

MANISTEE CITY ZONING BOARD OF APPEALS

City Hall, 70 Maple Street
Manistee, MI 49660

MEETING MINUTES

October 25, 2007

A meeting of the Manistee City Zoning Board of Appeals was held on October 25, 2007 at 5:30 p.m. in the Council Chambers, City Hall, 70 Maple Street, Manistee, Michigan.

The meeting was called to order at 5:03 p.m. by Chairman Perschbacher

ROLL CALL:

Members Present: Mark Hoffman, Marlene McBride, John Perschbacher

Member Absent: Bill Kracht (excused)

Alternates Present: Nathaniel Neider, Craig Schindlbeck

Others Present: Ray Fortier (Planning Commissioner), Tom Bastion (Good Shepherd Lutheran Church), Jon Rose (Community Development Director), and Denise Blakeslee (Planning & Zoning) and others

Because the request on the Agenda was from the City of Manistee Planning Commission and Ray Fortier is the Planning Commission Representative serving on the Zoning Board of Appeals. Mr. Fortier did not take his seat on the Zoning Board of Appeals for this meeting.

APPROVAL OF AGENDA:

MOTION by Mark Hoffman, seconded by Craig Schindlbeck that the Agenda be approved as prepared.

MOTION PASSED UNANIMOUSLY

APPROVAL OF MINUTES:

MOTION by Mark Hoffman, seconded by Nathaniel Neider that the Minutes of the June 18, 2007 Zoning Board or Appeals Meeting be approved

MOTION PASSED UNANIMOUSLY

PUBLIC HEARING:

Interpretation of the definition of "Accessory Use"

The City of Manistee Planning Commission is requesting the Zoning Board of Appeals determine if the Zoning Administrators interpretation of the definition of "Accessory Use" is correct.

The definition of Accessory Uses, related to uses permitted is as follows: *"A use naturally and normally incidental to, and subordinate to, and devoted exclusively to, the principal use of the land or buildings."*

Chair Perschbacher opened the Public Hearing.

The City of Manistee Planning Commission made a request to the Zoning Board of Appeals to review the Zoning Administrators interpretation of the definition of "Accessory Use". This issue came up during the October 4, 2007 Planning Commission Meeting while reviewing an application from Good Shepherd Lutheran Church for a Special Use Permit for an off-site Parking Lot.

Good Shepherd Lutheran Church purchased the vacant property on the corner of U.S. 31 (Cypress Street) and Sixth Street with the intention of constructing an additional parking lot for their facility. They are hoping that the addition of this parking lot will alleviate the congestion they experience during peak seasons and would allow them to hold just one service on Sundays instead of two.

Chairman Perschbacher spoke of a court case similar to this request and establishing a precedence.

Denise Blakeslee explained to the Members of the Board that they are to make a determination on the definition NOT the request from Good Shepherd Lutheran Church. It is difficult to keep the two items separate but the request from the Church should not be considered. In the event that the Board feels there is a need to make a correction to the ordinance they can make a recommendation to the Planning Commission.

Ms. Blakeslee also explained the process for a Zoning Amendment and the amount of time an amendment typically takes to go into place.

Jon Rose, Zoning Administrator spoke to the Zoning Board of Appeals members about the consequences of the interpretation and that they should not be concerned about setting a precedence. If the ordinance needs to be corrected an amendment can be done.

Mr. Rose spoke of a court case where the ZBA denied a request because the ordinance stated "on the same lot" in their language. The Applicant appealed to Circuit Court and they overturned the ZBA's decision. The ZBA then appealed to the Court of Appeals. The Court of Appeals upheld the ZBA's ruling citing that their ordinance read "as a subordinate use which is customarily incidental to the principal use on the same lot" Mr. Rose stated that the language in the ordinance does not include "Contiguous" or "on the same lot" in the definition. So the parcel not being contiguous or on the same lot did not pertain to his interpretation.

During the Planning Commission meeting a concern was raised that by allowing an off-site parking lot to be constructed, we would also have to allow the construction of accessory structures (i.e. garages) to be constructed on vacant parcels without a primary structure. While that concern may be valid Mr. Rose believes that the interpretation that was made is correct. Mr. Rose noted that the Church did not intend to begin development of the Parking Lot until spring.

Chair Perschbacher asked if there were any public comments.

Tom Bastion (Good Shepherd Lutheran Church) - Mr. Bastion commented on Mr. Rose's notation that they were not going to begin development until spring. In the event that the Zoning Board of Appeals were to over rule Mr. Rose's interpretation there is time to pursue other action if necessary.

Chair Perschbacher asked if there were any correspondence received in response to this request.

None

There being no further public comments and the hearing was closed at 5:53 p.m.

BUSINESS SESSION:

ACTION ON PENDING CASE:

Interpretation of the definition of "Accessory Use"

A Public Hearing was held earlier in response to the request from the City of Manistee Planning Commission requesting a determination from the Zoning Board of Appeals if the Zoning Administrators interpretation of the definition of "Accessory Use" is correct.

Mark Hoffman expressed his concern about Section 1805.B.3 which reads "An accessory use shall not generate any effects on neighboring properties, including, but not limited to, noise, parking, traffic, glare, or dust, greater than or more burdensome than such impacts from the main use on the property." Mr. Hoffman asked how a parking lot would not generate an effect on neighboring properties.

Mr. Rose said how he interpreted the language "main use on the same property".

Mr. Rose compared the effect that the parking lot -vs- the vacant lot has on the neighboring properties.

Marlene McBride asked what was at the site before it became a vacant lot. A store was previously at that location. Ms. McBride asked if it is zoned residential why would a parking lot be allowed.

Mr. Rose explained a church is a place of Public Assembly Large and is allowed in the R-2 Residential Zoning District as a Special Use if the property is located on a Key Street Segment. U.S. 31 (Cypress Street) is a Key

Street Segment. The Church is considered an existing Special Use under the standards of our Zoning Ordinance.

Review of the standards of the R-2 Residential Zoning District shows that an Accessory Use, related to uses permitted (Section 1805) is a Special Use. After reviewing the Standards and definition of Section 1804 "A use naturally and normally incidental to, and subordinate to, and devoted exclusively to, the principal use of the land or buildings". Mr. Rose determined an off-site parking lot complied with the requirements of the Zoning Ordinance as a Special Use.

Craig Schindlbeck asked if a parking lot is a principle use or an accessory use.

Mr. Rose said that a parking lot is not defined as a use in our ordinance so he considered it an accessory use.

Nathaniel Neider asked where this request is located. Jon Rose showed where it is located on the map and that there is an alley, two business and a street between the Church and the proposed parking lot.

Mr. Neider asked if the proposed parking lot was 10 blocks away from the church if it would be considered? Mr. Rose said he felt it was unlikely that a parking lot that far from a principle structure would be approved by the Planning Commission but noted that in the past off site parking has been allowed within 200' feet of the principle use. An example was the Greenbush Inn on Greenbush and Filer that has a parking agreement with the Briny Inn. Abonmarche, Century 21 and the Lady Jane Bed & Breakfast have a parking agreement with the Methodist Church.

MOTION by Mark Hoffman, seconded by Nathaniel Neider that the Zoning Board of Appeals overrule the Zoning Administrators interpretation of the definition of "Accessory Use"

With a roll call vote this motion passed 4 to 1.

Yes: Schindlbeck, Neider, Hoffman, McBride
No: Perschbacher

Recommendation to Planning Commission

Motion by Mark Hoffman, seconded by Marlene McBride that the Zoning Board of Appeals recommends that the Planning Commission review and clarify the definition of accessory use.

With a roll call vote this motion passed 5 to 0.

Yes: Hoffman, Schindlbeck, Neider, McBride, Perschbacher
No: None

OLD BUSINESS

None

OTHER BUSINESS OF THE APPEALS BOARD

None

PUBLIC COMMENTS AND COMMUNICATIONS CONCERNING ITEMS NOT ON THE AGENDA:

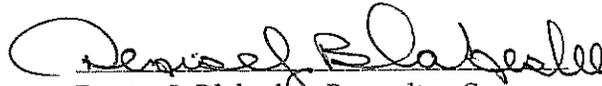
None

ADJOURNMENT:

There being no further business meeting motion by Nathaniel Neider, seconded by Craig Schindlbeck that the meeting be adjourned.

Meeting adjourned at 6:32 p.m.

Respectfully Submitted


Denise J. Blakeslee Recording Secretary