These minutes are subject to formal approval by the Wyoming Zoning Board of Appeals at their regular meeting on September 17, 2012.

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

August 20, 2012

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

Members present:	Beduhn	Dykhouse	Lomonaco	Postema
	Palmer	VanderSluis	VanHouten	

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

A motion was made by Lomonaco, and seconded by Palmer to approve the minutes of the August 6, 2012 Zoning Board of Appeals meeting with minor corrections to page 1 and page 2. (Editor's Note: Page 2 was reviewed, and was correct as submitted.)
Motion carried: 7 Yeas 0 Nays

A motion was made by Lomonaco, and supported by Beduhn to alter the order of the agenda, moving V1200233 to the end of the Public Hearings.
Motion carried: 7 Yeas 0 Nays

PUBLIC HEARING:
Appeal #V120230 P.P. #41-18-19-226-011
Robert Christiansen
3627 Linden Ave. S.E.
Zoned I-1

The application requesting a variance from City Zoning Code section 90-893 regulating I-1 Light Industrial zone districts as follows:

1. variance from minimum 43,560 (1 acre) square foot area required to divide an existing parcel into two lots under same ownership (1) 16,648 square feet 63.5'x261' and (2) 35,800 square feet (136.25'x261)
2. variance from minimum 10,000 square foot building size to allow proposed 720 square foot accessory use building on the smaller parcel was read by Secretary Lomonaco.

Chairman VanderSluis opened the public hearing.

Robert Christiansen, 154 36th St. S.E. is purchasing the property. He was granted a Use variance in June for a B-2 use in an I-1 district. After the variance, his attorney discovered a State of Michigan constitutional statute that does not allow the mortuary and the crematorium to be owned by the same business. So he would like to separate the parcels in order to make them different operating businesses to satisfy the State Law.

There being no further remarks, Chairman VanderSluis closed the public hearing. DeLange stated it was rare for staff to support a variance request of this nature in regards to the size of the parcels, however in view of the state regulations; staff would support the request with stipulations. Staff recommended a stipulation that should either business cease operating for whatever reason; the two parcels would be required to be combined. This stipulation should be recorded on the deeds of the properties.

It was clarified by the Board that the State Law prohibits the parcels from having the same owner. The applicant proposed different family members be recorded as owners. This changed staff's proposed stipulation somewhat since staff had suggested the properties have the same owner. It was suggested and agreed that the wording of the deed restriction be reviewed and approved by the City Attorney prior to recording.

A motion was made by Postema and seconded by Palmer that the request for a variance in application no. V120230 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 State regulations for the cremation industry do not permit the facility to be on the same parcel as a funeral home business. In this case the two business types are affiliated, so it is necessary to divide the parcel into two lots with one parcel having a small proposed structure containing crematorium equipment. This unique property variance is subject to stipulations stated in finding of fact #2.
2. That such variance is necessary for the preservation and enjoyment of substantial property rights because it is stipulated that the submitted deed restriction as approved by the City Attorney requiring parcel combination upon sale or ownership change or business use/type be recorded with the Kent County Register of Deeds.
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 Occupancy of this site with a viable professional business will support property values. Use of the facility will not unduly increase congestion of the public street.
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 proposed business type crematorium/funeral home is rare in its industry.

Motion carried: 7 Yeas 0 Nays (Resolution #5339)

PUBLIC HEARING:
Appeal #V120232 P.P. #41-17-10-427-064
Joel Wilcox Builder LLC
3543 Burlingame Ave. S.W.
Zoned B-1

The application requesting a variance from City Zoning code section 90-893, which requires a minimum 30 foot rear yard setback to allow proposed 15'x25' building addition ie. garage to the rear of the building with a 25 foot rear yard setback was read by Secretary Lomonaco.

Chairman VanderSluis opened the public hearing.

Joel Wilcox, Joel Wilcox Builder LLC, 1643 Glenboro Ct., was present on behalf of the tenant. The plan is to remove the 8'x9' building to the rear of the property and add a garage, but they will need a variance for the rear yard setback. They also plan on residing and painting the building.

The owner of the adjoining property to the south voiced his concern with water drainage. 3547 Burlingame now gets the water run-off from 3543 Burlingame.

Mr. Wilcox addressed his concern, and noted gutters will be installed and the water will be funneled to a tile lined retention area. This will not only prevent any more water on the neighboring property but will also improve the current situation.

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

DeLange noted the variance request was modest, and improved the existing property. Staff supported the variance request.

A motion was made by Dykhouse and seconded by Lomonaco that the request for a variance in application no. V120232 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 is a modest attached storage/garage addition to the rear of a small commercially zoned and used building. Limited rear yard area is available for expansion without a minor setback variance of five feet. Allowing the structure to be placed as proposed retains all use of the current paved parking area.
2. That such variance is necessary for the preservation and enjoyment of substantial property rights because This small addition provides room for either product storage or for one vehicle to park therein.
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 n ample rear yard setback of 25' is retained and allowing for secure covered storage is a benefit to the business and general area. Street congestion is not a factor in this case.
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 minor project scope and the maintaining of a sizeable rear yard setback.

Motion carried: 7 Yeas 0 Nays (Resolution #5340)

PUBLIC HEARING:
Appeal #V120236 P.P. #41-17-13-353-029
Signworks
729 36th St. S.W.
Zoned B-2

The application requesting a variance from City zoning code 90-799, which prohibits signs above the roof line to allow two - 50 square foot 5'x10' signs placed on each side of a brick wall protruding above the roof line was read by Secretary Lomonaco.

Chairman VanderSluis opened the public hearing.

Ann Frass, Signworks, 4620 44th St. S.E., represented the tenant Work Box, who is expanding their business in Wyoming. They plan on freshening up the property and bringing life to the building. The building itself does not provide area for a roof sign. When the building was erected, the type of wall sign they are requesting was allowed by Zoning code. The construction of the building does not fit the Sign Ordinance.

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

DeLange remarked that the protruding brick wall was existing, and conducive to the placement of the proposed sign. Since the sign will function like a pylon sign, staff would recommend the variance be granted with the stipulation there be no other pylon or ground signs allowed on the property.

A motion was made by Van Houten and seconded by Lomonaco that the request for a variance in application no. V120236 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 brick wall appurtenance protruding above the roof line is an existing architectural feature of this older building. Its design is conducive to placement of reasonably sized wall signs, which will be visible at a higher point than normal. They will function much the same as a pylon sign. Therefore it is stipulated that no pylon or ground signs are permitted on this property.
2. That such variance is necessary for the preservation and enjoyment of substantial property rights because it will afford opportunity for business advertisement on a portion of existing building structure.
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

masonry wall appurtenance is an existing condition and pylon or ground signs are prohibited by variance stipulations. Street congestion is not a factor in this case.

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 there are very few structures with similar building features that would warrant consideration.

Motion carried: 7 Yeas 0 Nays (Resolution #5342)

PUBLIC HEARING:
Appeal #V120233 P.P. #41-17-10-427-064
DeHamer Brothers Real Estate Ltd. Partnership
2515 Burlingame Ave. S.W.
Zoned I-1

The application requesting a Use variance from City Zoning section 90-471 to allow an I-2 General Industrial District Special Use. I.E. open storage yard for construction equipment and materials such as trucks, equipment and materials related to a pipe line installation contractor located in an I-1 Light Industrial Zone district was read by Secretary Lomonaco. There were four letters in opposition to the variance request. They were from Jeana Anderson, 2520 Hague; Suzanne Towns, 2508 Hague; Tom Pham, 2524 Hague; and Maria Mendez, 2538 Hague. Also Jeff Koeze, Koeze Company, 2555 Burlingame had submitted a letter of opposition prior to the meeting.

Chairman VanderSluis opened the public hearing.

Mr. Dave DeHamer, DeHamer Brothers Real Estate Ltd. Partnership, 6941 Homerich, Byron Center, gave his personal and family history of the property in question. He and his brother still own the property. Over the years the property changed from residential housing to their landscaping business that was established in 1986. The site plan approval from the City at that time noted outdoor storage. They had landscape material as well as business equipment stored to the rear of the property. Also an appraisal had been made, and it also made mention that the best use for the property included outdoor storage. At present they have one tenant, Jon DeGraaf Painting, who has been there for over 4 ½ years. Anyone interested in renting the front office space wants outdoor storage. They have been trying to rent out the property for ten years. Miller Pipeline would like to store their equipment at this location. Miller Pipeline is an established business with a need for an area to store equipment. Mr. DeHamer displayed pictures of Miller's equipment that is presently stored on DeHamer's current landscape location in Byron Township. All the equipment is in good condition and nice looking. Bringing in a new business will re-establish the area and bring more jobs to the City.

Mike Whaley, General Manager of Miller Pipeline spoke about how Miller Pipeline is good for the economics of an area. They are a high profile company. They use local services, like fuel, food service and hotels. They contribute to charities in the areas where they have

locations. He cited several examples from their locations in Port Huron, Traverse City, Niles and other locations. Their operation is clean and neat. There is no fuel storage on site. The equipment is gone all day on location. The property would be used for nightly storage.

The son of Maria Mendez, 2538 Hague, spoke against the variance request. He had just returned from active combat military duty and is worried about the noise and the unsightliness of the equipment.

Mark Andree, Koeze Company, noted City staff does not support the variance request. At Koeze's they are concerned with any additional dust, and the possibility of unsightliness. He noted a variance would not meet the City's intent to restrict heavy industrial use to the area north of Chicago Dr., west of Burlingame. The applicant has asked for similar requests in the past that have been denied. The applicant has not met their burden of proof to establish a need for this variance. Nothing has changed. If granted a use variance, this would create a burden on the Koeze Company. The current tenant's use fits the I-1 zone and he has been a good neighbor.

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

DeLange said the City's Development Review team had had considerable discussion regarding this variance request. During discussion the team looked at the history of not only this property but the surrounding area. The team recommended the variance be denied and has formulated the following findings for the Board's consideration.

1. No circumstances are apparent to warrant approving this type of use variance. The parcel is zoned I-1 Light Industrial. Construction equipment and outdoor construction contractor storage yards are a Special Use approval in the I-2 General Industrial zone districts. This property is not unique to other I-1 parcels within the City.
2. No documentation has been submitted to indicate that uses permitted in the I-1 zoned district cannot reasonably use this site.
3. Allowing uses permitted in a particular zone district to locate in other districts have potential to alter the essential character of an area and circumvent the intent of the City's Master plan. Extensive outdoor storage can be a detriment to the appearance and value of an adjacent parcel, particularly when storage is of equipment, vehicles and materials used in construction.
4. It is problematic when various uses are proposed in districts where they are not permitted. Granting such requests can negatively affect the overall purpose of a district. Precedence may hinder the organized development of an area.
5. This use is normally permitted in I-2 General Industrial Districts only after thorough review by the Planning Commission under Special Use requirements. It is not permitted nor desired in I-1 Light Industrial Districts.
6. The variance request is caused by the applicant and/or property owner's desire to utilize the property at this time.

Chairman VanderSluis clarified the request is for a Use variance.

DeLange noted that as I-1 Zoning the property use could relate to repair/service of trucks over 5,500 pounds or manufacturing. However open storage of construction equipment is allowed by Special Use approval only in the I-2 zone district.

A motion was made by Van Houten and seconded by Dykhouse that the request for a variance in application no. V120233 be granted formulating the following Finding of Facts.

VanHouten thought the concerns regarding the variance request could be addressed. Buffer zones could be established, location of equipment setbacks could be set and landscaping could help control the dust concerns.

Dykhouse felt the variance for Weller had changed the character of the area. He saw this use as similar to an earlier use i.e. landscaping business. The trucks will be parked in the rear and not visible from the street frontage.

Dan DeHamer, DeHamer Brothers Real Estate Ltd. Partnership, alleged they had originally had zoning that would permit the proposed use, but then the zoning was changed.

Postema asked DeLange if the City would require the storage area to be paved if the variance was granted.

DeLange said the Board would have to make it a stipulation. Typically for heavy equipment storage, the City allows for a gravel surface with regular dust control.

Postema thought the main concerns could be handled with regular maintenance more than a vacant lot is.

Lomonaco thought the gravel would keep the dust down. The noise should not be an issue if the equipment leaves in the A.M. and returns in the P.M. There are so few properties in the area that meet the zoning requirements, because so many surrounding businesses have received variances. She would suggest screening.

DeHamer said they will be installing slats in the existing fences that will match that of Waste Management. The slats are already on order.

VanHouten asked about the business's hours of operation.

Mr. Whaley said they typically leave at 7 A.M. The equipment does not sit running except in the winter when the trucks need to be warmed.

The Board wanted to discuss a requirement to stipulate trees for screening. They were unable to decide on the type, location and spacing of any trees.

Mr. Andree noted there was a lot of discussion, and Koeze's would like to have a chance to review any proposal much like a site plan approval, where the site plan is available for viewing prior to discussion. Koeze's would prefer no landscaping. He cited the FDA

regulations on their manufacturing. He noted trees attract birds, and birds have been a cause of salmonella incidences.

VanHouten wanted to suggest the entire rear yard be fenced.

Mr. DeLange did not think Koeze's retail customers would see the vehicles stored in the rear.

Chairman VanderSluis noted this variance discussion was atypical for the Board. He reminded the other members that before voting on the motion, Mr. VanHouten as the person who made the motion would need to formulate Finding of Facts to support the motion.

Chairman VanderSluis noted the fact the applicant wants to lease the property is not a reason for a variance. They have a current tenant with an allowed use, so it is obvious the property can be used. Just saying the zoning is not fair does not constitute a reason to grant the variance.

The Board formulated the following 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 it does not have outdoor storage when many other businesses in the area other than Koeze's and the adjacent office complex do.
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 of the inconsistency of uses in the area, and at one time the property had a similar use.
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 of the condition of the vehicles and materials used in construction that will be stored. There already is outdoor storage on neighboring 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.
5. That the variance will not impair the intent and purpose of this Ordinance because the use is not different from historical use.
6. That the immediate unnecessary hardship causing the need for the variance request was not created by the applicant because of changes in zoning in the area, and past variances.

Motion carried: 5 Yeas 2 Nays (Beduhn, VanderSluis) (Resolution #5341)

Chairman VanderSluis called to Board's notice that in Miller Pipeline's letter, the stated intention was a monthly lease.

DeLange said he had been informed there had also been discussion of an option for Miller Pipeline to purchase the property.

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There were no public comments at the meeting.

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

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Canda Lomonaco
Secretary

CL:cb