

2 district. The Wyoming Code is designed with the intent and purpose of ensuring preservation and enjoyment of property rights, safeguarding property values and ensuring standard and uniform development. The operation would be an enhancement to the location. Negotiations took time, and it is possible that the non-conforming legal status was lost, while negotiations were taking place.

Lillian Vander Veen, 2751 Colgate, is a resident and business owner in Wyoming. As a member of DDA Board, she made the motion to endorse the variance request. The operation would be a good thing for the community. Two other large parcels are seeking relief by application to the Michigan tax tribunal. If granted, the DDA would lose funds. It would be smart to grant a variance that would allow a credible business to operate in the DDA. Merchants along 28th agree, and feel the use would benefit them as well.

Doug Kochneff, 841 28th St. S.W. – Action Tire, is also a member of the DDA. He also supported the variance request. The use would provide benefits to other parcels in a two mile radius, and would bring in people to the community. The business is well funded.

Matt Hofstee, 2006 Denwood, also supported the variance request, and thought the operation could bring in traffic.

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

DeLange read staff's recommended Finding of Facts for denial of the variance.

1. The display and sale of automobiles is prohibited in the DDA district. The previous vehicle dealership was an allowed non-conforming use I.E. grandfathered. Its vacancy for over one year caused this status to be lost. The property is available for permitted use within the DDA area. The premise of non conforming use cessation is to encourage development, meeting the districts development vision.
2. The layout of the building and land is conducive to the previous use. However it also has great potential for uses currently permitted in the DDA including retail, office, restaurant, etc.
3. Allowing vehicle sales to re-occupy the property will effect the future development of the DDA as currently envisioned. A Use variance can have long term impact due to variances staying with the property I.E. vehicle sales could occupy the parcel in perpetuity. Non conforming use cessation would not alter an approved variance.
4. Precedence is a concern as permitting this use may affect possible development requests at other light vehicle dealerships in the area.
5. The intent and purpose of the current ordinance is to not allow vehicle dealerships in the DDA and to not encourage recurring occupancy once non conforming use status has been lost.
6. The applicant desires this location, understandably so, however a hardship to the property itself has not been established.

He went on to explain that a Use variance is very difficult to grant. First because the Finding of Facts required by the State of Michigan are difficult to fulfill, and second, because a Use variance does not expire but stays with the property. Staff had researched the request and

discussed it the Planning Staff and the Development Review Team. Staff looked at the ordinance, and to uphold the ordinance as written for the DDA district, recommended the variance be denied. Use and new cars sales was not part of the vision when the DDA was developed. This is a good size building, and sharp looking, it could be remodeled for other allowed uses. A variance for this request could affect the vision of the DDA. A non-conforming legal use loses its permitted right once the use ceases, however a variance stays with the property. The Board needed to be careful of setting precedence, there could be similar requests forthcoming. The intent of the ordinance is not to allow or encourage non-conforming uses. No hardship had been established.

Tim Cochran agreed there are a great number of commercial vacancies in the City. However Wyoming has no more or less than any other community in the State, or the Country. In the current economic climate, there are two schools of thought. One is to embrace any business to fill occupancies, and provide jobs; the other is to stay the course. Recently, the City Council gave the Planning Commission approval to revisit the DDA district. A team of diverse professionals has been put together to take a comprehensive look. There will be input from the businesses and neighbors in the community. In approximately nine months, the City should have a good idea of what the City will envision for the district. It may be found used car sales would be a good use. Unfortunately, at this time, staff does not know. Car dealerships are unique operations, and tend to congregate by each other. An example is the used car sales businesses on S. Division. However, until the DDA zoning is looked at comprehensively by the team, it would be premature to address this request. The City should be clear in the direction of the Zoning. A variance at this time could have a negative effect on the district.

A motion was made by Van Houten and seconded by Lomonaco that the request for a variance in application no. V10077 be granted, using the applicant's proposed 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 is the only similarly situated parcel in the entire DDA, is on the outer edge of the DDA, was previously designed and used for used car sales, and is not readily fit for any other use.
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 if not for the DDA, the parcel is zoned B-2, which would allow used cars sales as a Special Use. The building is very small and not suitable for general retail sales. There is a large parking lot for display of vehicles. There is no need for construction, building permit, etc., as the building and layout are designed for used car sales.
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 parcel was previously used for car sales. There are several other nearby parcels, while not in the DDA, that operate used car lots. Appellant will maintain parcel in a highly professional appearance, ensuring the property is safe.
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 situation is unique. The parcel had been in operation as used car sales. The parcel was solely designed for car sales, and is on the outer edge of the DDA, near other car sales operations.

5. That the variance will not impair the intent and purpose of this Ordinance because the Wyoming Zoning Code is designed with the intent and purpose of ensuring preservation and enjoyment of property rights, safeguarding property values and ensuring standard and uniform development. There have been no improvements made to the area west of Burlingame from the DDA.
6. That the immediate unnecessary hardship causing the need for the variance request was not created by the applicant because Rightway began negotiations believing the used car sales were still permitted on the property. If negotiations had concluded earlier, property may still have maintained non-conforming legal or "grandfather" status.

Lomonaco supported the variance request and noted the DDA approved of it as well. In regards to the DDA actions, not much is done for the areas west of Burlingame Ave. on 28th St. It would be better to have the proposed use than a vacant lot with a weed issue. She thought the fact that they had been negotiating with the owner, should be considered in the consideration. Wyoming needs to focus on "right now", not the long term.

Postema asked for clarification about a variance staying with the parcel. DeLange noted again that a Use variance does not expire. If this business moved out, there is nothing from stopping another used car sales from operating out of the location.

VanHouten thought it was a shame the "grandfathered" use was lost. He felt it would be reasonable to extend the use.

Dykhouse asked if it was known when the other dealership closed. DeLange did not know the exact date, but thought it was about a year and a half ago. Earl Clements, representing the property owner Tim Petty, said Mr. Petty had ceased new car sales by the end of October, 2008 and used car sales by the end of December, 2008.

Chairman Burrill wondered if the expiration of the City business license could be used as the end date. DeLange noted Zoning Code specifically references the cessation of the use, but checked with the Clerk's office, and the business license expired March 30, 2009. Either way the property has been vacant for more than one year.

Chairman Burrill asked the applicant what the average price of their used car was. Mr. Crane, Rightway Automotive, answered \$10,000.

Dykhouse asked how many cars they would have on site. Mr. Crane answered they carried 40-60 days worth of inventory or 70-80 vehicles.

Chairman Burrill likes the proposed use. He thought the neighboring properties were used to seeing a dealership at this location. He thought it would be difficult to put another use on the site.

Postema asked to be shown what portion of each property would be used for the car lot. Mr. Clements used the aerial photograph to show the Board the referenced area. Rightway is leasing the property with an option to purchase. Only a portion of 1680 28th St. would be used, the rear half is currently occupied by Hansen Collision.

VanderSluis asked Mr. Cochran if it was reasonable to assume the Zoning Code would be tweaked as result of the review. Mr. Cochran could not answer that conclusively, however if changes were suggested, it would have to go through the Planning Commission, and then to City Council for approval.

VanderSluis said the Code clearly prohibited the sales of used cars. The Zoning Board of Appeals is not responsible for changing City Code, if the DDA wanted to amend the ordinance, the amendments should go through the proper channels. He also did not believe the applicant's Finding of Facts could be used.

Postema struggled with the same issue; however he would like to see the business at that location. He had researched his old Planning minutes, and when the DDA was developed, the concern regarding uses was strengthening the businesses along 28th St. The intent and the Master Plan are clear, however the fact that the location is not at the core of the DDA may add some validity.

Dykhouse was concerned that ever since the DDA was established, the Board of the DDA has endorsed variances from the DDA ordinance. He cited two variances for gas stations as example. He felt the DDA Board was not being consistent with their own vision.

Lomonaco thought the current economics should be considered, in order to help the businesses along 28th St.

Postema asked if the variance was granted, and the DDA zoning was changed to include used cars sales, would the use then be considered grandfathered, or would the variance take precedence. Cochran said it was too early to speculate, but he noted the use would be tied to the code at the time of commencement.

Chairman Burrill inquired about tying the variance to the applicant, with the variance expiring if the property is vacated for more than six months. DeLange noted the Board could make the stipulation, however legally defending the stipulation could be difficult.

Chairman Burrill also suggested adding to the Finding of Facts that the average price of Rightway's used cars is \$10,000.

VanHouten amended his motion to add the stipulation regarding the applicant's six month vacation, and also to add the language to the finding of facts noting the vehicle sale price. Lomonaco amended her support.

Motion carried: 5 Yeas 2 Nays (Dykhouse, VanderSluis)(Resolution #5241)

During the public comment portion of the meeting, Doug Kochneff thanked the Board for their decision. He wanted the ZBA to know the DDA is about doing good for the businesses on 28th St. Mike Crane also wanted to thank the Board. He said Rightway would make the City proud they approved the variance.

ELECTION OF OFFICERS:

A motion was made by VanderSluis and seconded by Lomonaco to elect Burrill as Chairman of the Zoning Board of Appeals.

Motion carried: 7 Yeas 0 Nays

A motion was made by VanHouten and seconded by Lomonaco to elect Postema as Vice Chairman of the Zoning Board of Appeals.

Motion carried: 7 Yeas 0 Nays

A motion was made by Beduhn and seconded by VanHouten to elect Lomonaco as Secretary of the Zoning Board of Appeals.

Motion carried: 7 Yeas 0 Nays

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



Canda Lomonaco
Secretary

CL:cb