

Mt. Pleasant Zoning Board of Appeals
Minutes of Regular Meeting
May 25, 2011

Chairman White called the meeting to order at 7:02 p.m.

I. Roll Call: Kench called roll.

Members Present: Brockman, Ellertson, Olivieri, Palm, White (Chair)
Members Absent: Kulick (Vice-Chair), Rowley
Staff: Kench, Murphy

II. Approval of Agenda:

Motion by Brockman, support by Ellertson to approve the agenda. Motion approved unanimously.

III. Approval of Minutes:

Motion by Brockman, support by Palm to approve the minutes from the March 23, 2011 regular meeting as written. Motion approved unanimously.

Motion by Palm, support by Brockman to approve the minutes from the April 27, 2011 work session as written. Motion approved unanimously.

IV. Communications:

Kench reported that there were no communications to share at this time.

V. Public Comments:

Chairman White opened the floor for public comments.

There being no one who wished to speak, Chairman White closed the Public Comments portion of the meeting.

VI. Public Hearings:

Chairman White explained board proceedings, noting that a quorum was present.

Kench introduced the first case:

Case ZBA-02-2011 –104 E. May – Todd Gurzick.

Kench explained that the applicant is requesting a finding to determine whether the addition of a SDD (Specially Designated Distributor License) liquor license to allow the sale of liquor is an increase in the legal non-conforming use (convenience store) of the property. The store currently operates with a SDM license, which allows the sale of beer and wine.

Kench provided background on the property, reporting that in 1983, the ZBA at the time granted approval to allow a new non-conforming use of the site, to allow a party store/convenience store. The Board at the time approved the request contingent on restricting the hours of operation from 7:00 a.m. – 11:00 p.m., with improvements to the parking and limitations on video games. In 1984, the owner made application to the ZBA to request that the hours of operation be lifted. That request was denied.

In 2006, the current owner filed a similar application to the ZBA, asking that the restricted hours of operation be lifted. The request was again denied. Following the hearing, Mr. Gurzick filed an application to the Planning Commission in 2007 seeking a conditional rezone which was later denied by the City Commission.

Kench noted that the application that is coming before the ZBA for consideration on the non-conforming use is appropriate and consistent with the position that staff has taken on any changes in the original approval on the use on this site from 1983. Kench noted that the Board is being asked to render a finding in this case that adding a SDD license, for the sale of liquor, in addition to his current inventory, does not increase the manner or degree of the non-conforming use.

Kench reported that the owner has provided a detailed report on the products sold through the store, which include pizza, calzones, subs and salads that are made to order.

Kench shared some photos of the interior of the store with the current inventory. Kench reiterated that the Board will need to determine whether adding a SDD license for the sale of liquor to the existing Party/Convenience store, that currently has a SDM license, for the sale of beer and wine, represents an increase in the manner or degree of non-conformity. Should the Board determine that the addition of the SDD license does not increase the degree of non-conformity, Kench commented that the Board may wish to modify the 1983 conditions to allow liquor sales, and may also wish to attach reasonable conditions on the approval.

Mr. Todd Gurzick, owner and operator of ToDbld's Party Store, addressed the Board. Mr. Gurzick stated he would like to address some of the concerns expressed in the two letters submitted to the Board in opposition to his request. Mr. Gurzick invited those who had concerns with his business to visit his store and observe for themselves the operation. He commented that his business is far from a liquor store; there is much more. He further commented that the majority of his sales are non-alcoholic; in fact in 2009 91.2% of his sales were non-alcoholic. Mr. Gurzick commented that they sell a lot of pizza and fountain pop. He acknowledged that his store tends to cater to the younger crowd; however they do have other customers as well and stated that contrary to popular belief, residents and students fuel their bodies with things other than alcohol. Mr. Gurzick commented that although he previously sought to have the hours of operation lifted, he has no interest in extending his hours as he already puts in 90+ hours a week. He further commented that he is not looking to spot zone. He is not asking to change the use; he is just looking to add a shelf behind the counter to offer alcohol as part of his inventory.

Mr. Gurzick referred to a comment from one of the letters stating that those who wish to purchase liquor do not lack opportunities to do so in Mt. Pleasant. Mr. Gurzick agreed,

commenting that this statement is true, and that he is simply looking to have the same opportunity as other stores in the area. He stated his limited inventory would not create additional problems related to alcohol consumption.

Mr. Gurzick shared some information with the Board on other promotions he is doing to promote healthy lifestyles by encouraging walking/biking, etc.

Chairman White opened the Public Hearing.

Henry Fulton, 807 S. University, addressed the Board, speaking in opposition to the request. Mr. Fulton commented that the store should never have been approved in 1983, and questioned the impact an expanded liquor license may have on the neighborhood. Mr. Fulton also referred to a memo from Tony Kulick, former City Planner, stating that the addition of an SDD license would be an increase in the non-conforming use. Kench explained that the memo Mr. Fulton referred to was drafted by him and Mr. Kulick in 2007, in response to a letter from the Michigan Liquor Control Commission, advising the City Manager that adding a SDD License to the property should be approved by the Zoning Board of Appeals, as they are the only body who could grant relief from the conditions placed on the property in 1983.

Wayne Nicholson, 405 E. High, addressed the Board, speaking in opposition to the request, citing concerns with increased automobile and bicycle traffic. He further expressed concerns over the alcohol abuse by college students.

James Eikrem, 305 E. High, addressed the Board, speaking in opposition to the request. Mr. Eikrem expressed concerns with increased traffic and the safety of the neighborhood. He further commented that with increased CMU enrollment there has also been an increase in the noise and parties. He also commented on the effects of alcohol abuse in the classroom.

Edward Clayton, 302 E. High, spoke in opposition to the request and also submitted a letter of opposition. Mr. Clayton commented that he appreciates Mr. Gurzick's invitation to visit his store; however, he has concerns with the quality of life in the neighborhood. He commented on the City's endeavors to bring back owner occupied properties to the area and feels this goes against the City's plan.

Nancy Fulton, 807 S. University, spoke in opposition of the request. Mrs. Fulton commented that the store should not have been approved in 1983 and further commented that they had tried legal recourse to have the decision revoked with no luck. Mrs. Fulton stated that she has seen a lot of positive changes in the neighborhood in recent years and appreciates the city's efforts to restore the neighborhood to residential. She commented that it is frustrating that they have to keep coming back to protect what they have.

There being no one else who wished to speak, the Public Hearing was closed.

Kench shared the correspondence received: Letter of opposition from Jennifer Boyce, and letter of opposition from Edward Clayton and Jessica Jernigan.

Board Discussion: Commissioner Brockman commented that this decision was made in 1983 and has been back before the Board several times, and questioned why it keeps coming back.

Kench explained that this is the first time this particular request has been before the Board. Kench noted that staff has consistently taken the position, that any changes in the use, which was sanctioned by the Zoning Board of Appeals in 1983, is required to be brought back to the Board for consideration.

Kench noted that the letter that was presented by Mr. Fulton was drafted by Tony Kulick and himself to the City Manager following a request by the business owner to the State seeking an SDD license. Kench noted that the memo to the City Manager noted that the applicant would be required to rezone the property or seek approval before the ZBA, the body who permitted the non-conforming use, for consideration on the non-conformity and advise the State that a liquor license could be granted for this site. The fact that this application is being brought to the ZBA at this time is appropriate and consistent with the position that staff has taken in this matter since the 1983 hearing.

Mr. Gurzick reiterated that this is the first attempt at getting a SDD license for this location.

Commissioner Palm commented that the store was approved for beer and wine only in 1983, which would lead her to believe that this was a change in the use.

Kench reminded the Board that the *non-conformity* is the party store being located in an M-2 District. Kench noted that the sale of alcohol is typically found in the C-3 district and regulated under a Special Use Permit. The approval by the ZBA in 1983 permitted the sale of alcohol for the first time. Kench suggested that the Board consider what types of business you may expect to see alcohol sales and what they would expect to see in a party store. The question before the Board is whether adding an SDD license to the use which already has the SDM license would increase the manner and degree of non-conformity.

Commissioner Olivieri commented that you could say they are already selling alcohol so there is not much of a change, or you could consider that the State looks at the licenses differently.

Chairman White shared with the Board how the Zoning Ordinance defines a liquor store as being a business that has an SDM *and/or* an SDD license.

Commissioner Olivieri commented that he doesn't think adding an SDD license would have that much of an increase in revenue for the store; and he further commented that he doesn't believe it would change anything in the neighborhood either.

Chairman White commented that the Board needs to look at a couple of things:

1. Would adding an SDD license be an increase in the non-conformity?
2. If not, should restrictions be attached to the finding?

If the Board rules that it is not an increase in the non-conformity, then the Board may wish to make the finding with conditions to ensure that other products are still being sold in addition to the alcohol sales.

Commissioner Ellertson commented that he agrees that he does not believe there would be a significant increase in the sales, nor would it have any negative impact on the neighborhood; however, based on the fact that the state requires a different license, he feels it would be an increase in the legal non-conforming use. Commissioner Olivieri agreed.

Motion by Ellertson, support by Brockman that the Board finds that adding an SDD license does indeed increase the degree of non-conformity. Motion passed unanimously.

Mr. Gurzick asked the Board for clarification on their finding. Chairman White commented that the decision was based on the fact that the State differentiates the sale of beer and wine and the sale of liquor and has two separate licenses. Therefore, the Board determined the sale of liquor under an SDD increases the degree of the non-conformity.

VII. Other Business:

Kench reported that the case involving 218 N. Lansing would be coming back to the Board, based on an issue raised by the owners. They will be represented by their attorney. Information will be sent out when it is prepared.

Commissioner Olivieri asked if there was any progress on setting up a joint meeting with the City Commission. Kench reported that a request has been submitted and we are waiting for a response.

Chairman White officially welcomed Commissioner Palm to the Board.

VIII. Adjournment

Motion by Brockman, support by Ellertson to adjourn. Motion approved.

Meeting adjourned 7:53 p.m.

bam