

These minutes are subject to formal approval by the Wyoming Zoning Board of Appeals at their regular meeting on June 21, 2010.

MINUTES OF THE WYOMING BOARD OF ZONING APPEALS
HELD AT WYOMING CITY HALL

June 7, 2010

The meeting was called to order at 1:30 P.M. by Chairman Burrill.

Members present: Beduhn Burrill Dykhouse Lomonaco
 Postema VanderSluis VanHouten

Other official present: James W. DeLange, Chief Building Official

A motion was made by Postema, and seconded by VanderSluis to approve the minutes of the Board of Zoning Appeals meeting.

Motion carried: 7 Yeas 0 Nays

PUBLIC HEARING:

Appeal #V100070 P.P. #41-17-14-126-019

G. David Hoek
1216-1286 28th St. S.W.
Zoned DC

The application requesting a Use variance from City Zoning Code section 90-372 (18), which prohibits sale of used merchandise in the DDA (Downtown Development Authority area); to allow sales/display indoors of various types of used merchandise was read by Secretary Lomonaco.

Chairman Burrill opened the public hearing.

Joel Tasman, partner of G. David Hoek, said they run a liquidation business. They sell anything they can. They get used equipment all the time.

Ray Dikson, representative of property manager for Wyoming Mall Limited, said the business was a good tenant. They keep the place clean.

There being no further remarks, Chairman Burrill closed the public hearing.

DeLange reported many discussions had taken place before the business moved into the building. The owner was told repeatedly they would not be able to sell used goods. When they applied for their business license, it was stipulated right on the application "new goods only". The City received a complaint of the sales of used goods, and it was confirmed the business sold about 20% - 30% used goods. The owner had the right to seek a variance, and they chose to do so. The variance application temporarily stayed further action on the

violation until after the variance meeting. As a reminder to the Zoning Board of Appeals members, and to inform the audience, to grant a Use variance, the Board has to meet six Finding of Facts as required by the State of Michigan. Because of the strict standards required to grant a Use variance, staff recommended the variance be denied with the following findings.

1. The sale/display of used merchandise in the DDA has been prohibited for many years. The City and the DDA goals were to enhance the image and quality of business types within the DDA boundaries. No new used merchandise operations have been allowed in this district since the ordinance change. There are a few that predate the ordinance amendments.
2. The building in question is a multi-tenant retail facility. It and other businesses in the area serve the new merchandise market. There has been no evidence submitted to support or substantiate that used merchandise sales are warranted.
3. The desired character of the DDA and intent of the Master Plan clearly indicates that the sale/display of used merchandise is not the intended or desired use within the DDA. Used merchandise sales encourage similar proposals for second hand shops, pawn shops, etc.
4. Allowing this proposed use may well create precedence for other used merchandise operations that may desire to locate in this area.
5. Granting this variance would clearly be in contradiction to the current ordinance provisions.
6. This request and current illegal use was wholly created by the applicant. The owners were advised by both Planning and Inspections Departments well before the business opened that used goods display/sales were prohibited. Furthermore the City Business License application specifically stipulated no display or sales of used merchandise.

Chairman Burrill said with the State required Finding of Facts; it made it hard for the Zoning Board to grant a Use variance.

Mr. Tasman said they had been told they could only sell new goods, but business was not good. When they brought in used merchandise, business got better. They will go out of business if they cannot sell used merchandise. He suggested the store Once Upon A Child was evidence that used goods are in demand. They are helping the mall.

VanHouten asked what kind of equipment they sold. Mr. Tasman said office, and business equipment.

Chairman Burrill asked if the code did not allow a percentage of used goods in a retail zone.

DeLange answered in the DDA, all goods have to be new. In B-1 Zoning, 15% of the floor area of a business can be used. In B-2 Zoning, the sale of used goods is allowed by Special Use. As for Once Upon A Child (a used clothing store), the business predated the DDA ordinance language. When they moved to a different tenant space, the City did not require a Use variance because the business stayed on the same parcel. If they had moved to a different parcel, a Use variance would have been required.

A motion was made by VanHouten and seconded by Lomonaco that the request for a variance in application no. V100070 be denied, accepting staff's recommendation.

Motion carried: 7 Yeas 0 Nays

PUBLIC HEARING:

Appeal #V100072 P.P. #41-17-31-101-008
Lisa Postema
5335 Canal Ave. S.W.
Zoned ER-1

The application requesting a variance from City Zoning Code section 90-891 requiring minimum 150 feet lot width and minimum two (2) acre lot size in ER-1 Estate Residential zone districts to divide a 6.68 acrea parcel into two lots, 0.82 acres irregular shape with 150 foot frontage on Canal, with the remaining 5.98 acre parcel with existing house with 100 foot of frontage on Canal Ave. was read by Secretary Lomonaco.

Chairman Burrill opened the public hearing.

Ms. Lisa Postema informed the Board the existing parcel belongs to her mother, and Ms. Postema had grown up in the area. She wanted to be close to her mother. The proposed lot is similar to existing lots adjacent to the property, and was configured not to interfere with her mother's yard.

There being no further remarks, Chairman Burrill closed the public hearing.

DeLange remarked that most of the residential property west of Ivanrest was zoned ER-1 and required a minimum of two acres with 150' front yard width. The existing lot has ponds and is undulating. The new parcel would have 150' front yard width, but would be less than the two acre minimum. The remaining parcel would have more than the two acre minimum, but the front yard width would be reduced to 100'. He also noted similar sized lots in the area.

A motion was made by Dykhouse and seconded by VanderSluis that the request for a variance in application no. V100072 be granted, accepting staff's Finding of Facts.

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or class of use in the same vicinity and district because this large parcel is interrupted by various ponds and undulating terrain, which is not conducive to creating two acre parcels. Rather, its geographies do serve to create one smaller lot with code complainant frontage while retaining a parcel of almost six acres albeit with 100 feet of frontage.
2. That such variance is necessary for the preservation and enjoyment of substantial property rights because it will allow one parcel to be split from the overall parcel in a fashion consistent with the two neighboring parcels to the north, fronting also on Canal Ave.
3. That the granting of such variance will not diminish the marketable value of adjacent land and improvements, or unduly increase congestion in the public streets because the large

acreage parcel remains and the new smaller parcel will have new house construction therein. This lot remains larger than those allowed in R-1 subdivisions.

4. That the condition or situation of a specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation because of the unique size, shape, and characteristics of the parent parcel.

Postema wanted to note for the record that while he has a cousin named Lisa Postema, he was not related to the appellant.

Motion carried: 7 Yeas 0 Nays (Resolution #5240)

PUBLIC HEARING:

Appeal #V100073 P.P. #41-17-14-201-014
Hub Ministries
950-1100 28th St. S.W.
Zoned DC

The application requesting a Use variance from City Zoning Code section 90-976 regulating use in the Downtown Center District; to allow continuation of a religious assembly use of approximately 5,000 square feet within a portion of Rogers Plaza Mall was read by Secretary Lomonaco.

Chairman Burrill opened the public hearing.

Glen Buter, 5148 S. Oakvale Ct., spoke as representative of HUB Ministries. He began with an apology for not going through the correct process. The church has been in the mall for approximately two years. The lease arrangement is on a month by month basis. Currently the mall has a lot of vacant space. The vacancy is greater than 25%. The space at present can not be readily used for its intended use. The church does not have excessive noise or traffic. The mall has a lot of parking. The church interacts with people of the mall, and they occupy approximately 5,000 square feet. It was an old karate facility. The church can only be noticed by mall walkers. When there is a viable retail opportunity for the space, the church would move. They feel they meet the character of mixed use activity. They bring people into the community to support the local businesses. This tenancy is not a long term solution, only a good interim use.

Pastor J.R. Pittman, minister of HUB Ministries, also apologized for not knowing about the zoning issue. He believed the church had a unique calling in the community in a tough economic time. Their vision encompasses revitalizing families. They have an impact on the community, and are active with the school district and started a mentoring program in the district. They hold seminars and workshops to restore families and help business with financing. He asked to be allowed to stay.

Dr. Brown, a chiropractor in Rogers Plaza, has an office next to HUB ministries. He talks to people that go to the church. They feel secure going to that location, and are used to going

into a mall. In July, 2009 when he moved in, he was “fired up” to help the community. The church has shown their willingness as well. He believes the church enhances the community and should be allowed to be there.

Mike Kuncaitis, the chairman of the church asked the Board to approve the variance. The church does not have a traditional use, and is just as useful as economic rebuilding.

There being no further remarks, Chairman Burrill closed the public hearing.

DeLange reported staff had received notice about the use through an inspection from the Fire Department. Until that time, the City had been unaware the church was operating out of the mall. The City recognizes the value a church can have as a stabilizing influence in the community, and had recently expanded the Zoning Code to allow churches as a Special Use in the B-2 Zoned districts. Before they had only been allowed in residentially zoned districts with a minimum lot size requirement. However the Downtown Center Zoning districts, where this church is located, does not include religious facilities as a permitted use. Staff recommended the request be denied. The required Finding of Facts cannot be met for the following reasons:

1. There is no condition, location, or situation of the specific piece of property or of the intended use of the property evident that is unique to the property in the zoning district in which it is located. The use exists without formal approval. Religious Assembly uses such as this are permitted by right in all residential districts and as a Special Use in B-2 General Business zone districts. This property is zoned downtown center district, which has no such provision.
2. This is a multi-tenant retail mall. The City recognizes the retail market's economic challenges, however this use occupies space without any approval and in contrast to the desired retail development in the area. There has been no evidence presented to indicate that the building or land cannot be used consistently with its design, historic function and within parameters of the Downtown Center zone district.
3. Allowing uses in a zone district, which are not normally permitted can begin to change the character of a district. Non permitted uses also have the potential to expand thereby exasperating the impact to a district. The Master Plan and DDA goals are to create a focused “downtown” retail and similar use flavor to this area with a viable tax base accounted thereto.
4. Allowing non permitted uses in a particular district by variance has the potential to foster other requests for consideration with the potential to essentially change the character of a district.
5. The Downtown Center District and DDA are focused on creating a district with a mix of business, retail and combination retail/residential structures in a goal towards a unique appearance and pedestrian friendly environment. The proposed use is not included in the DC zoned vision.
6. The hardship was solely caused by both the occupant and the property owner/management, neither of which sought approval by the City prior to occupancy and renovating the building.

A motion was made by Van Houten to table the request. He then withdrew his motion.

A subsequent motion was made by Van Houten and seconded by Lomonaco that the request for a variance in application no. V100073 be denied, accepting staff's Finding of Facts.

The Board questioned whether the use had been inadvertently omitted in the DC. There was general discussion regarding the creation of the DC zone district, as well as the addition of religious facilities as a Special Use to the B-2 Zoned district. DeLange noted the DC had been created with a special vision. The City Development Review team, reviewed the variance request and determined the proposed use did not meet the parameters of the code for the DC district.

Overall the Board was in favor of religious facilities, and did not want to see HUB Ministries leave the City. Many of Board members thought that as an interim use, the church was not objectionable. However it was stated, and repeated that a temporary variance is difficult to defend, and sets precedence.

In addition, Board members stated they unfortunately were unable to meet the six Finding of Facts for a Use variance as required by the State.

The Board members encouraged Staff to work with the appellant to find them a location in the City with the correct zoning, to allow the church at least ninety days to vacate, and to be open to future consideration should the applicant be able to provide Finding of Facts.

Motion carried: 7 Yeas 0 Nays

PUBLIC HEARING:

Appeal #V100074 P.P. #41-17-14-126-019
Steven Timmers
5024 Maple Tree Ct. S.W.
Zoned ER-1

The application requesting a variance from City Zoning section 90-45(4)(7) limiting the number of accessory structures to one, plus the attached garage, and limiting maximum combined storage area of all accessory buildings to 1,000 square feet, to allow proposed 12'x12' gazebo in rear yard in addition to existing attached garage and small accessory building for a combined area of approximately 1,100 square feet was read by Secretary Lomonaco.

Chairman Burrill opened the public hearing.

Mr. Timmers, 5024 Maple Tree Ct. explained his lot was very wooded and private. The proposed structure would be a 12'x12' gazebo with no sides but a solid room. He had had a temporary structure in the rear yard, but since it had rusted out, he would like to replace it with something sturdier. There is already a pad for the gazebo. It would not be visible from adjacent properties.

There being no further remarks, Chairman Burrill closed the public hearing.

DeLange said staff supported the request, and had formulated Finding of Facts for the Board's consideration.

A motion was made by Lomonaco and seconded by Beduhn that the request for a variance in application no. V100074 be granted, accepting staff's Finding of Facts.

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or class of use in the same vicinity and district because this gazebo accessory structure compliments and provides a covered entertainment/cooking area for the rear yard area. The other small existing accessory building is utilized for general storage of yard and swimming pool equipment.
2. That such variance is necessary for the preservation and enjoyment of substantial property rights because it will allow an enclosed atmosphere for outdoor yard/pool use. The practicality of such a covered structure provides a measure of shelter from the rain and elements when outdoor activity is taking place.
3. That the granting of such a variance will not diminish the marketable value of adjacent land and improvements, or unduly increase congestion in the public streets because of the modest size of the structure, considerable setback from lot lines and it is well screened. Street congestion is not a factor in this variance request.
4. That the condition or situation of a specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation because of the findings stated above.

Motion carried: 7 Yeas 0 Nays (Resolution #5241)

PUBLIC HEARING:

Appeal #V100076 P.P. #41-17-02-454-045
Robert Flores
1961 Godfrey Ave. S.W.
Zoned B-1

The application requesting variances to construct a proposed 8'5"x25'5" building addition in the north side yard; variance from 90-894(3) reducing the required side yard setbacks from 20' to 11' & ' from the north property line, and a variance from 90-44 reducing the required setback of mechanical units from 20' from the side lot line to proposed 12'-15' was read by Secretary Lomonaco. A e-mail communication of support from Dave and Anita Kamps, property owners of 1101-1115 Burton was also read.

Chairman Burrill opened the public hearing.

Kevin Eidson, W.L. Perry Associates, referred to the letter of support he had submitted for the Board's consideration. He noted when originally built, the building had been constructed within the constraints of the B-1 regulations. B-1 has zero setback restrictions when abutting other B-1 parcels. Most B-1 buildings run adjacent to either with no side yards. This property abuts a residential property, and is required to have a rear yard setback. The

proposed addition will encroach on the side yard to the north where there is a hill. The location is unique, and the surrounding residential properties have closer setbacks than this business has.

Mr. Robert Flores, owner of Amaros Bakery, 1961 Godfrey, explained he needed the variance to construct a walk-in cooler. This will give him more room in his facility, and provide additional job opportunities. He asked the Board to grant his variance request.

There being no further remarks, Chairman Burrill closed the public hearing.

DeLange explained the request was for a dimensional variance. Staff supported the request, and were pleased the applicant proposed to provide a finished décor for the cooler and not just leave it with an aluminum or galvanized metal finish.

A motion was made by VanderSluis and seconded by Beduhn that the request for a variance in application no. V100076 be granted, accepting staff's Finding of Facts.

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or class of use in the same vicinity and district because this small commercial enterprise now requires a larger cooler/freezer capacity best obtained through a building addition. The parcel is limited in area necessitating the requested reductions in setback.
2. That such variance is necessary for the preservation and enjoyment of substantial property rights because it will allow this business to adequately service its customers with minimal impact to the area.
3. That the granting of such variance will not diminish the marketable value of adjacent land and improvements, or unduly increase congestion in the public streets because the proposed cooler/freezer addition is constructed such that the exterior design compliments the main building and the overall all separation between this addition and the residential unit next door is considerable for the general area.
4. That the condition or situation of a specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation because of the property use, function and physical limitation for incorporating the desired cooler/freezer unit.

Dykhouse asked where the dumpsters were located. Mr. Flores pointed them out on the site plan. DeLange noted if the dumpsters were currently in the open, they would have to be replaced in an enclosure when the addition was completed.

Motion carried: 7 Yeas 0 Nays (Resolution #5242)

PUBLIC HEARING:

Appeal #V100077 P.P. #41-17-12-352-028
Meyers, Bueche & Nies, Inc.
2781 Woodward Ave. S.W.
Zoned B-2

The application requesting a variance from City Zoning Code section 90-648(1) to reduce the 25 foot landscaped greenbelt to proposed 10 ft. deep landscaped greenbelt for construction of a 24 space parking lot from Restauracion Iglesia Evangelica religious facility was read by Secretary Lomonaco.

Chairman Burrill opened the public hearing.

Brad Meyers from Meyers, Bueche & Nies, Inc. represented the church. The church had purchased this property across from the church to add parking as the church is thriving. The proposed parking lot would have 24 spots with a 10' green space. A 25' green space is required, but with a 25' green space, they would lose 7-8 parking spots. He noted the fencing and screening on the property.

Eric Verburg, 2777 Woodward, did not believe the variance should be granted if there was no protection for neighborhood property values. He believes reducing the green belt would reduce property values and should not be approved. He owns the house to the north.

There being no further remarks, Chairman Burrill closed the public hearing.

DeLange said the site plan showed the location and design of the parking lot. It appeared that the property at 2777 Woodward shared a driveway through the property. While this would be a reduced green belt, 10' is more than many existing businesses have. Privacy fences are proposed for the neighbor's protection. It does not appear there is an easement for the present driveway, and the provided access is reasonable. The parking lot is designed for water drainage.

Chairman Burrill asked the if the privacy fences are required by code. DeLange answered a privacy fence is required between commercial and residential zones, however the house to the north is not zoned residential so while a fence is not required by code. The Board could make the fence requirement a stipulation if they desired.

Mr. Meyers said there was no record of an easement for the neighbor's driveway, but the church was willing to work with Mr. Verburg and the driveway was incorporated into the traffic pattern. It did not make sense to cut off their entrance, so that is why there is no privacy fence until past the driveway.

The Board had empathy with Mr. Verburg, but recognized that without a recorded easement for his driveway, any owner of the property to the south would have the right to cut off his driveway, and it would be his responsibility to provide access to his lot. They commended the church for be willing to compromise.

Postema asked if an additional variancw was needed to shorten the rence? DeLange noted it was a minor condition, however he would seek advice from the City Attorney. If deemed a separate variance is necessary for the fence, the City would be willing to process the

application without any additional fees. In DeLange's opinion, as a stipulation on a non-required fence, the Board's action is sufficient.

Dykhouse asked if the parking spaces were 10' wide. It was noted they were.

A motion was made by Lomonaco and seconded by Dykhouse that the request for a variance in application no. V100077 be granted with the stipulation the privacy fence be erected as proposed on the site plan, accepting staff's Finding of Facts.

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or class of use in the same vicinity and district because this proposed parking lot is relatively small and serves a nearby religious facility, which meets occasionally during the week. The proposed development retains a ten foot landscaped greenbelt, which is greater than most other parking areas in the area.
2. That such variance is necessary for the preservation and enjoyment of substantial property rights because it will allow paved off street parking for the church members and guests.
3. That the granting of such variance will not diminish the marketable value of adjacent land and improvements, or unduly increase congestion in the public streets because of its proximity to other commercially zoned parcels. It will also serve to reduce congestion in the public street due to affording increased area for off street parking with defined ingress/egress.
4. That the condition or situation of a specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation because of the above referenced findings of fact.

Motion carried: 7 Yeas 0 Nays (Resolution #5243)

There were no public comments at the meeting.

The new business items were discussed by DeLange and the Board members.



Canda Lomonaco
Secretary

CL:cb