is the standard of slope on the trail must go down. With the topography of the site, they can't meet the plan without it. Mr. Lettow stated he sits on the NFPA Board but didn't vote in the last meeting.

Ken Peregon stated to make the trail accessible to the physically and visually impaired people they need to meet a lot of standards, and they can't avoid all the slopes, it needs to be relatively flat.

Mr. Carroll questioned if they had to move dirt. Mr. Peregon replied yes. Mr. Carroll questioned if he was doing this work for the city to gain access to the manholes or primarily for access for all people. Mr. Peregon stated the grading is for access for all people. The location of the trail is driven for city access for the manholes, it's a combination. This preserve is a natural park for the city and township but is open to the public.

Jamie McCarthy, the liaison for the NFP Board from the City, spoke to the recommendation from the NFP Review Board, overall, the Board looked closely at this, variances or relief are in Kalamazoo Township, they took into account several factors. Ms. McCarthy clarified the intent of the NFP overlay standards is to protect the natural features including the water quality. They need good access for cleaning out sanitary sewers, there was very minimal tree removal, the grading plan wasn't very severe, there's no new structures being built, the impervious surface isn't being changed, the trail ways are crushed gravel. They want the public to enjoy the natural features. The Board recommended the variances be granted within the City's area. To get back to the manholes and for people to get back to the wetland areas. The report found that the applicant requested the minimum relief required. It would not cause any substantial detriment to the slopes themselves; it'd be gradual grading and the applicant would be required to then plant and do some slope stabilization. It's a balanced application.

Mr. Carroll asked what percentage of the trail system the variance is for. Mr. Lettow stated in the city's area it would be approximately 100' to 150' of impacted area. Wheelchairs would be able to access this trail. Mr. Lettow clarified the path and area being affected, and where the truck would access the manhole areas.

Mr. Eldridge commented the preserve expands into Kalamazoo Township and in the 300' boundary area they notified a total of 39 additional properties to which he had received no responses from. On the environmental side the city now has an NFP features ordinance, but they have made other ordinance amendments to allow for gravel parking in certain circumstances. They did have a variance in 2014 from an asphalt parking lot to have a gravel parking lot. He spoke to the trail locations that would accommodate the trucks for the manhole maintenance.

Ms. McCarthy stated one individual from Congregation of St Joseph spoke in favor of the request at her Board meeting.

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

FINDING OF FACT

Mr. Flach moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 3401 Nazareth Road shall include all information included in the notice of public hearing dated July 28, 2020.
- 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.
- 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: Mitch Lettow stated the property was donated to the Land Conservatory to be made more open to the public, it's open 365 days a year, the goal was to make the property more accessible, to improve the property by making the trails accessible, it's a joint venture with the City to also allow appropriate vehicles access to fix sewer lines. There are five natural features the applicant needs to be aware of in the NFP, the trails are in compliance for all but one, the grading, in order to allow all people to use the trails there needs to be some change to the grading, the applicant noted this is a natural place for a park and will positively impact the neighborhood, will potentially raise property values. Mr. Carroll clarified what the percentage of the trail is non-conforming, and if wheelchairs would be able to navigate the trail. Jamie McCarthy, the City Liaison to the NFP Board mentioned the Board looked favorably upon this, and it's important to have access to the sewer manholes, and working closely with other conservancy groups, there will be no negative impact on the wild life, the trail itself only has approximately 100 feet of non-conforming trails. Staff noted that the Conservatory is not only within the City but is in Kalamazoo Township, notices were sent and had no negative feedback. The trails need trucks to accommodate the maintenance of the trails.

Ms. Doane 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. Carroll.

Mr. Carroll stated he'd be in support of the request.

Motion approved by roll call vote unanimously.

OTHER BUSINESS:

ADJOURNMENT:

The meeting was adjourned at 8:41 p.m.

Submitted By _____ **Date** _____
Recording Secretary

Reviewed By _____ **Date** _____
City Staff

Approved By _____ **Date** _____
Chair