

These minutes are subject to formal approval by the Wyoming Zoning Board of Appeals at their regular meeting on November 18, 2013.

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

November 4, 2013

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

Members present: Beduhn Burrill Dykhouse Lomonaco Palmer
 Postema VanderSluis

Other official present: Tim Cochran, City Planner

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

Motion carried: Yeas Nays

PUBLIC HEARING:

Appeal #V130047 P.P. #41-17-02-183-013 & -014

Johnny Wilter Maldonado-Monteoya

1251 & 1255 Chicago Dr. S.W.

Zoned B-1

The application requesting a Use variance from City Zoning code section 90-336 to allow a B-2 general business automotive repair garage to operate in a portion of a building located in a B-1 local business zone district was read by Secretary Lomonaco.

Chairman VanderSluis opened the public hearing.

Mr. Johnny Wilter Maldonado-Monteoya, referred to his architect Juan Davis to speak for him.

Mr. Juan Davis, 350 Collindale, Grand Rapids, explained that Mr. Maldonado-Monteoya had started working on the building without a permit. The City had told Mr. Maldonado-Monteoya to obtain building drawings, and submit for a permit. Mr. Davis had been hired to draw the plans for the building which included an office and a repair shop. At that time Mr. Maldonado-Monteoya only owned the one property with the commercial property. Later Mr. Maldonado-Monteoya purchased the second property with a residential house, which he tore down for future parking. Mr. Maldonado-Monteoya had continued working on the building, but stopped all construction when he was informed that he needed a Use variance for the zoning.

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

Tim Cochran displayed photographs of the area. He pointed out the residence to the east, as well as the residences on the north side of the alley. The building is close to the alley and comes right up to the sidewalk along Chicago Dr. The business would have to use the alley for entrance. Mr. Cochran acknowledged this is a difficult decision for the applicant as well as the City. The situation started with a complaint from the Police Department about construction on the site. The owner had started digging a trench in the building. The Inspection Department told the owner to get drawing for the construction. The permit was issued after review, and construction continued. It was then discovered that the proposed use of auto repair was not allowed in the district where the building was located. Staff looked at the situation and the cars awaiting repairs would have to be stacked behind the building. Staff suspected there would be cars parked on site either being repaired or waiting for repairs. In addition, there is no egress off Chicago Dr., and it was doubtful that the Michigan Department of Transportation would allow an egress for a commercial use. Staff recommended the variance be denied. However, if the Board should decide to grant the request, staff would ask the Board consider stipulating the vacant lot be paved.

A motion was made by Dykhouse and seconded by Lomonaco that the request for a variance in application no. V130047 be denied, 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. This location is zoned for local business types. The proposed use, automotive repair, appears too intense, and the floor plan and lack of parking is not conducive to auto repair. The work is partially completed. City staff made an error in its original permit approval; however the proposed use is difficult to support from a Zoning standpoint.
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. There are B-1 Uses operating in the vicinity. The building remains short of parking; however the adjacent parcel has potential for parking area expansion.
3. That the use variance may alter the essential character of the neighborhood or the intent of the City Master Plan, or be of detriment to adjacent properties. A B-2 use such as automotive repair is not in character with B-1 Zoning. Auto repair is a more intense Use and has potential for being detrimental with outside storage of vehicles.
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. There are numerous non-compliant zoning uses in the general area; however that fact is not justification to expand than trend.
5. That the variance might not impair the intent and purpose of this Ordinance. The current Zoning code has three distinct Business Zone districts with separate uses allowed within. Each zone has a unique characteristic.
6. That the immediate unnecessary hardship causing the need for the variance request was created by the applicant. The owner began intense repair work without permits; however the City also erred when reviewing plans, failing to see the B-1 Zoning designation.

Burrill noted there were many different uses along Chicago Dr. He thought there had been other car repair facilities in the area.

Cochran agreed there were mixed uses in the area, however some of the uses were more conducive prior to widening of Chicago Dr. from two traffic lanes to four lanes, and in some places five lanes. Many properties lost their front yards. In this situation, staff looked at the surrounding houses as a major concern. If there had more commercial surrounding the property, staff may had not been so concerned. There had been a car sales and repair use across Chicago Dr. by Wendler Ave. that had been bought and removed by the City. The removal had been an improvement to the area. Currently, this area is not strong for commercial uses. However, the new McDonald's Restaurant will be a positive development in the area.

Postema asked how much work the applicant had done on the project, and if the City was concerned about liability.

Cochran had no information regarding that.

Mr. Davis said Mr. Maldonado-Monteoya had purchased an oil separation unit, had done electrical wiring and plumbing. He has a lot of money invested in the property but once he got the information on the required variance he stopped construction. He was not aware on any zoning issue when he got the building permit, the issue with the zoning was a surprise to Mr. Maldonado-Monteoya.

Postema understood Mr. Davis said Mr. Maldonado-Monteoya has money invested in the project, but he wondered if that was after the permit but before the variance.

Lomonaco felt some of the cost incurred must have taken place before the permit, since the permit was not taken out until the City received a complaint about construction work without a permit.

Burrill wondered if the issue should really go to the Planning Commission for review to be studied to see if the use fit the area.

Cochran reminded the Board the City was currently working on a form based code for the 28th St. area. There will be six different districts. This code will have application for other areas of the City, but how each will be affected will be a long public process.

Lomonaco noted the building was small. She noted there would probably be a lot of outside storage of vehicles.

Mr. Davis said Mr. Maldonado-Monteoya planned on working on only one vehicle at a time.

Lomonaco thought the use could have a big impact on the neighbor.

Postema concurred with Mr. Cochran about the City's development process. He does not know the history of the area. He did feel the City could incur some liability if they had issued a building permit, and the applicant had started the work.

Dykhouse thought there might be liability on both sides. An architect should also be aware of zoning restrictions when proposing a building use; however despite the liability issue, the zoning is not right.

VanderSluis did not believe liability would be a reason for the Board to grant a variance. Granting a variance for a building permit that was mistakenly issued for an unapproved use has a bigger impact. There are other avenues for the applicant should he choose to try to recoup his costs.

Palmer asked if the variance could be granted if stipulations were placed on it to minimize any impact.

VanderSluis thought if the Zoning Board granted the variance and tried to place stipulations on it, they would in effect be doing the Planning Commission's job. The question the Zoning Board should address is, should the use be granted? Development of the property is a secondary issue. The parking and access situation does not change whether or not the Use is appropriate.

Motion carried: 6 Yeas 1 Nays (Palmer)

There were no public comments at the meeting.

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

Canda Lomonaco
Secretary

CL:cb