

These minutes are subject to formal approval by the Wyoming Zoning Board of Appeals at their regular meeting on July 21, 2014.

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

June 16, 2014

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

Members present:    Beduhn            Burrill            Lomonaco        Palmer  
                                 Postema            VanderSluis

Other official present:        Tim Cochran, City Planner

A motion was made by Burrill, and seconded by Lomonaco to approve the minutes of the May 19, 2014 Board of Zoning Appeals meeting.

Motion carried:        6 Yeas            0 Nays

PUBLIC HEARING:

Appeal #V140021                    P.P. #41-18-18-126-013  
Shak Manufacturing  
3057 Madison Ave S.E.  
Zoned B-2

The application request was read by Secretary Lomonaco. Zoning Code Section 90-371 B-2 General Business District Permitted Uses does not provide for a light manufacturing industrial uses within this district. The petitioner requested a use variance to allow a plastic injection industrial facility to be established on this property.

Chairman VanderSluis opened the public hearing.

Kevin Smith, 3025 Madison owns the a property to the north. He would like to add this property to support his existing business. They make molds for plastic injection

Craig Dent, 426 Mae-Thy lives approximately 100 yards from the building. He wanted to know if the proposed use would produce hazardous waste, excess noise or noxious fumes. He would have no problem with the proposed use if the business is quiet and environmentally friendly.

Mr. Smith said business hours are 7:30 – 5:00 P.M. during the week. The noise would not exceed that of existing traffic noise from Madison Avenue. They run a clean operation, and other than some water from the injection process, or some oil for lubricant, they use nothing that could affect the area. They do not do anything that would hurt the environment.

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

Cochran noted the applicant has received a variance in the past for his current operation. This variance would expand his use. The area is unique in the fact there is a mixture of commercial and industrial uses. An adjoining property is an auto body shop which is a commercial use, and neighboring property located in Grand Rapids is used industrially. The current building is not viable for commercial use. It is currently vacant, and needs repair. If left vacant, the building will continue to disintegrate. The City sees no reason to shift the uses in the area to either commercial or industrial. Staff supports the variance request but suggested if the Board granted the request they stipulate there be no pellet blowers to keep down the noise levels.

A motion was made by Burrill and seconded by Lomonaco that the request for a variance in application no. V140021 be granted with the stipulation pellet blowers be prohibited, accepting staff's Finding of Facts.

1. That the condition, location, or situation of the specific piece of property or of the intended use of the property is unique to the property in the zoning district in which it is located because this request is comparable to that previously made by the applicant (Shak Manufacturing) for the nearby properties at 3025 and 3033 Madison Avenue in 2011. The applicant desires to expand that light industrial tool and die manufacturing use (authorized by a use variance) to this failing property. If the use variance is granted, they will acquire the property, reconstruct the building, and establish this use as a companion facility to their existing business. The commercially zoned properties located on the west side of Madison Avenue have been used for a variety of businesses including quasi industrial activities. Allowing the expansion of an existing tool and die manufacturing use onto this property will promote a viable business use in the area and will halt a potential blighting influence.
2. That the building, structure or land cannot be reasonably used in a manner consistent with the uses allowed in the zoning district in which it is located because much of the general area is already zoned, or used, for light industrial purposes. The proposed use does not involve production runs of heavy materials or the use of large stamping equipment. This area of Madison Avenue is not a typical commercial district, and as such provides limited commercial opportunities.
3. That the use variance will not alter the essential character of the neighborhood nor the intent of the City Master Plan, nor be of detriment to adjacent properties because this area of Madison Avenue has a mixture of industrial and commercial uses. Its character has not reached a tipping point to distinctly suggest a change of zoning or an amendment to the Master Plan. Although it is not proposed by the petitioner, it is recommended that the use variance include the prohibition of pellet blowers to prevent the possibility of a noise nuisance to nearby residential areas.
4. That the requested use is not of so general or recurring a nature as to make reasonably practical the formulation of a general regulation, or adding it to the permitted uses in the zoning district in which it is located or to permitted uses in other more appropriate zoning districts because the mix of industrial and commercial uses in this area is unusual within Wyoming and has existed for several decades. Rather than establish a new zoning district that blends commercial and industrial uses, staff considers it appropriate to let the corridor evolve to eventually clearly establish a zoning character.

5. That the variance will not impair the intent and purpose of this Ordinance because the mixed use character of this corridor has already been established.
6. That the immediate unnecessary hardship causing the need for the variance request was not created by the applicant because the applicant has an established light industrial use on a nearby property which is also zoned commercial. They desire to acquire and redevelop a failing property and establish a viable business use.

Motion carried:           6 Yeas           0 Nays (Resolution #5562)

PUBLIC HEARING:

Appeal #V140018                   P.P. #41-17-10-302-012  
Blu House Properties  
2440 Byron Center Ave. S.W.  
Zoned B-1

The application request was read by Secretary Lomonaco. Zoning Code Section 90-336 B-1 Local Business District limits land uses to nonresidential purposes in this district. Zoning Code Section 90-682 Nonconforming Uses of Land restricts the enlargement of nonconforming uses of land. The property is nonconforming with the use requirements of this B-1 District in that there are three existing apartments in addition to a hair salon. The petitioner requested a use variance to allow the property to be used for five apartments. A letter of opposition from Khoa Duong, owner of 2358 Lee St. was also read.

Justin Smith, Menlo Park, CA explained he had purchased the apartment building two months ago. The property had been managed by Blu House for the last six months. Mr. Smith has four apartment buildings in the Grand Rapids/Wyoming area. This is the only one in Wyoming. He has relatives in the area, and he can afford to buy property in Michigan, rent it out to tenants and make a difference in the area. When he purchased the building there had been a hair salon. That space is no longer occupied. He believed the hair salon created the parking issues. Right now he has three apartment tenants with a total of three cars. There are three garages on the property which can be used to park four cars. In the past the garage had been rented out separately from the apartment rentals. With the salon gone, there is more capacity for parking. The upstairs has four units, three of which are being used. The downstairs space can be converted into a fifth unit. He uses a professional property manager who take their time to find good tenants.

Chairman VanderSluis opened the public hearing.

Duke Gray, Blu House Properties, said his company has managed the property since Decmeber, 2013. The property had been foreclosed. Previously the property had been badly mantained. The previous tenants were the problem. Since December, there has been no problems at the property.

Mr. Smith was surprised to see an objection from Mr. Duong. They had been negotiating for a parking easement on Mr. Duong's property until it was determined that with the garages

they would have sufficient parking. He had taken pictures of the property on the day of the meeting and the parking lot was empty.

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

Cochran spoke to the unusual aspects of the property. The building itself is awkward. In the past the property had been given approval for apartments on the top floor. He referred to aerial pictures and building layouts. In 2011 the Zoning Board had been asked to grant approval for four apartments. At that time staff was unsupportive of the request. Since then there has been a lot of discussion in general within the City of supporting changes to the Zoning Code to allow and promote mixed uses. Specifically, the City is currently looking at 28<sup>th</sup> St. and South Division corridors. This building already has characteristics suggesting mixed use but was not well designed. Staff does not believe that an office use or retail business would be viable at this location. The business located just to the north along Porter Street derives its business from the neighborhood surrounding it. The best use for the building may be an apartment use. Overall there would be less need for parking. However to help limit parking issues, he suggested the Board make a stipulation on the garage parking so the garages are not rented out for other uses. Staff would support the request. (Editor's Note: Cochran noted a correction in the proposed Finding of Facts, the word Porter should be substituted wherever there is the word Burton.)

A motion was made by Burrill and seconded by Palmer that the request for a variance in application no. V140018 be granted accepting staff's Finding of Facts.

1. That the condition, location, or situation of the specific piece of property or of the intended use of the property is unique to the property in the zoning district in which it is located because this property is unique in that there are three historical and BZA authorized apartments, a commercial space, an office and three separate garage stalls within the single structure. This structure is an oddity within the City. The combination of the uses results in dysfunction with the overall efficient use of the property. The petitioner proposes to fully utilize the property for five complete apartment units. The existing multifamily use of this property predates the current B-1 Local Business zoning.
2. That the building, structure or land cannot be reasonably used in a manner consistent with the uses allowed in the zoning district in which it is located because the Byron Center/Porter commercial node is small in scale. The existing businesses in this node cater primarily to nearby residents. The use of the structure for commercial and office space (as permitted under the B-1 Local Business zoning) in combination with the more dominant apartment use does not appear viable long term.
3. That the use variance will not alter the essential character of the neighborhood nor the intent of the City Master Plan, nor be of detriment to adjacent properties because this property has been used for apartment use for a considerable time. There are other apartment buildings located in the surrounding area on both Byron Center Avenue and Porter Street. With the full use of the garages and the existing on-site parking, there is sufficient parking to supply the five apartment units. The site is also located near the RAPID bus service which runs Burton Street frequently. Without a viable use of a significant portion of the structure, the overall property will deteriorate and become detrimental to nearby properties.

4. That the requested use is not of so general or recurring a nature as to make reasonably practical the formulation of a general regulation or adding it to the permitted uses in the zoning district in which it is located or to permitted uses in other more appropriate zoning districts because the property could be requested for R-4 Multiple Family Residential zoning, to be considered by the Planning Commission and City Council. However, the property does not abut another R-4 zoned property and would be considered a “spot” zoning. Also, the property is less than one acre, which is the minimum required for an R-4 zoning. City Council cannot waive the minimum lot area Zoning Code requirement.
5. That the variance will not impair the intent and purpose of this Ordinance because the property has been used primarily for apartment use for a considerable period.
6. That the immediate unnecessary hardship causing the need for the variance request was not created by the applicant because the property has been used primarily for apartment use for a considerable period and prior to ownership by the petitioner. The long term use of a portion of the structure for commercial and office space is not viable.

Because Lomonaco is a resident of the area, she noted in the past the tenants of the building would allow pets to defecate on neighboring properties since there is no green space on the site. Also the tenants would hold parties in the neighboring parking lot. Currently there is a dumpster in the City’s Right of Way. She did not feel that location was appropriate for the dumpster and would like to see it removed to an enclosed area.

There was discussion amongst the Board members to where the dumpster should be located. It was decided to have the owner obtain the City’s suggestions and approval about a permanent location.

Burrill was concerned about the tenants’ accessibility to garage use. Many times garages are offered for an extra monthly rate. He would like it stipulated the garages be available only for tenant use.

Burrill with Palmer’s support amended his motion to add stipulations the garages be accessible and used by tenants only, and the dumpster be moved to a location acceptable to the City and enclosed.

Motion carried:           6 Yeas           0 Nays (Resolution #5563)

PUBLIC HEARING:

Appeal #V140019                   P.P. #41-17-02-327-005  
Richard Kazma  
1614 Judd Ave SW  
Zoned R-2

The application request was read by Secretary Lomonaco. Zoning Code Section 90-68 R-2 Single Family Residential limits residences to single family structures in this district. The petitioner requested a use variance to allow an existing two family structure to be retained.

Chairman VanderSluis opened the public hearing.

Richard Kazma, 1750 Grand Ridge, Grand Rapids, purchased the property on July 10, 1987. At the time the property was being operated as a two family. The electric and gas lines were split between the units.

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

Cochran explained to the Board members prior to 1950, the zoning code allowed for single family and two family uses in this R-2 zoned area. Because of that there is a mix of residences in this older area of the City. In 1957 a survey was taken to determine which houses were used as single family or two family. This address is not noted as a two family so at some point this house may have been converted. However for over twenty years it has been used as a two family. The City became aware of the use through the City's rental program. The variance is required to grant legal status to the use. There has been no communications received in opposition. The use is viable and has proved not to be a detriment to the neighborhood. Staff supports the request and provided Finding of Facts for the Board's consideration.

A motion was made by Postema and seconded by Lomonaco that the request for a variance in application no. V140019 be granted accepting staff's Finding of Facts.

1. That the condition, location, or situation of the specific piece of property or of the intended use of the property is unique to the property in the zoning district in which it is located because this property came to the attention of the Building Inspections Department through the rental inspection program. The property is zoned R-2 Single Family Residential and it was converted to a two family quite some time ago without City authorization. The request is to authorize its ongoing use as a two family residence. This area of Wyoming developed prior to 1950. The Zoning Code during that period allowed both single and two family residences to be built in this area. In 1957, in advance of a new Zoning Code, a survey was conducted to identify which residences were two family houses. This property was not identified as a two family in that survey. All identified two family residences were made non-conforming within the new Zoning Code. There are numerous two family residences scattered in the general area. The authorization of this property as a two family would acknowledge its on-going historical use and the property would not be out-of-character with the surrounding area.
2. That the building, structure or land cannot be reasonably used in a manner consistent with the uses allowed in the zoning district in which it is located because the development pattern in this area of Wyoming is primarily single family residences with scattered two family residences. The proposed two-family use is consistent with this development pattern.
3. That the use variance will not alter the essential character of the neighborhood nor the intent of the City Master Plan, nor be of detriment to adjacent properties because the property has functioned as a two family residence for a considerable period without significant impact to the surrounding neighborhood. The residence is now on the rental inspection program with significant improvements to the overall property being required.
4. That the requested use is not of so general or recurring a nature as to make reasonably practical the formulation of a general regulation or adding it to the permitted uses in the

zoning district in which it is located or to permitted uses in other more appropriate zoning districts because there are numerous two family residences scattered throughout this area on properties also zoned R-2 Single Family Residential. The comparative numbers of such residences in the overall area is not sufficient to justify amending the Zoning Code to authorize such uses

5. That the variance will not impair the intent and purpose of this Ordinance because the continued two family use of this property would not impair the intent of the R-2 Single Family Residential district as single family homes would continue to be the majority of structures in this area.
6. That the immediate unnecessary hardship causing the need for the variance request was not created by the applicant because the petitioner has owned the property for over 20 years. He acquired it as an existing two family residence with both electrical and water service split for each unit.

Motion carried:           6 Yeas           0 Nays (Resolution #5564)

PUBLIC HEARING:

Appeal #V140020                   P.P. #41-17-03-451-018  
Rieth-Riley Construction Co. Inc.  
2020 Chicago Dr. S.W.  
Zoned I-2

The application request was read by Secretary Lomonaco. Zoning Code Section 90- 893 Nonresidential Districts requires a minimum side yard setback of 10 feet in this I-2 General Industrial District. The petitioner requested a variance to allow two building additions with up to a zero side yard setback.

Chairman VanderSluis opened the public hearing.

Gary Schenk, Rieth-Riley Construction Co. said the company had acquired the property in 2009; however the asphalt batch plant has been in operation for the past 25 years. The proposal is to raze the old plant and construct a new one. The office would be enlarged so the location could be made the regional headquarters. The existing office building already crosses the property line; however there is a perpetual easement between Rieth-Riley and the Chesapeake and Ohio Railroad for the property to the west, which technically gives them sufficient setbacks. The proposed laboratory building requires the setback variance so the traffic flow of the property will not be affected. It would not adversely affect the railroad property.

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

Cochran affirmed the variance is for an expansion of a current and on-going situation. The site plan was approved by the Planning Commission in May. Staff supports the request and has provided Finding of Facts for the Board's consideration.

A motion was made by Burrill and seconded by Palmer that the request for a variance in application no. V140020 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 the petitioner proposes to redevelop and modernize the existing asphalt batching facility. The site plan for the project was approved by the Planning Commission on May 20, 2014. That site plan showed the expansion of the existing office building and construction of an adjoining lab building. The office building currently is located across the property line on the C&O Railroad right-of-way. An easement granted by the railroad provides for that building's location. The proposed small building additions would fall within the required 10 minimum side yard for this district. The proposed additions will have no impact on the adjoining railroad spur function.
2. That such variance is necessary for the preservation and enjoyment of substantial property rights because the expansion of the existing office building and the development of the lab building, are essential for the operation of the proposed modernized asphalt batching facility. Utilities are currently provided to that building which will be utilized for the new facilities.
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 building locations will have no impact on the existing railroad as the current building is already located on that property within a granted easement. No congestion will occur on Chicago Drive with this use.
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 the existing building is located across the property line. This situation is not of a general or recurrent nature.

Motion carried:            6 Yeas            0 Nays (Resolution #5564)

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There were no public comments at the meeting.

The Board inquired about being provided identification for site visits. Cochran would check into the possibility.

Burrill spoke about the new Wimsatt development on 28<sup>th</sup> St. that had been before the Board for use variances. He felt the City and Board's decisions had helped to bring about the new development. The property looks "sharp".

Cochran updated the Board on the lawsuit against the City by CBS Outdoor. The Court had agreed with the Board's interpretation that proposed billboard change-outs to digital display did not meet the definition of regular maintenance and denied the appeal.

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Canda Lomonaco  
Secretary

CL:cb