



**MEETING MINUTES
Cadillac Zoning Board of Appeals
5:30 P.M.
September 19, 2019**

CONVENE MEETING

Chairperson Nichols called to order a meeting of the Cadillac Zoning Board of Appeals at 5:30 p.m. on September 19, 2019.

ROLL CALL

MEMBERS PRESENT: Nichols, Paveglio, Bontrager, and Genzink
MEMBER ABSENT: Ault, Knight, & Walkley
STAFF PRESENT: Coy

APPROVAL OF MEETING AGENDA

Motion by Paveglio to approve the September 19, 2019 agenda. Support by Bontrager. The motion was unanimously approved on a roll call vote.

APPROVE THE JULY 18, 2019 MEETING MINUTES

Motion by Bontrager to approve the July 18, 2019 meeting minutes as presented. Support by Genzink. The motion was unanimously approved on a roll call vote.

Nichols turned the meeting over to Coy. Using a power-point presentation Coy went through the staff report prepared for this public hearing.

PUBLIC HEARINGS

1. A Variance Application from Tim Birtles, owner of Birtles Automotive 2330 W. Division St. to allow for him to use the R-2 One-family setback and lot coverage standards when creating a site plan for the addition to his building he would like to construct. The R-2 front yard setback is 25 feet. Mr. Birtles was present.

Coy explained that these standards were used for this area of West Division St. prior to October of 1989 when City Council changed the zoning to MH Mobile Home Park. Included with the staff report to the Zoning Board of Appeals (ZBA) was information from Section 46-629 within the Code of Ordinances which showed the differences in setbacks and lot coverages allowed between the two districts. Aspen Enterprises who owned what is currently called Country Acres Mobile Home Park was the applicant for the re-zoning.

Coy read the standard in Section 46.69(2) from the City Code of Ordinances which reads "To authorize, upon an appeal, a variance from the strict application of the provisions of this chapter where by reason of exceptional narrowness, shallowness, shape or area of a specific piece of

property at the time of enactment of this chapter or by reason of exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to, or exceptional undue hardship upon the owner of such property, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this chapter.”

Finding-Coy said he feels there may be an undue hardship based on the change in zoning was not the result of Mr. Birtles actions. He added that in the aerial GIS provided he could not find a single mobile home in the Country Acres site that met the MH zoned district 50 foot front yard setback.

Next Coy went over the standards in Section 46-69(4) of the Cadillac City Code. The standards state that in consideration of a variance, the Zoning Board of Appeals shall first determine that the proposed variance will not result in conditions which:

Standard – *The variance will not impair an adequate supply of light and air to adjacent property.*

Finding – The requested variance is not anticipated to impair an adequate supply of light and air to adjacent properties.

Standard - *The requested variance will not unreasonably increase congestion in public streets.*

Finding – The requested variance is not anticipated to impact traffic volumes on West Division Street.

Standard – *The requested variance will not increase the danger of fire or endanger the public safety.*

Finding – The requested variance will not increase the danger of fire or endanger the public safety.

Standard – *The requested variance will not unreasonably diminish or impair established property values within the surrounding area.*

Finding – Staff feels this will not diminish neighboring property values

Standard – *The requested variance will not impair the public health, safety, comfort, morals, or welfare of the inhabitants of the city.*

Finding – The requested variance is not anticipated to impair the public health, safety, comfort, morals, or welfare of the inhabitants of the city.

PUBLIC NOTICES

Coy said that notification of the public hearing on this application was given via first-class mail to all property owners and residents within 300 feet of the subject site 15 days prior to this meeting as was a notice placed in the Cadillac News

Coy concluded his presentation with “based on a finding of compliance or non-compliance with the standards of the ordinance, the Board shall approve, approve with conditions, or deny the variance application.” Reasonable conditions may be attached to an approval in-order to achieve compliance with the standards of the ordinance.

Coy added that he did not receive any questions or public comment with regard to this variance request.

Nichols opened the meeting to public comments.

Coy asked Mr. Birtles how long Birtles Automotive has been at that location. Birtles answered he purchased the business in 1983. Nichols said it’s been 30 years since the re-zoning and the mobile home park has not expanded to the north where the re-zoning occurred. Genzink asked how big of an addition he was planning. Birtles answered 24 feet to the south and maybe 25 feet to the front. Genzink asked how far it was from his building to the south property line and Birtles answered he thought it is 40 feet. Coy said he could get a close measurement from the GIS maps and let the ZBA know.

Paveglio added that he was not comfortable approving the request without a specific site plan showing the setbacks. He suggested they table the request and give Birtles time to come back with a site plan they can look at. Birtles said he was okay with tabling his request until he puts together a specific site plan.

Paveglio made a motion to table the variance request until a later date giving the applicant time to provide more information. Support by Genzink. The motion passed with a unanimous vote.

2. A Variance Application from Emil Tonello, 1907 Sunnyside Drive asking for a side yard setback variance of one-foot, ten inches so that he may add onto his garage. This is the west side of his home. Mr. Tonello was present.

Coy showed pictures of the exterior of the home. He explained that the two garage doors we see in the picture is actually a one and half car garage. A previous home owner widened the kitchen area off the garage by building a new wall in the garage thus making it difficult to get two cars in the garage area and open car doors.

Coy read the standard in Section 46.69(2) from the City Code of Ordinances which reads “To authorize, upon an appeal, a variance from the strict application of the provisions of this chapter where by reason of exceptional narrowness, shallowness, shape or area of a specific piece of property at the time of enactment of this chapter or by reason of exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to, or exceptional undue hardship upon the owner of such property, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this chapter.”

Finding - Coy said the hardship or practical difficulty was not created by Mr. Tonello but by a previous owner of the home.

Next Coy went over the standards in Section 46-69(4) of the Cadillac City Code. The standards state that in consideration of a variance, the Zoning Board of Appeals shall first determine that the proposed variance will not result in conditions which:

Standard – *The variance will not impair an adequate supply of light and air to adjacent property.*

Finding – The requested variance is not anticipated to impair an adequate supply of light and air to adjacent properties.

Standard - *The requested variance will not unreasonably increase congestion in public streets.*

Finding – The requested variance is not anticipated to impact traffic on public streets.

Standard – *The requested variance will not increase the danger of fire or endanger the public safety.*

Finding – The requested variance will not increase the danger of fire or endanger the public safety.

Standard – *The requested variance will not unreasonably diminish or impair established property values within the surrounding area.*

Finding – Staff feels this will not diminish neighboring property values

Standard – *The requested variance will not impair the public health, safety, comfort, morals, or welfare of the inhabitants of the city.*

Finding – The requested variance is not anticipated to impair the public health, safety, comfort, morals, or welfare of the inhabitants of the city.

PUBLIC NOTICES

Coy said that notification of the public hearing on this application was given via first-class mail to all property owners and residents within 300 feet of the subject site 15 days prior to this meeting as was a notice placed in the Cadillac News.

Coy concluded his presentation with “based on a finding of compliance or non-compliance with the standards of the ordinance, the Board shall approve, approve with conditions, or deny the variance application.” Reasonable conditions may be attached to an approval in-order to achieve compliance with the standards of the ordinance.

Coy added that he did not receive any questions or public comment with regard to this variance request. He did add that he believes if approved there should be a condition that the west property line be surveyed to make sure the setback is not closer than 8 feet, 2 inches from the property line.

Nichols opened the meeting for public comment.

Mr. Tonello spoke and explained his plan to expand the garage. He said the garage stall closest to the kitchen is narrow and you cannot open a car door on the one side. He's okay with a survey. The contractor he's chosen is Matt Hamacher and he would like to have it constructed before winter. He wants to add 13 feet to the width of his garage so that his large van will fit easily.

Bontrager asked if the garage door closest to the house will remain or be changed. Tonello said the garage door would remain making it look like a three-car garage. He also added that because of the addition to the kitchen the garage door closest to kitchen cannot open all the way. Mr. Tonello also said he's spoken with both of his neighbors about this addition he wishes to do.

Genzink made a motion to approve the variance request for a one foot, ten-inch side yard setback. Including a condition that the west property line be surveyed prior to construction. Support by Bontrager. The motion passed with a unanimous vote.

3. A Variance Application from Krist Oil Co., Iron River, MI for a parking variance to allow for 13 parking spaces, plus 8 spaces at the four gasoline pumps totaling 21 to be sufficient for the convenience store and gasoline station they wish to build at 605 N. Mitchell Street in Cadillac. The convenience store they have in a preliminary site plan is 4,000 square feet in size. The ordinance requires one parking space for each 150 square feet of gross floor space in a convenience store plus one space for each pump. The parking requirement for this sized convenience store is 26.6 spaces plus 8 for the number of pumps they propose.

The applicants were unable to attend due to a family medical issue. Coy made a phone call to Craig Richardson the architect who prepared the preliminary site plan for Krist Oil and put him on speaker phone so that he could participate in the meeting.

Using a power point Coy showed pictures of the site looking west across North Mitchell Street and looking north across North Street.

Coy read the standard in Section 46.69(2) from the City Code of Ordinances which reads "To authorize, upon an appeal, a variance from the strict application of the provisions of this chapter where by reason of exceptional narrowness, shallowness, shape or area of a specific piece of property at the time of enactment of this chapter or by reason of exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to, or exceptional undue hardship upon the owner of such property, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this chapter."

Finding – Coy said he's not able to identify a practical difficulty. He went on to talk about the information he provided in the staff report that gave information on other convenience stores with gas stations and their parking within the city. He included information on the Shell Station on South Mitchell Street which was not in the staff report. He also mentioned how at convenience stores customers often ignore the designated parking spaces and just pull up in front of the stores at times blocking access to the sidewalk.

Next Coy went over the standards in Section 46-69(4) of the Cadillac City Code. The standards state that in consideration of a variance, the Zoning Board of Appeals shall first determine that the proposed variance will not result in conditions which:

Standard – *The variance will not impair an adequate supply of light and air to adjacent property.*

Finding – The requested variance is not anticipated to impair an adequate supply of light and air to adjacent properties.

Standard - *The requested variance will not unreasonably increase congestion in public streets.*

Finding – The requested variance is not anticipated to impact traffic volumes on North Mitchell Street. A convenience store, gasoline station will have an impact on driveway ingress and egress.

Standard – *The requested variance will not increase the danger of fire or endanger the public safety.*

Finding – The requested variance will not increase the danger of fire or endanger the public safety. Building inspectors and the Fire Marshal will need to do inspections before an occupancy permit is issued.

Standard – *The requested variance will not unreasonably diminish or impair established property values within the surrounding area.*

Finding – Staff feels this will not negatively impact neighboring property values and may increase property values for the immediate neighbors.

Standard – *The requested variance will not impair the public health, safety, comfort, morals, or welfare of the inhabitants of the city.*

Finding – The requested variance is not anticipated to impair the public health, safety, comfort, morals, or welfare of the inhabitants of the city.

PUBLIC NOTICES

Coy said that notification of the public hearing on this application was given via first-class mail to all property owners and residents within 300 feet of the subject site 15 days prior to this meeting as was a notice placed in the Cadillac News

Coy concluded his presentation with “based on a finding of compliance or non-compliance with the standards of the ordinance, the Board shall approve, approve with conditions, or deny the variance application.” Reasonable conditions may be attached to an approval in-order to achieve compliance with the standards of the ordinance.

Nichols opened the meeting to public comments.

Mr. Richardson representing Krist Oil spoke and talked about the material presented to the Zoning Board of Appeals (ZBA) that was prepared by his office that includes a letter explaining the justification. The material included photos of other Krist Oil sites and it gave examples of other cities parking requirements. He added that the normal Krist Oil store is 5,220 square feet and this one at 4,000 square feet is smaller than the average. Each store handles over 3,000 pieces of merchandise.

Paveglio spoke and said he does not see an undue hardship in Cadillac's ordinance for the parking space requirements.

Walter Kulik who owns property at 627 N. Mitchell Street spoke in support of the variance application. He said he travels regularly to the Upper Peninsula to property he owns and is familiar with the Krist Oil stores. He said they're well kept up and provide plenty of parking.

Rob Montague one of the current owners of the site where Payne Tire is spoke and asked if studies are done to see how long people park and stay when they go into a convenience store? He added that he too sees that people often don't park in marked parking spaces. He supports the variance application. Mike McGuire a realtor representing the Krist family asked that the ZBA look at and consider other similar convenience store, gas stations within the city and how much parking they provide. He too supports the variance application.

Nichols spoke and said "people are parking lot dumb" when they come and go into convenience stores. He added that snow removal should not be a consideration when reviewing a site plan as "it's a cost of doing business" and businesses remove it from the site when it affects parking. He mentioned issues the Dollar General has with snow removal.

Genzink added that if parking spaces are too far from the building people don't use them.

Paveglio spoke and said he does not see an undue hardship in Cadillac's parking space requirement.

Paveglio said he does not see a practical difficulty that would require a variance. Nichols mentioned the short in and out time that customers spend in a convenience store he feels should be considered. Paveglio added that it's not the responsibility of the ZBA to re-write the ordinance. He added that he feels it's the ZBA's role to identify a practical difficulty or undue hardship to grant a variance. The applicant cannot create their hardship or practical difficulty.

Kate Montague asked what about other convenience stores that don't meet the parking standard?

Coy spoke and said that a variance would not be required for parking if they built a 2,000 square foot convenience store instead of the 4,000 square foot store they would like to build. He also mentioned they can buy more property from the neighbor to the west. Mike McGuire asked about how many parking spaces J & H were required to provide. Coy answered 53 parking spaces for J & H Oil were required and they provided 59. He also explained how the parking spaces for J & H Oil was calculated.

Kate Montague asked what the retail floor space for the Krist Oil convenience store is? Coy looked it up and the site plan shows a retail floor area of 3,245 square feet. Using the same formula of one parking space for every 150 square feet of retail floor space the Planning Commission approved for the J & H site this would require Krist Oil to provide 21.6 parking spaces in addition to the fuel pump parking. Rob M. again mentioned that Speedway customers park and quickly go in and out.

Bontrager spoke and said the time it takes for a person to come and go from a convenience store has nothing to do with this variance request. A question was asked as to size of parking spaces. Coy looked up in the ordinance and depending on the angle of parking the most common is for parking spaces to be ten feet wide and 20 feet in length.

There being no other public comments or questions from this Board of Appeals, Nichols asked for a motion.

Genzink spoke and said he feels any vote will be split and thus the variance will not pass. Paveglio suggested that if they table a motion it would allow the applicant to come back and hopefully have more board members present possibly giving them a better chance for approval. Coy spoke with Mr. Richardson and asked if that is something the applicant Krist Oil would prefer versus a denial. Mr. Richardson said yes.

Paveglio made a motion that this variance application from Krist Oil be tabled. Support by Genzink. The motion passed with a unanimous vote.

BOARD MEMBER COMMENTS –

None

ADJOURN

Chairperson Nichols adjourned the meeting at 7:13 pm.