

CITY OF SYLVAN LAKE
ZONING BOARD OF APPEALS
June 11, 2008

A Meeting of the Zoning Board of Appeals, was held on Wednesday, June 11, 2008, opening at 6:05 p.m. at the Sylvan Lake Lutheran Church, 2399 Figa, West Bloomfield Twp., with Chairman Storrie presiding.

Present: Menuck, MacGillis, Storrie, Galacz, Alternate Harrop
Absent: Nechal

Also Present: City Manager Martin and Clerk Clippert

APPROVAL OF AGENDA

Moved by MacGillis, seconded Storrie, to approve the Zoning Board of Appeals Agenda for June 11, 2008, as presented.

Yes: All
No: None

MOTION CARRIED

VARIANCE REQUEST **Z-00-08**

Property: 2650 Island Court
Petitioner: Kevin Spizizen
Zoning Ordinance Sections: Sec 78-296 p.CD78:55; Sec. 78-610(a)(2) p.CD78:81

In accordance with the provisions of the Zoning Ordinance, a Public Hearing was held by the Zoning Board of Appeals at the request of the petitioners, to grant two variances from the zoning ordinance, one for each proposed lot, to allow a lot split at 2650 Island Court.

All property owners within 300 feet of the parcel in question having been duly notified of the hearing and the hearing published as required by PA 110 of 2006; Chairman Storrie opened the hearing. Proof of mailings and required proof of application are on file.

Martin explained the current lot sits on a dead end street with water on three sides. The street is only 40 feet wide so both properties will split the 40-foot wide street for access to the property. Both lots will exceed the minimum ordinance requirements for minimum width, area, etc. Each property will have 20 feet of frontage on the street, requiring a variance of 45' for each lot.

A lot split was approved back in 2003, but the house was never torn down and the variance expired.

Kevin Spizizen, petitioner, stated his practical difficulty is living on the end of a dead end street. The street doesn't meet the minimum requirement.

Storrie asked the petitioner when the house will be removed. Spizizen stated he will remove the house when one of the lots sells or before the one year expiration of granting the variance, if approved.

Chairman Storrie opened the meeting to the public. There were no comments.

Martin noted for the record there was a letter objecting to the variance request.

Moved by Menuck, seconded Storrie, to approve the lot split variance requests for 2650 Island Court, as presented, because applicant has shown practical difficulty for the following reasons: There are exceptional or peculiar circumstances or conditions applicable to the property that do not apply generally to other properties in the area or city. Specifically the property is on a dead end street with water on three sides so there is no way to meet the minimum frontage requirement. If the street continued to the end of the second piece of property there would be no problem. Also, the granting of the variance will not adversely affect the intent of the ordinance which is to have proper width for the lots with proper front yard setbacks and uniformity. Because of the water, the intent of the ordinance will be maintained. This variance is contingent on the removal of the house. The approval of the lot split is up to Planning Commission and City Council.

Yes: Storrie, Galacz, MacGillis, Harrop, Menuck

No: None

MOTION CARRIED

Martin stated the next step will be to go before Planning Commission. He asked Spizizen to come in and see him. Another application will need to be filled out for the lot split.

Storrie clarified, granting of this variance is contingent upon the demolition of the house and the variance has a one year term from today's date. Spizizen stated he understands.

VARIANCE REQUEST

Z-00-08

Property: 2635 Orchard Lake Road
Petitioner: Joseph Volpe, Jr.
Zoning Ordinance Sections: 78-88(7) Use Variance

In accordance with the provisions of the Zoning Ordinance, a Public Hearing was held by the Zoning Board of Appeals at the request of the petitioners, to grant a use variance from the zoning ordinance to allow light automobile repair and tire sales in a C-1 zoning district.

All property owners within 300 feet of the parcel in question having been duly notified of the hearing and the hearing published as required by PA 110 of 2006; Chairman Storrie opened the hearing. Proof of mailings and required proof of application are in file.

Storrie asked Martin to confirm if the ordinance has been properly amended for the Zoning Board to hear "Use" variances. Martin affirmed the Planning Commission and City Council did approve the ordinance. City Planner, Michelle Anoil, asked if the ordinance had been published. Martin confirmed it has, but it has not been 7 days since publication. He suggested hearing the variance and holding a special meeting to make an official ruling.

City Planner, Michelle Anoil, gave an overview of the facts. She reviewed her memo to Martin, dated April 4, 2008. Jennifer Hill, attorney for the petitioner, requested a copy of this memo. Anoil stated when a non-conforming use on a site is terminated, it ceases to exist and has no legal status. The applicant's lack of awareness of the potential impacts resulting from the amendments to the ordinance standards does not constitute a hardship. The applicant received an inquiry from an automotive repair user, and upon approaching the City and finding out that the use is not permitted, the applicant applied for a use variance. She noted the automotive repair use made inquiries on the use of the property prior to being rezoned to C-1, but the applicant made the decision to participate in the rezoning of the property, choosing the retail user over the automobile repair user. She concluded the alleged hardship is entirely self created and results from a need to have the building occupied to obtain a financial return.

Hill stated the Planner stated the criteria correct. She feels, the question is, if it is reasonable. She added, Mr. Volpe's son did object to the rezoning at the Planning Commission and City Council meeting. Volpe added, everyone that was in attendance at the Planning Commission meeting objected to the rezoning. Hill stated the building is not setup for retail. So what is happening is that the entire building is being condemned. The entire building would have to be renovated. She feels they have a unique situation and they are being singled out in the Master Plan. It is completely surrounded by an I-1 district. Granting this use variance will not alter the characteristics of the neighborhood. A repair shop would benefit the city and the residents of the city. She feels the hardship is not from a result of Mr. Volpe's actions. Mr. Volpe is suffering because the City wants to move forward with the Master Plan and alter the nature of the Orchard Lake Corridor. She believes Mr. Volpe never abandoned that use and a use variance could be granted in this situation. He has rented it out as light automotive repair. JRE Tire was in there until April 2006 and in April of 2007 Twisted Cycle moved in. They never were able to do the automotive light repair because the City stated they were not allowed to do that.

Volpe stated JRE closed in April 2006. Then under the 180 day rule he wanted to reopen, but were told they no longer could do repairs. In the fall of 2006 he attended a Planning Commission meeting and told the commissioners if you want to do light repair, they got to change the zoning and the definitions are wrong and outdated. The Planner told them the definitions were being rewritten. He agreed to have it rezoned because under C-1, at that time, light repair was allowed as a variance. Then at the meeting they changed it to C-1 and after that they voted to change the definition of C-1, not allowing light repairs. He added it will cost him \$30-\$50K to convert the building to retail. He feels they are trying to comply in good faith.

Chairman Storrie opened the meeting to the public.

Russell Meskin stated he was on the Planning Commission Board during this and recalls the meeting.

Martin presented a signature sheet he received from 13 surrounding business owners who are against this variance because it is not part of the Corridor Plan. Hill requested a copy.

Hill stated this is much more than an economic hardship. The surrounding businesses are all zoned I-1. She feels the City is being unfair to Mr. Volpe and the equitable thing to do is grant the use variance.

Galacz questioned if Volpe's property is the only property zoned C-1 and the rest are zoned Industrial. Martin replied, yes. He explained the reasoning behind it. A public hearing was held to rezone most of those properties to C-1. Twisted Cycle was at this meeting and was all for it. The other property owners didn't like the fact that they would become a non-conforming use. Planning Commission decided to rezone only this parcel, at this time, and rezone the others in the future. Galacz confirmed they changed it because at the time the new tenant wanted it. Hill disagreed with that statement because at the same meeting Planning Commission next changed the definition of C-1. Hill added technically they never abandoned the use. Volpe tried to continue the business and rent it out. Storrie expressed, it is a question of case law and offer for Ms. Hill to bring a piece of case law addressing this, they would look at it.

MacGillis asked the City Planner to respond to petitioner's comments. Anoil replied, after the Master Plan was completed the City heard from Mr. Volpe about a possible automotive repair user. She wrote a memo outlining what could be done under the existing I-1 zoning, at that time, with automotive repair and why there was a difference with major and minor. Any new use must come into zoning requirements. When Mr. Volpe couldn't get approval for his interested renter, Mr. User, he got Twisted Cycle, which was a retail operation. It was

explained the City is in the process of changing their Master Plan and looking for a new vision for the Corridor and a retail operation would be more in keeping with the Master Plan in rezoning to C-1.

Storrie asked, was the change to C-1 for any other reason than to accommodate Twisted Cycle. Martin replied, yes; the vision for the future land use was to not have those types of uses in that area.

Menuck commented, it is her understanding that a property owner doesn't have to approve of a rezoning. Martin stated that is correct. Menuck suggested changing all of those in the Corridor Plan that they wanted changed to C-1, to do that now, and let the business owners be a legal non-conforming use and when the business is done they have the chance to convert them. She continued, stating the board has to look at today's ordinance and today's request and whether or not there is a hardship and the financial aspects don't work into that. Storrie reasoned, they can ask for certain factual things. Menuck suggested if someone wants to suggest a variance it should be for X amount of time and given X amount of time to get a tenant and if that tenant then vacates he is back to square one. Again Menuck would urge Planning Commission and City Council to change all those future land use to what they want.

Storrie asked if a variance could be granted for a limited term. Anoil stated the board can establish conditions, but she was not sure about a time line.

Volpe asked what a hardship is. Storrie explained, four elements need to be met. Hill interrupted stating this is much more than financial.

MacGillis expressed the Planning Commission spent a long time on deciding what the future of the Sylvan Lake Corridor should be and they didn't expect it to happen over night. He stated he could accept a temporary approval for one renter of light automotive with reason being on timing of past events and how this has developed since the Master Plan was approved.

Martin stated he will find out if a use variance can be approved for a limited time and he will get the board minutes from Planning Commission meetings and the Planners memos.

Moved by MacGillis, seconded Storrie, to table the variance for 2635 Orchard Lake, to June 24, 2008, at 6:30 p.m.

Yes: All

No: None

MOTION CARRIED

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ADJOURNMENT

Moved by Menuck seconded Galacz, to adjourn the meeting.

Yes: All

No: None

MOTION CARRIED

The meeting adjourned at 7:30 p.m.

Nicole Menuck, Secretary

Dennise Clippert, City Clerk