

Mt. Pleasant Zoning Board of Appeals
Minutes of Regular Meeting
March 28, 2012

Chairman White called the meeting to order at 7:01 p.m.

I. Roll Call: Kench called roll.

Members Present: Ellertson, Fetting, Kulick, Palm, Quast, White (Chair)

Members Absent: Fokens

Staff: Kench, Mrdeza, Murphy

II. Approval of Agenda:

Motion by Kulick, support by Quast to approve agenda. Motion approved unanimously.

III. Election of Officers:

Motion by Kulick, support by Ellertson to nominate White as Chair.

There were no further nominations. Motion approved unanimously.

Motion by White, support by Palm to nominate Ellertson as Vice-Chair.

There were no further nominations. Motion approved unanimously.

IV. Welcome new Board Members:

Kench introduced new Board members; Commissioner Quast, who will be serving as our cross-over member to the Planning Commission; Commissioner Fetting; and acknowledged Commissioner Kulick's reappointment as our alternate. Kench further reported our other new member; Commissioner Fokens, would be joining us in May.

Staff introduced William Mrdeza, who has recently been hired as the City's new Director of Community Services and Economic Development.

V. Approval of Minutes from January 25, 2012:

Motion by Kulick, support by Palm to approve minutes from the January 25, 2012 meeting as submitted. Motion approved unanimously.

VI. Communications:

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

VII. Public Comments:

Chairman White opened the floor for public comments.

There being no one who wished to address the Board, the Public Comments session was closed.

VIII. Public Hearings:

Chairman White explained board proceedings, noting that a quorum was present and that the Board would be hearing eight cases.

A. Case ZBA-01-2012 - 221 Clayton. Kench introduced Case ZBA-01-2012, explaining that this case was a request for a finding on a non-conforming use to allow the redevelopment of a rooming dwelling on a non-conforming lot. Kench explained that the property is located in the M-2 zoning district, which allows rooming dwellings under a Special Use Permit. The surrounding properties are predominately student housing and are all zoned M-2. Kench stated that if this request is approved, it will then proceed to the Planning Commission for a Special Use Permit and Site Plan Review.

Kench referred to Section 154.007 of the Ordinance, which gives the Board authorization to grant approvals for redevelopments of nonconforming uses if the redevelopment is a marked decrease in the degree of nonconformity and if the project enhances the desirability of adjacent conforming uses. Kench reported that the project will eliminate the following non-conformities from the property:

- Parking Ratio will be brought into compliance
- Parking will be removed from front yard
- Stacked parking will be eliminated
- Greenbelt on Clayton Street is proposed at 12' where 10 feet is required
- Parking will be hard surface
- Building area per person will be increased
- Setbacks will comply
- Distance between the building on the adjoining property will be brought into compliance

In exchange for the reductions in non-conformities, Kench reported the applicant is requesting an increase in occupancy from the 5.9 allowed by ordinance to 6. Kench referred to the redevelopment standards that the Planning Commission and Zoning Board have been working on in regards to the recent redevelopments, stating that later in the agenda, the Board would be reviewing these standards.

Kench showed pictures of the site, along with renderings of the proposed elevations. Kench commented that the property has frontage on both Douglas and Clayton Streets; therefore, the Board may wish to request additional features on the side street elevation.

Kench shared a visual of the density of the surrounding properties.

Kench reported that the lot lacks the required land area for the Zoning District having only 5,379 square feet of land area, where 8,000 is required. Therefore, the Board will need to make two determinations:

- Consider approval to construct a new Rooming Dwelling on a parcel that is less than 8,000 square feet.
- Consider allowing an increase in the allowable occupancy from 5 to 6.

Commissioner Kulick questioned whether the applicant has offered stricter lease language as they have in the past with these requests.

Kench stated he would let the applicant speak to that.

Joe Olivieri, representing the owner of the property, addressed the Board. Mr. Olivieri stated he has done several of these redevelopments where the old "eye-sore" buildings are replaced with attractive buildings and wants to do the same here. In response to Commissioner Kulick's question, he stated that the owners will be putting the same strength language in their lease.

Chairman White spoke regarding the side elevation, asking if the owner had considered adding a wrap-around porch.

Mr. Olivieri commented that he hopes the Board would give him some architectural latitude to work with staff on the elevations.

Commissioner Quast asked if there would be any screening for the parking area.

Mr. Olivieri stated they could do fencing similar to some of the other recent developments.

Chairman White asked what type of landscaping was being planned.

Mr. Olivieri stated it too would be similar to the other recent re-developments that he has completed.

Commissioner Palm questioned the code violations, asking how long the current owner had owned the property. Mr. Olivieri stated the current owner purchased the property some time within the last two years.

Chairman White stated he didn't feel the amount of enforcement activity was excessive and further stated the strength in the lease agreements will also help with code enforcement issues.

Chairman White opened the public hearing. There being no one who wished to speak, the public hearing was closed.

Kench reported the only correspondence received was from the Fire Department, listing their recommendations and requirements.

Board Discussion:

Commissioner Kulick commented that we have seen several old single-family homes come down and be replaced with buildings that are an asset to the community. He also commented that there is better cooperation with the owners and Code Enforcement and feels this is a good request.

Commissioner Quast referred to the Fire Departments comments requesting sprinklers.

Kench stated that the sprinkler request is a recommendation only and is not a requirement of code.

Vice-Chairman Ellertson commented that the redevelopments are an improvement to the community and will also increase the tax revenue for the city.

Chairman White commented he likes to see this type of request come through for safer, more energy efficient housing that also reduces the non-conformities on the site.

Motion by Kulick, support by Quast, to approve the redevelopment of 221 Clayton, with 6 occupants, based on the irregular shape of the lot and the reduction in the degree of non-conformities. Approval is subject to the owner placing stricter language in the lease agreements, the placement of screening on the north side of the parking lot, additional trees to be planted, the requirements of the Fire Department to be met and façade details to be worked out with staff to meet the architectural standards of the neighborhood.

Motion approved unanimously.

B. ZBA-02-2012 - 1003 Douglas. Kench reported this request is similar to the last request and has been submitted by Joe Olivieri on behalf of the owner, Rentwood Management. Kench explained that the original request and staff's report indicate the applicant is requesting an increase in occupancy from the 9 that would be allowed by Ordinance based on land area, to 12. The applicant has since revised the request and is now asking for 11 occupants. This case is also a two-step process in that if it receives approval from the ZBA, it will need to proceed to the Planning Commission for a Special Use Permit and site plan review.

Kench reported that the site is zoned M-2 multi-family and is surrounded by M-2 zoned properties, sharing a lot line with the previous case. This property currently consists of two single-family units. The applicant is asking for approval to raze the existing homes and construct a two-unit rooming dwelling for 11 people. Kench again shared the visual of the surrounding properties and the density of the sites, along with photos of the existing site and elevations of the proposed building. Although there are some sites in the area that have brick detail, the proposed project is vinyl siding.

Kench explained that the Board would be looking at the following reductions in non-conformity:

- Rear dwelling unit would be eliminated
- Parking Ratio would be increased to 1:1

- Parking would be hard surface
- Setbacks will comply
- Distance between the buildings on the adjoining property would be increased.

Kench commented the Board would need to consider if they are interested in exceeding the parameters of allowing an increase in occupancy of one, in exchange for reducing other non-conformities, as this request is asking for an increase of two.

Commissioner Kulick asked how many bedrooms there would be.

Joe Olivieri, representing the owner, addressed the Board, and stated that the floor plan originally called for two bedrooms downstairs and four up for each unit. The plan would be revised so that one side of the unit would have only one bedroom downstairs and a larger living room area.

Mr. Olivieri further stated that the original application was a request for 12 occupants, which was based on the properties recently redeveloped along Main Street. These redevelopments were an example of how the sites can accommodate this density and still allow for 1:1 parking ratios. Since the Planning Commission has since tightened up the parameters, the request has been reduced to 11 occupants; however, the site will still have 12 parking spaces.

Chairman White opened the Public Hearing. There being no one who wished to address the Board, the Public Hearing was closed.

Kench shared the correspondence from the Fire Department. Commissioner Kulick questioned the Fire Department's comments regarding access to the parking lots. It was determined the site plan conforms to their request.

Commissioner Quast questioned how the requested density compares with the density on Main Street, commenting that she is comfortable granting 10 occupants for this property, but not 11 or 12. Kench responded that several of the older rooming dwellings on Main Street were non-conforming in regards to the density.

Chairman White stated that the Board has the opportunity to determine how much is too much and to set the bar. He stated that he does not want to see this request go away; but is uncomfortable giving 11. Chairman White suggested possibly postponing the case until next month to allow the Board to see a floor plan.

Commissioner Palm agreed that she too does not want to see this go away, but is concerned with granting 11 occupants and the cumulative effect this may have for this area in the future.

Commissioner Kulick stated that the proposed building is all vinyl siding, with no brick, stone, etc., and further commented that he would like to see the applicant offer more in consideration for the increase in occupancy.

Chairman White agreed, stating that with most cases the trade-off is more justifiable and most times the applicant is not asking for more than one additional occupant. Although he stated that one is not the golden number, the Board needs to weigh what we are getting in return.

Motion by Kulick, support by Palm, to postpone Case ZBA-02-2012 for one month to allow the applicant to come back with a revised plan showing more durable materials, and to allow staff to provide a comparison of densities to those on Main and Washington Streets.

Vice-Chairman Ellertson commented that he doesn't want to lead the applicant to believe they may consider 11 occupants if that is not the case. Several Board members stated that although it is not a given, they would be willing to consider 11 if the applicant provides a plan showing upgraded building materials, etc.

Motion to postpone approved unanimously.

C. CASE ZBA-03-2012 - 110 Cherry - Tim Driessnack. Kench explained that this request involves a property that is currently a vacant lot, following a fire in 2009 that destroyed the home. The site has since been purchased by Mr. Driessnack, and adjoins another of his properties at 701 S. Main, which is a non-conforming rooming dwelling in an R-3 zoning district. Kench reported the applicant is requesting permission to expand the parking area to accommodate parking for the 701 S. Main Street site. The lot in questions is only 33 feet wide, and joined with the Main Street property; the parcels are more comparable to other parcels in the area. Kench explained that because the site is non-conforming, any expansion requires approval from the Zoning Board of Appeals.

Kench shared photos of the site, stating that the applicant currently relies on stacked parking on a concrete pad accessed off Cherry Street, along with parking in the front of the building. The applicant is proposing 6 new spaces on the vacant parcel, along with a greenbelt.

Kench stated the area surrounding is a mix of single family homes and established rooming dwellings, sharing similar problems.

Kench stated the reduction in non-conformities offered with this request as:

- Parking Ratio will be improved to meet ordinance requirements of 1:1
- Parking will be partially removed from front yard
- Stacked parking will be reduced
- Greenbelt along Cherry Street will be installed
- Parking will be hard surface

Kench stated that the Board is being asked to render a finding that allowing parking on the site will reduce the non-conformities of current site conditions.

Tim Driessnack, owner of the property addressed the Board. Mr. Driessnack stated that he had purchased the property hoping to expand his parking at 701 S. Main. The property is licensed for 10 occupants; however, there is not enough parking. Mr. Driessnack stated that

his tenants currently rely on stacked parking, on-street parking and oftentimes are parked over the sidewalk.

Commissioner Palm stated that even with the 6 additional spaces, the site plan shows that there will still be parking in the front. Mr. Driessnack concurred; however stated it would be reduced. Commissioner Palm questioned whether he would consider putting all 10 spaces on the vacant lot and eliminating parking in front.

Chairman White asked if there would be any privacy fencing or landscaping installed to screen the lot. Mr. Driessnack stated he would be willing to work with the neighbor to the south to put something up, limiting access between sites that would not interfere with snow removal.

Chairman White questioned if there would be drainage issues. Kench stated the applicant would be required to work with the Department of Public Works (DPW) to put in required drainage. Mr. Driessnack indicated that DPW would allow him the portion of pavement shown on the site plan without adding additional drainage.

Chairman White opened the public hearing. There being no one who wished to address the Board, the Public hearing was closed.

Kench shared that we had received one letter of opposition from a neighboring property owner, along with correspondence from the Fire Department who had no concerns.

Commissioner Kulick commented that he is in favor of providing parking; and does not feel this would encourage more density. In addition, he noted that the lot in question is very small and needs to be re-attached to the parent property. Commissioner Kulick further stated however; that the applicant has enough land area to do it right and would not support the request the way it is presented. Commissioner Kulick suggested postponing the request to allow the applicant to provide an alternate plan.

Chairman White voiced his agreement, stating that if the parking lot is done correctly, with proper screening and layout it could enhance the area. Commissioner Quast agreed, stating that parking is one of the biggest problems with student housing and if done correctly, it could be a great project.

Vice-Chairman Ellertson questioned whether if denied, the applicant would be willing to do it right, stating that what is there is currently legal and the applicant doesn't have to do anything. Before postponing the request, Vice-Chairman Ellertson suggested asking the applicant if he would be willing to consider moving all the parking to the empty lot.

Mr. Driessnack stated he's not sure it would be worth it financially and would really need to look at the cost.

Chairman White stated he would like to at least offer the applicant the opportunity to bring back a revised request now that he has heard our concerns.

Vice-Chairman Ellertson asked Commissioner Kulick to give an indication of what he would like to see.

Commissioner Kulick stated he would like to see the elimination of stacked parking; a site plan drawn to scale showing no stacked parking, showing what will be done to protect the sidewalk i.e., guardrails, big rocks, fence, etc.

Motion by Kulick, support by Fetting, to postpone Case ZBA-03-2012 for one month to allow the applicant to submit a revised site plan, showing greater detail, eliminating stacked parking, which also shows what will be done to protect the sidewalk and protect the green space.

Motion approved unanimously.

D. ZBA-04-2012 - 714 S. Main - Jeff Jakeway. Vice-Chairman Ellertson excused himself due to a conflict of interest. Chairman White noted that we still have a quorum. Kench introduced the case, commenting that the Board had received a lengthy report and he would therefore not be going through the history of this property.

Kench explained that an application had been filed by Jeff Jakeway on behalf of AMES LLC, who owns property at 714 S. Main Street. Kench referred to the copy of the letter sent to Mr. Jakeway in December of 2011 regarding a zoning violation for over-occupancy.

Kench explained that the property is zoned R-3 which limits the property under a rental license to single family, or no more than two unrelated people. The letter that was sent in December indicated that we had a confirmed violation and asked for the site to be brought into compliance within a certain time period, at which time we asked that we be contacted to confirm the site was in compliance and the complaint would be closed. The letter also referred to the applicant's right to appeal the decision which prompted this request.

Based on section 154.163 of the Zoning Ordinance and the Zoning Enabling Act, an appeal stays all enforcement action until the case is heard. The applicant was cited in December; however, we were unable to get a quorum in February to hear the case, which is why it is being heard now.

Kench commented that going through the materials and e-mails, it appears that we are on the same page with the applicant, who contends that he has a lease agreement with only two individuals; which would also comply with the zoning for the property, yet it was confirmed that there were four and possibly 5 individuals residing at this address. Kench stated he was a little puzzled regarding the basis for the appeal.

Kench reported that the applicant purchased the property in 2007 and on occasion we have had other issues with over occupancy. Following an incident of over occupancy in 2007, the applicant applied for a Special Use Permit to convert the home to a duplex, which is a permitted use for the district and is regulated under a Special Use Permit. The applicant failed to follow through with the conversion and the Special Use Permit eventually expired.

Kench further reported that when the violation was noted in December, it was suggested that if the applicant's intent was to get an increase in occupancy, staff could walk him through the process with the Planning Commission for a new Special Use Permit for a duplex and a new building permit.

Kench reported that in 2009 there was also an issue with construction taking place without the benefit of a building permit. Staff worked through the issue with Mr. Jakeway and the permit was eventually issued for work on a single-family home. We were advised by Mr. Jakeway at that time that he intended to file an application for a conditional re-zone. Kench noted the application was recently filed and is being presented to the Planning Commission on March 29, 2012.

Kench asked that the Zoning Board deny the applicant's appeal and affirm staff's position that allowing more than two people constitutes a zoning violation. Staff will then begin working on the enforcement until the site is brought into compliance.

Jeff Jakeway, appellant, addressed the Board. Mr. Jakeway stated he has a couple of questions, further stating he wasn't quite sure why he was here as he has confirmed that there is an over-occupancy and is taking all the right steps to correct the situation - that he is in the process now.

Mr. Jakeway stated in regards to the history of the property, he is not sure what has been shared with the Board, but he provided a handout with what has happened since he received the letter.

Chairman White indicated the handout would be included in the record. (Attachment A)

Mr. Jakeway stated his first question would be is "What are we trying to achieve here tonight - I'm still not clear on that. If I could have Mr. Kench...."

Kench replied that Mr. Jakeway was appealing his decision on a zoning violation - stating that apparently he disagreed that he had a zoning violation.

Mr. Jakeway stated "No I don't....." At this point James Higgs, Attorney at Law from Stein and Higgs asked to address the Board on behalf of his client, Jeffrey Jakeway.

Mr. Higgs stated that he had suggested Mr. Jakeway make the appeal as he believes there is a procedural due process issue that this Board can deal with. At the time this notice of violation was issued his client was given 15 days to comply in order to evict tenants that are over occupied or civil infraction tickets would be issued. At the end of the 15 days, Mr. Jakeway was charged with a misdemeanor crime for not having evicted the tenants. During that time, Mr. Higgs stated that in order to evict these people; his client is required by law to do a 30 day notice to quit. Following that he must file a complaint and personally serve the complaint. After filing and serving, he is required to appear 21 days later at a hearing to evict them. Mr. Higgs stated that in the meantime there was this criminal complaint that required him to appear in court during the time that the appeal was taking place, which

should have stayed all action against his client until the Board has made the determination on whether this was the correct conduct by the Building Official.

Mr. Higgs further stated that there is a procedural problem when you tell a landlord that you have to evict someone from your property in 15 days. He stated it is legally impossible - he cannot accomplish that for Mr. Jakeway; therefore he suggested Mr. Jakeway file an appeal so they could deal with the procedural issues and determine whether a citation could or should be issued by a building official after only giving 15 days to evict.

Chairman White asked if the tenants that were to be evicted were on the original lease.

Mr. Higgs stated they were not - it was a two person lease agreement and it was explained that they cannot have other occupants in there. The notice that there were five people in there was notice to Mr. Jakeway that they had let friends move into the building with them. Mr. Higgs stated that is why he had advised his client to make the appeal and is not sure Mr. Jakeway understood that.

Mr. Higgs stated that the lawyer for the city has issued a criminal misdemeanor charge against his client threatening 93 days in jail and has indicated he is not willing to negotiate that and it is set for a jury trial to determine whether Mr. Jakeway has violated this ordinance.

Chairman White asked for clarification on what the applicant hopes to accomplish tonight. Mr. Higgs stated that they hope that the Board will determine that the Building Official has to give a landlord adequate notice to legally comply with the Ordinance before they can issue a criminal citation. He reiterated that 15 days is not adequate.

Commissioner Quast commented that 15 days was enough time to start the eviction process.

Mr. Jakeway stated they did. Mr. Higgs replied that it is technically enough time to start the process; however stated that the notice stated the violation was discovered on December 12th. The client got the notice on December 15th, at which time the students were home for Christmas vacation. The students returned December 9th (January?) and Mr. Jakeway was issued a citation on December 10th (January ?). It is impossible to personally serve a student while they are away on Christmas vacation.

Mr. Higgs continued that they have willingly asked them to comply and they have refused. They were in court this week and they still refuse and have asked to be in front of a judge. Mr. Higgs stated there isn't much he can do to speed up the process to evict someone who is squatting in the house.

Chairman White commented that in reality they are actually trespassing. He asked if they were hoping granting this appeal would rescind the violation and buy time so they could go through the process.

Mr. Higgs stated they are in the middle of the eviction process and a rescission of this order saying he is in violation and has to comply within 15 days and making this order comply with state law regarding evictions would allow them to comply without his client being

subjected to criminal prosecution. A 15 day notice is not enough time to comply. That is why they are here - hoping to fix the order to give him time to comply.

Chairman White stated he's not sure, from a legal standpoint, what effect the Board's decision will have with the proceedings currently underway.

Mr. Higgs asked if the Board is comfortable with charging a landlord with a criminal offense when he is trying to evict tenants that are squatters.

Kench clarified that the applicant is also being cited under the Housing Licensing Standards, administered through the Department of Fire Safety for over-occupancy. They (Dept. of Fire Safety) are working with the City Attorney on the criminal matter to correct violations of the Housing Code, simultaneously with the zoning violation.

Chairman White commented that the Board is limited to looking at the zoning violation on the property as it currently stands with regards to the number of tenants which has forced the city to take action

Kench stated that this is all "point in time" stuff - and the Board needs to determine if what took place in December, with 5 people residing in the house, constitutes a zoning violation. That is what we are looking at, and for which the appeal was made. Does five people in that house at 714 S. Main, zoned R-3 Residential, limited to no more than two unrelated people, constitute a zoning violation.

Mr. Jakeway commented that he has all the history on the property from the day that he bought it - he had approval for a duplex granted in August of 2009 and was working with Captain Andy Theisen at the Fire Department when he was stopped by the Building Department who said his SUP had expired. Mr. Jakeway stated he was working in good faith and has all the documentation. He further stated he was working through Andy Theisen which was the protocol at the time. When you wanted to get a housing license you called Andy Theisen. He came out - He inspected it and he told you what you needed to do to comply and you did it. Mr. Jakeway stated he wasn't sure what information the Board had in front of them tonight; but he stated the write up for the Planning Commission contains a statement from the Planning Chairman that states he moved people in before he applied for the housing license, which is not true - he has the evidence right here and it is all contained on a PowerPoint presentation.

Chairman White discussed with the applicant whether the new information was relevant to the case.

Mr. Jakeway stated that he sat on the Planning Commission and when he was asked to make a decision, he would have appreciated having all the information. He further stated that he could have provided it if had been asked.

Chairman White commented that he believed that is what the Board had been given.

Mr. Jakeway stated no, they were only given part of the picture.

Commissioner Kulick stated there appears to be two issues that are getting muddled. One issue is that the ZBA is being asked: Was this property in violation of the Zoning Ordinance at a point in time, which would be a municipal civil infraction - determined by a preponderance of evidence beyond reasonable doubt. The second issue is a criminal charge under the Housing and Licensing Code, which we have no prerogative over - there is an appeal Board for that if they wish to pursue.

Kench confirmed Kulick's statement and stated for the record that when they tried to do the conversion to a duplex in 2009 under a Special Use Permit that was expired, the city tried to work with the applicant to get him back in front of the Planning Commission to renew the SUP and get him under a building permit, stating that city staff would have gladly helped him through the process. This would have seemed like an easy request as a duplex is an allowed use for the district and it had been approved once already. The applicant indicated he no longer wished to follow through with the conversion to a duplex, and instead indicated he was going to request a conditional rezoning. It is now three years after the fact; we have a zoning violation on the property, it was brought to our attention in December, we cited the violation and asked for compliance. Common sense would tell me that if I have three people not on a lease that are living there, I would ask them to leave. It would comply with the lease and the zoning. It has been three months since the letter and we are just now getting some action. What is being asked is one piece of the puzzle - you are being asked - does five people in that building constitute a zoning violation.

Chairman White stated that the Board's finding does affect the latter half of the issue, but the Board has no control over that.

Kench further commented that he's not sure introducing anything that happened in 2008/2009 has any relevance to what is being asked of the Board this evening. It's a point in time thing - did you have a zoning violation in December when this thing was cited. "I say you do."

Mr. Jakeway interjected that they have not denied that there is an over occupancy and have taken action to correct it.

Chairman White stated that this is the only thing the ZBA will be voting on tonight.

Kench stated that there is a lot of history at this property; however we are just looking at the point in time stuff. The applicant is appearing before the Planning Commission tomorrow for conditional rezone. If the re-zoning is approved the applicant can move forward; if denied, he can still go back to the Planning Commission for a Special Use Permit for a duplex but he would need to go through that process before we could issue a building permit to make the conversion. Kench repeated that he would gladly help him through that process. Kench commented that the record seems to stand for itself.

Mr. Jakeway stated he was prepared to do the conversion in 2009 and believes he was denied wrongly - as he believed he had the authority from Captain Theisen to finish the project. That happened on or about August 5/6 of 2009. He stated that he had a lease due to start on August 21. Mr. Jakeway continued, stating that since then it has been occupied by two

people - two on lease with no issues. The Fire Department has been in there every year and he has never received anything from the Fire Department that he was not in compliance. He stated he doesn't know what we are trying to find or what we are trying to prove tonight but he has a lease with two people. He stated he has done what he is obligated to do under the law.

Chairman White commented that the Board is to vote on the finding that took place on December 11 in regards to the over-occupancy issue.

Mr. Jakeway asked what the purpose of the vote was - what are we trying to accomplish, commenting that he still did not understand.

Chairman White replied that the Board's approval would overturn the statement of over occupancy based on the zoning of the house.

Mr. Jakeway stated then you are just going to deny my appeal and so I will go to the Planning Commission tomorrow and then to Court on the civil infraction on April 4th. I'll have a chance to plead not guilty.

Chairman White stated that the Board's finding would only confirm what has taken place in regards to the over occupancy; it is not going to affect the legal matter that the applicant is in. Basically they will just be confirming the city's finding of over occupancy

Kench confirmed Chairman White's explanation, commenting that the Board could vote that allowing 5 people does not violate the zoning. Kench stated that he is asking that the Board deny the request - affirm staff's position that we have a zoning violation by allowing 5 people to reside at 714 S. Main which is in the R-3 Zoning District.

Mr. Jakeway stated that staff keeps saying "allowing" - and they haven't "allowed" anything.

Mr. Higgs reiterated Mr. Jakeway's statement that he hasn't "allowed" five people....that's what they are asking. He stated that the Zoning Ordinance says that if they "allow" five people he can be charged with this - he has not "allowed" five people - as soon as he found out about the five people he had been trying to evict them - there is no "allowing" them. Mr. Higgs stated that is clear here - if you find he has not allowed five people then you have to dismiss this.

Chairman White stated that regardless of the term allowance - there are currently five people residing at that location which is not zoned nor licensed for five and that is what the Board will be re-affirming with their vote.

Mr. Jakeway commented that he affirmed that back in December.

Chairman White repeated that is what the Board would be voting on.

Mr. Jakeway stated he understands all that.

Mr. Higgs stated that the accusation in the letter that caused all this was that he is "allowing" that to happen. That is the accusation in the letter that brought us here - that he is "allowing" it to happen when he has not "allowed" it to happen. If you are saying that a violation is occurring, a violation is occurring. If you are accusing Mr. Jakeway of "allowing" it like the letter says, then we have to object to that. There has not been a landlord "allowing" this to happen in this circumstance. If you're saying that based on the Ordinance it is over-occupied, then that is true.

Chairman White stated that the Board is reaffirming the finding that in December the property was over-occupied.

Mr. Higgs stated that you are not confirming that he is "allowing" it the way the letter's written. If you are confirming that it happened, it happened but he didn't know about it at the time. Don't confirm the letter because the letter says that he is "allowing" it and he is not.

Chairman White stated that from his standpoint it doesn't matter how it is worded. The Board is simply looking at whether the property was over-occupied as cited by City staff in December. That is all the Board will be determining.

Chairman White opened the Public Hearing. There being no one who wished to address the Board, the Public Hearing was closed.

Board Discussion:

Kench reported the correspondence received included one letter of support and one letter from the Fire Department talking about the misdemeanor ticket for over occupancy. We also received a letter from Mrs. Rosan to be entered into the record, favoring allowing a rooming dwelling and stating that she has had no problems with Mr. Jakeway.

Motion by Kulick, support by Quast, for a finding based on the preponderance of evidence presented in the information provided by staff that there were 5 occupants at 714 S. Main in December of 2011, which was a violation of the Zoning Ordinance and the Board affirms the finding of the Building Official and denies the applicants request for appeal.

Motion to deny the applicant's request and uphold the Building Official's position that the property was in violation was approved unanimously.

E. ZBA-07-2012 - 116 N. Mission Street - Shaheen Buick Cadillac GMC. Kench explained that this is a request for a variance to reduce the front setback for a new addition and an alteration in the greenbelt area. Kench reported that the proposed changes include a change in the elevation at the front showroom, a new entrance and new canopy over the service bay, along with a new vehicle pickup area. Along with the exterior renovations, the applicant also proposes remodeling of the showroom, and upgrades to the site. The applicant is proposing the use of stamped concrete in lieu of a greenbelt.

Kench reported that the site is located in the C-3 General Business District, which requires a 50 foot front yard setback for new construction. Kench further reported that the existing

building sits 32 feet from the property line. With the proposed entrance feature, the setback will be reduced to 25 feet; therefore, the applicant is requesting a variance. Kench further commented that the addition is an open-sided structure.

Kench reported that he had met with the architect, along with the Planning Director and discussed masonry entrance features to enhance the entrance. In addition, the driveway aisle width on the north was reduced and the south drive will be modified to provide a right-turn only and will also be reduced down to 30 ft.

Kench explained that the applicant is also seeking a variance from the greenspace area, proposing the use of a stamped concrete display pad.

John Jensen, architect for the project, addressed the Board, stating the proposed change is mostly an appearance issue. Mr. Jensen stated that the building was there before the setbacks were established and the only additional encroachment proposed is the entry feature.

Commissioner Quast spoke about the stamped concrete questioning whether there would be anything to prevent cars from parking on the sidewalk.

Mr. Jensen stated the intention is to park fewer cars along this area, which is used for display of vehicles. He also stated they are contemplating masonry posts with roughly 10 ft. of decorative fencing.

Commissioner Quast questioned whether the Fire Department would have concerns with the site layout. Kench stated that the Fire Department has commented that as long as they have access to the other sides of the building they are okay with the reduced front setback.

Chairman White asked about the detail of the stamped concrete. Mr. Jensen stated there are several patterns available and it will be a better platform to display the cars.

Chairman White asked if the plan would affect the line of sight for traffic. Mr. Jensen stated it would not.

Chairman White opened the Public Hearing. There being no one who wished to address the Board, the Public Hearing was closed.

Kench shared the correspondence from the Fire Department.

Commissioner Kulick commented that the setback was narrowed when Mission Street was widened to provide a center turn lane, which provides a basis for granting the request.

Motion by Kulick, support by Fetting, to grant the variance to reduce the front setback for a new addition and to permit an alteration to the greenbelt area based on a finding that the reduced front setback was caused by the State of Michigan. The applicant is to comply with requirements of the Mt. Pleasant Fire Department and is to provide some sort of barrier to prevent vehicles from projecting over the sidewalk.

Motion approved unanimously.

F. ZBA-05-2012 - 816 Douglas. Kench introduced Case ZBA-05-2012 as a request submitted by Rick McGuirk, requesting a side street setback variance to construct three open porches over existing entryways. The porches will extend into the required 10 foot side yard setback.

Kench reported that the area is zoned M-2 as are the surrounding properties. The property is established as a multi-family use which is consistent with the future land use. The property has frontage on two streets, with a 20' setback along Douglas and 10' along May Street. The ordinance allows porches on the front to extend 6 feet into the setback. Kench reported that the applicant constructed entrance features last year along Douglas Street and would like to replicate the entrances along May Street.

Chairman White asked if the proposed construction would be identical to the porches on Douglas.

Rick McGuirk, owner and applicant, addressed the Board, noting that the proposed construction along May Street would be identical to the porches on Douglas.

Vice-Chairman Ellertson asked how many porches the applicant was proposing. Mr. McGuirk stated there would be three.

Chairman White asked if the pads were already in place. Kench stated the pads were already there, it is the overhang that the setback applies to, which is why the applicant is asking for the variance.

Chairman White opened the Public Hearing. There being no one who wished to address the Board, the Public Hearing was closed.

Kench stated the only correspondence received was from the Fire Department, who had no objections.

Motion by Kulick, support by Quast, to grant the setback variance to allow the construction of three open porches located within the 10 foot side yard setback, based on a finding that the lot is larger than other lots in the area and the construction will have no negative impact on adjacent properties and will enhance the architectural appeal of the building and improve the neighborhood.

Motion approved unanimously.

G. ZBA-06-2012 - 1222 North Drive. Commissioner Kulick noted that although his wife works for a company that supplies the Medical Care Facility, he does not feel that he has a conflict of interest and will be participating in this case.

Kench introduced Case ZBA-06-2012 as a request submitted by Rowe Professional Services for a rear setback variance, along with a variance to exceed the allowable height and number

of stories, to allow an addition to the facility. Kench reported that the property is unique in that it shares a wall and property line with McLaren Hospital. Kench referred to a recent case that the Board heard to allow the addition of a kitchen for the Medical Care Facility.

Kench stated the property is located in the R-3 Zoning District and is surrounded by R-3 properties with a mix of residential and institutional uses. Kench explained that the district allows structures with a height of 35' and 2.5 stories. The applicant is proposing the demolition of a portion of the existing building and replacing it with an addition matching the height of the existing building. The proposal includes the reconfiguration of the space, with occupancy remaining essentially the same.

Kench shared the elevations and site plan for the proposed addition.

Chairman White asked if the addition would affect the parking requirements. Kench stated that the addition would essentially be built within a similar footprint and based on the configuration of the space, it should not affect the overall occupancy or parking requirements.

Stacie Tewari, Rowe Professional Services, addressed the Board, offering to answer any questions.

Chairman White commented that he is in favor of extending the height.

Commissioner Kulick stated that the reason the ordinance contains the height limitation is because it was based on the limitations of the Fire Department's equipment. Not they have equipment that can reach those stories, so it is no longer an issue.

Ms. Tewari stated that the addition essentially falls within the existing footprint. The proposal will allow for patients to have private rooms, whereas now they have to share.

Chairman White asked if the façade materials would match the existing building. Ms. Tewari stated they would be the same.

Chairman White opened the Public Hearing. There being no one who wished to address the Board, the Public Hearing was closed.

Kench indicated the Fire Department had submitted their views, speaking of the 24' aisle requirement. They further had indicated that there may be a need for an additional fire hydrant, which prompted a revised site plan from the applicant.

Motion by Kulick, support by Palm, to grant the variance for a rear yard setback and a variance to exceed the height and number of stories to allow the addition to the Isabella County Medical Care Facility, subject to meeting the requirements of the Fire Department. The approval is based on a finding that the proposed addition is consistent with other buildings on the block and the institutional use is an allowable use in a residential district and should have no negative impact on the surrounding neighborhood. In addition, the rear property line concept becomes obscure when it joins the adjacent building.

Motion approved unanimously.

H. ZBA-08-2012 1204 E. Pickard. Kench introduced Case ZBA-08-2012, explaining that this case, submitted by Harmon Signs, was a request for a variance from the four foot height restriction for Ground Signs. Kench explained that the proposed signage, for the new Belle Tire, is being proposed in lieu of a pylon sign. The use is an allowed use the district, which is zoned C-3. Kench stated that based on our ordinance, ground signs are limited to 4 ft in height, with a 5' setback requirement. Kench also commented that the site would permit a pylon sign with a height of 30 ft.

Kench reported that the proposed sign is 7'6" in height, providing 50 square feet of display area. Kench shared photos of the site, currently under construction.

Dave Brink, representing Harmon Signs, addressed the Board, commenting that their company works a lot for Belle Tire and they prefer monument signs over the pylon signs. Mr. Brink also commented that most communities prefer monument signs. Mr. Brink commented they would like to be as close as possible to the street.

Commissioner Kulick referred to the rendering supplied, which shows the address, requesting clarification on whether they would be including the street numbers. Mr. Brink indicated they would.

Chairman White clarified that the applicant would need to maintain the 5' setback from the sidewalk.

Mr. Brink stated it does not appear that the Ordinance addresses monument signs and they are therefore asking to substitute this design in lieu of a pylon sign. Chairman White questioned whether there would be signage on the building as well. Mr. Brink stated there would, noting that they are allowed 200 square foot of signage; however the proposed ground sign would be smaller than what would be allowed for a pylon sign.

Chairman White questioned whether they could raise the grade. Mr. Brink replied that there was shrubbery determined by the Planning Commission that would also need to be incorporated in the plan.

Commissioner Fetting asked if the sign would be lighted. Mr. Brink replied that it would have interior lighting.

Chairman White asked what types of materials were proposed. Mr. Brink stated that the standard Belle Tire signs are aluminum and use the red/white/blue theme.

Chairman White opened the Public Hearing. There being no one who wished to address the Board, the Public Hearing was closed.

Kench stated the only correspondence received was from the Fire Department, who had no objections.

Commissioner Kulick commented that as a community we would like to see more monument signs rather than pylons; however was concerned if the sign would cause any obstructions with line of sight.

Vice-Chairman Ellertson stated he doesn't have any issue with the size of the sign and stated he feels the setback requirement is logical.

Chairman White commented that he isn't sure the applicant was aware of the five foot setback and further commented that he is a stickler on size of signage and is not comfortable granting a variance to increase the size. He added however, that based on our Ordinance language, that if denied, they would be allowed to install a larger pylon sign.

Mr. Brink commented about the 5' setback requirement, stating that they are behind the 20' clear view triangle and would like to place the sign as close to road as possible. Mr. Brink further commented that monument signs aren't addressed in our Code and stated that they are typically a compromise as they are low-lying, and can get lost in traffic. Mr. Brink further commented that the size is deceiving when considering it inside a building. When it is out in the field, it appears much smaller.

Commissioner Quest commented she is uncomfortable with the size of the requested sign and further stated she would like to see some brick incorporated into the design.

Commissioner Palm questioned the applicant on whether they would be open to reducing the size of the sign as the building itself will be very visible.

Dan Muska, representative of Belle Tire, asked what size the Board would like to see, commenting that with the required setback, the sign needs as much visibility as possible.

Vice-Chairman Ellertson commented that if the Ordinance states 4', he's not sure where to land.

Commissioner Quast stated the sign Ordinance needs to be looked at.

Mr. Muska expressed concern that if the base was reduced too much, the required shrubs would block the sign. Chairman White suggested some low-lying ground cover. Chairman White also stated he would prefer to see some brick wrapping however noted that he understands that Belle Tire has their standards.

Commissioner Quast suggested postponing action to have the applicant submit a different plan. Commissioner Kulick commented that it might be worthwhile to look at the size of the proposed sign in the field to get an idea of the scale. Commissioner Palm asked how the applicant felt about postponement.

Mr. Muska commented they hoped to be open by Memorial Day; therefore a postponement would not be in their best interest. Mr. Brink also commented that they are located three hours away.

Commissioner Quast asked what height they would be able to agree with.

Chairman White suggested knocking a foot off the height of the base, keeping the sign face at 5' x 10'.

Mr. Muska agreed and also commented that they could incorporate some brick on the sign base.

Chairman White stated the applicant would still need to abide by the 5' setback.

Motion by Ellertson, support by Kulick, to grant a variance to allow a monument sign with a sign face of 5' x 10' as opposed, with the overall sign height not to exceed 6 1/2 feet, and with the sign base to be constructed of brick.

Motion passed 5:1 (White).

IX. New Business

A. Consider documentation of Review Procedures and Standards - Redevelopment in the M-2 Zoning District.

Kench introduced the document explaining the Planning Commission had recently met in a joint session with the City Commission and reviewed the procedures for the redevelopment of non-conforming uses. The City Commission went on record that they were pleased with the end results; however, voiced some concerns on the process. The City Commission directed staff to draft a document which outlines the procedures being used by the Zoning Board of Appeals and Planning Commission to encourage better site design and use of better building materials in exchange for reducing non-conformities on the site. . Kench further stated that if the Board is comfortable with the document, a motion and vote would be needed, then the document will be sent on to the City Commission.

Chairman White commented that this may be a good time to schedule a work session to review the document as a Board, especially since we have some new Board members.

Motion by Kulick, support by Palm to postpone action and schedule a work session for Board review.

Motion approved unanimously.

B. Training

Chairman White commented on some upcoming training opportunities that the Board may be interested in. He will provide information to Board members.

Adjournment

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

Meeting adjourned 10:17 p.m.

bam