

City of Howell Board of Zoning Appeals
Thursday, January 26, 2017
City Hall Council Chambers
611 E. Grand River
Howell, MI 48843

The meeting of the Board of Zoning Appeals was called to order by Chairman Munsey at 7:00 p.m.

Present: Sean Munsey, Ken Keith, William Flattery, David Holmes, Victoria Hertrich, Jeannette Ambrose, Randall Mattson, City Attorney Dennis Perkins, Community Development Director Timothy Schmitt, and Recording Secretary Deanna Robson.

Absent: None.

Guests: Kam Schroeder, Matt Schroeder, Deborah Schroeder, and Patrick Cleary.

APPROVAL OF MINUTES OF October 27, 2016

MOTION by Flattery, SUPPORT by Ambrose, to approve the minutes of the October 27, 2016 meeting. MOTION CARRIED (7-0).

#16-036 – 623 MCCARTHY/622 FLEMING – MULTIPLE REQUEST AND APPEAL OF PLANNING COMMISSION DENIAL OF SITE PLAN

Chairman Munsey read the five variances and appeal requested by Matt Schroeder as noted in the staff variance analysis dated January 20, 2017 and listed below.

- **Variance 1:** Section 4.07 *Schedule of Area, Height, Width, and Setback Requirements* to allow the illegally construction addition to be located 18 feet from the nearest residentially zoned property where 60 feet is required.
- **Variance 2:** Section 5.13 *Outdoor Storage of Commercial/Industrial Equipment and Vehicles* to allow the vehicles being stored/worked on in the area adjacent to the illegally constructed addition to be visible from adjacent properties and roadways.
- **Variance 3:** Section 5.13 *Outdoor Storage of Commercial/Industrial Equipment and Vehicles* to allow outdoor storage of equipment and vehicles in the area adjacent to the illegally construction addition, which is closer than 50 feet to the neighboring residential property.
- **Variance 4:** Section 6.17 *Automobile Filling Stations, Automobile Repair Garages, Automobile Service Stations, Automobile Washes, and Automobile Dealerships* to allow washing/service/repair of vehicles in a building that is setback 18 feet from the neighboring lot line, rather than the 40 feet required.
- **Variance 5:** Section 6.17 *Automobile Filling Stations, Automobile Repair Garages, Automobile Service Stations, Automobile Washes, and Automobile Dealerships* to allow washing/service/repair of vehicles on paving within 10 feet of a site lot line.
- Appeal of Denial of Site Plan by the Planning Commission under Section 12.05 *Procedure for Appeal*.

Chairman Munsey opened the public hearing at 7:01 p.m.

Matt Schroeder, 11210 Spruce Point Drive, Brighton, MI, stated that he requested the variances. Member Mattson asked why the addition was done without seeking permits. Mr. Schroeder responded that one of his employees had an accident and broke a large section of the wall. The job started as a repair and he did the work himself. Member Mattson asked if Mr. Schroeder was using the property behind the addition previously, and Mr. Schroeder replied that his family owns the house at 622 Fleming and that he used the area along the privacy fence between the house and the building for storage of scrap metal and tires, but the area has since been cleaned up.

Discussion followed regarding the age of the building/shop and its former and current proximity to the neighboring house. Kam Schroeder stated that the original building was built in 1818 and used to be part of Community Elevator. Photos of the property were reviewed and Mr. Schroeder talked about the new fence that he proposed to build. Member Mattson asked how much it would cost Mr. Schroeder to remove the illegally constructed building addition and Mr. Schroeder estimated the cost at \$60,000 - \$75,000, explaining after further inquiry by City Attorney Perkins that the addition cost \$50,000 to construct but a site plan would cost extra and more funds would be needed for demolition. Chairman Munsey stated that the majority of loss would be due to the fact that Mr. Schroeder never had site plan in place before he started the construction. Attorney Perkins asked for the square footage of the addition; Mr. Schroeder responded that it was approximately 700 square feet, he did not know exactly and had to obtain an architectural rendering after construction because he did not abide by City ordinance prior to construction. Member Mattson confirmed that the addition was 724 square feet.

Chairman Munsey asked if anyone had any additional statements or comments. Mr. Schroeder stated that he learned a lot by doing this, would never imagine working again without a permit, thought about what would happen if he got caught working without a permit while he was building the addition, and admitted that he never thought the City would deny the site plan or construction. Chairman Munsey reminded Mr. Schroeder that in the City a permit is even required to put a new roof on a house, so he should have known that a permit would be required before he even began construction.

Chairman Munsey closed the public hearing at 7:20 p.m.

Member Mattson stated that it seemed to him that the issues was mostly about setbacks; Mr. Schroeder did not know about the requirements; and to cost him \$75,000 for failing to acknowledge the setback would be a manifest injustice.

Chairman Munsey reminded the Board that the City has a responsibility for making sure that the structure is constructed properly and to code, for safety reasons. Member Keith stated that if the building is approved it will be inspected. Member Mattson stated that the construction has been inspected and that would seem to indicate that it is safe. Attorney Perkins stated that the site plan does not attest to the structural integrity of the construction. Community Development Director Schmitt confirmed that City staff have not had an opportunity to inspect the construction.

Member Ambrose noted her appreciation of the information provided by Mr. Schroeder, but stated that her biggest concern is protecting the rights of City residents and the neighboring property owners. Member Keith confirmed that the owner of the neighboring duplex does not reside at the property and Member Mattson confirmed that the property line has not changed, adding that the debris and animal issues have all been rectified. Member Ambrose commented that clearing the rubbish and tall weeds is no excuse for encroaching on the neighbor's property, adding that the property should have been maintained all along. Mr. Schroeder responded that he recently demolished a house in front of his business and removed a whole bunch of toxic waste tanks, adding that his whole driveway is used as a throughway and the improvement to his property is for all of his neighbors. Attorney Perkins noted that it took nearly nine months to get the structure in the front of the property demolished – and a permit was required.

Discussion followed regarding ownership of the neighboring property. City Attorney Perkins inquired when the major business structure was built. Kam Schroeder confirmed that he obtained a building permit in 2000, but claimed he did not know that there was no permit pulled for the addition. Attorney Perkins stated that there are numerous violations; the letters from City staff are compelling; Mr. Schroeder was aware of the rules and has obtained permits previously for both construction and demolition projects; and that it may not have been as serious of an issue if the wall had just been rebuilt versus construction of an addition over 700 square feet in size. Member Mattson suggested a reprimand for failure to secure a permit as an alternative to denying the requests. Chairman Munsey reminded the Board that their authority only included approving or denying the requested variances and appeal.

MOTION by Mattson, SUPPORT by Keith, to approve the requested variances and grant the appeal of the Planning Commission denial of the site plan. Member Ambrose suggested other conditions that the Board may want to consider, such as the standard regarding storage of unlicensed or inoperative vehicles as noted in the Planning Commission report. Community Development Director Schmitt stated that the Board could include any Planning Commission actions as noted in the Commission report. Discussion followed regarding storage of cars on the property. City Attorney Perkins informed the applicant that he could not store junk or parts cars on site if they are not kept in the garage, adding that if the Board approved the site plan it would probably be with a condition regarding vehicle storage. Mr. Schroeder argued that he felt it would be unnecessary for the Board to include conditions regarding the storage of junk or parts cars. Member Mattson asked the applicant if the condition would be too great a burden, adding that he did not necessarily agree with the condition but would go along with the recommendation if the Board insisted upon it.

Attorney Perkins asked Mr. Schmitt if all of the variance requests would be included if the site plan was approved. Mr. Schmitt responded that the property is in violation of the City's zoning code; the site plan would not meet code even if it was approved; and the Board would need to act on all five variance requests and could not just act on the Planning Commission denial.

Discussion followed concerning adding an amendment regarding storage of inoperative or unlicensed vehicles to the original motion. Member Ambrose inquired if the Board should also consider paving and curbing of the outdoor storage areas as referenced in the Planning Commission report. Member Keith asked why the Board should discuss Planning Commission

business, and Attorney Perkins responded that the Board is being asked to reverse a decision made by the Planning Commission. Member Hertrich asked if the property was grandfathered and Attorney Perkins replied that everything changed once the addition was built. Member Keith asked if the site plan review provided was standard for every business; Mr. Schmitt confirmed, adding that some of the standards may be different depending on the property use and the corresponding requirements. Discussion followed regarding the curbs and drainage. Mr. Schmitt stated that after reviewing the engineering and drainage, staff is not concerned with the curbs. He also confirmed that the condition regarding storage of inoperative or unlicensed vehicles applies to all properties with automobile-related uses in the City. Member Mattson agreed to the amendment regarding storage of inoperative or unlicensed vehicles, and the amendment was agreed to by Member Keith. Member Ambrose suggested adding the condition of construction on an eight foot fence. Deborah Schroeder stated that the fence does not belong to the business owner, and they would like to replace it as long as it is approved by the owner of the neighboring property. Attorney Perkins suggested that Mr. Schroeder could construct the fence on his side of the property. Mr. Schroeder stated that he would have to cut the concrete on his property in order to do so, and Member Keith suggested that Mr. Schroeder would only need to cut the cement where the posts would be located. Member Ambrose proposed the amendment for the fence. Members Mattson and Keith approved.

The motion was read in full.

MOTION by Mattson, SUPPORT by Keith, to approve the requested variances and grant the appeal of the Planning Commission denial of the site plan with the following conditions:

- A. Inoperative or unlicensed vehicles shall not be stored outside for more than seven (7) days. Such storage shall not occur in front of the building front line.**
- B. An eight (8) foot privacy fence is to be constructed on the applicant's property along the northern property line adjacent to the addition and per Zoning Ordinance requirements.**

A roll call vote was taken on the motion. Munsey – no, Keith – yes, Holmes – no, Mattson – yes, Flattery – yes, Ambrose – no, Hertrich - yes.

MOTION CARRIED (4-3).

ADJOURN

MOTION by Mattson, SUPPORT by Flattery, "To adjourn the meeting at 7:54 p.m."

MOTION CARRIED (7-0).

Deanna Robson, Recording Secretary