

# ZONING BOARD OF APPEALS MINUTES 04-20-2017

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## MEETING HELD IN THE CITY COMMISSION CHAMBERS THIRD FLOOR, 225 E PORTAGE AVENUE AT 5:30 PM ON THURSDAY, APRIL 20, 2017

*Pending approval by the Zoning Board of Appeals*

### 1. **Call to Order:**

The Zoning Board of Appeals meeting was called to order by Jeremy Gagnon at 5:30 p.m.

### 2. **Roll Call of Board Members:**

Roll call was taken to reflect the following quorum:

**Present:** Jeremy Gagnon (Chair)  
Andrew Barnebey (Secretary)  
Gary Dean  
Robert Casey  
Beverly McCready  
Steve Twardy

**Absent:** Dan Campbell

**Staff Present:** Kelly Freeman (Community Development Director) and Melanie McBride (Community Development Office Coordinator)

**Public Present:** Larry Bitnar  
Jennifer Garnett  
Bruce Burton  
Rick Clerc  
Jim McLeod  
James Gillotte  
Jenny Gillotte  
Timothy Moher

### 3. **Excuse absent board members:**

*It was moved by Beverly McCready and supported by Robert Casey to excuse the absence of Dan Campbell. The motion passed unanimously.*

### 4. **Acceptance of the Minutes of the Zoning Board of Appeals meeting held on March 16, 2017:**

Additions or deletions: There were none.

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*It was moved by Gary Dean and supported by Robert Casey to accept the Zoning Board of Appeals Meeting Minutes of March 16, 2017. The motion passed unanimously.*

Next, Jeremy Gagnon outlined the procedure for the variance. He explained that first City Staff will present the background information and then the applicant will have an opportunity to provide additional information and explain why he or she feels that the variance is warranted. Next, he said that comment is opened up to the public. If anyone from the public wishes to address the Board, he asked that they state their name and address for the record, and direct their comments to the Chair. After all the members of the public have spoken, the matter comes before the Zoning Board for discussion. He added that members of the Board may ask City staff or the applicant any questions at that time.

Jeremy Gagnon recused himself from agenda item 5 due to business dealings with the applicant, Larry Bitnar. Andrew Barnebey took over temporarily as meeting chair.

### **5. Bitnar Use Variance Request:**

A request by Larry Bitnar for a modification to a previously issued use variance (approved May 21, 2015) which served to permit a building contractor's office and storage yard to operate from the property located at 900 E. Spruce Street. The applicant is requesting the following uses to be permitted on the property in addition to the building contractor's office and storage yard:

- Retail and/or professional (including medical) office, limited to the existing 20' x 24' building.
- Motor vehicle and engine repair, limited to the existing 50' x 80' and 28' x 36' buildings
- Indoor rental storage space, limited to the existing 28' x 36' building.

Community Development Director Kelly Freeman reviewed the background for this request. Mr. Freeman displayed a power point presentation showing the property outlined in yellow. Mr. Freeman then gave information regarding the prior use variance on this property. The original use variance on May 21, 2015 gave Mr. Bitnar approval to use the property as a contractor's office and storage yard. The site plan was approved by the Planning Commission on June 25, 2015.

Mr. Bitnar is requesting a use variance from Section 10-1.05 (500) to establish the following uses in addition to the contractor's office and storage yard:

- Permit (Building I) 20' x 24' building to be used as an administrative/medical office or retail
- Permit (Building II) 50' x 80' building to be used for motor vehicle and engine repair to allow Caudill Diesel to remain as a tenant
- Permit (Building III) 28' x 36' building as rental storage space or additional use for Caudill Diesel.

State Statute requires that the Zoning Board of Appeals find that an unnecessary hardship is created through the strict application of the Zoning Ordinance. For an approval motion to pass, the Zoning Board of Appeals must have a 2/3 membership vote. Five votes for approval

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are required.

Continuing Mr. Freeman's power point, R-2 zoning generally limits uses to those which are residential in nature such as: one & two family homes, schools, churches, and municipal buildings.

Mr. Freeman described the history of this property. The North half of the property historically was used industrially. It was the home of Jacob & Son's until 1994, and was in operation since approximately 1930. This property was zoned industrial until 1965, when it was re-zoned to R-2 by the city when the current zoning ordinance was adopted. The South half of the property was primarily used for residential purposes until the late 70's to mid 80's. Mr. Freeman explained that environmental testing wasn't prevalent when the city re-zoned the property back in 1965. Mr. Bitnar had Phase 1 environmental testing done in June of 2015, and Phase 2 testing in July of 2016. Mackinac Environmental Technology Inc., found numerous exceedances at various locations on the property. Of seven (7) test borings done on the property, six (6) returned results showing contamination levels exceeding either drinking water or residential direct contact standards. Mr. Freeman displayed a table of the findings, and explained that one test had ten (10) times the lead level recommended for clean-up. Mr. Freeman made contact through email and phone with Paul Kreski of Mackinac Environmental Technology, and his recommendation is that this property should not be used residentially. Mr. Freeman concluded that Mr. Bitnar has taken some remediation efforts by removing 12" of existing topsoil from the property. It is not known to what extent of contamination remains below that level. Mr. Freeman's analysis pointed out that this property is likely not appropriate for residential uses due to the soil contamination, lime piles to the south, power lines to the east, and an auto body repair shop to the west. Mr. Freeman also noted that some homes have been torn down in these areas.

Mr. Freeman discussed his recommendations for the following buildings:

- Building I:
  - It was previously approved for a constructor's office use.
  - There is not a meaningful difference between Administrative / Medical Office or retail use
  - Medical Office may have higher traffic, but due to the building's size this will limit the impacts.
  - The same consideration applies to retail use, though more parking may be required.
  - Recommendation is to approve requested Admin/Medical Office uses and approve retail uses provided that parking may be added if necessary.
- Building II:
  - 50'x80' (4,000 sq. ft.) 4 bay garage currently rented by Caudill Diesel
  - Use of this building is a primary concern due to the vehicle and engine repair activities have potential to create a large amount of noise caused by pneumatic tools, idling engines, and traffic.
  - Noise violations would be difficult to enforce due to short duration of activities and would place the burden of enforcement on adjoining property owners.
  - Recommendation is to deny the request to continue to utilize this building

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- for motor vehicle and engine repair.
- Building III:
  - 28'x 36' (1,008 sq. ft.) 2 bay garage currently being used by applicant.
  - 2 proposed uses, motor vehicle and engine repair by Caudill Diesel and rental storage space.
  - Use by Caudill Diesel creates the same concerns as with Building II
  - Rental Storage is generally seasonal and passive in nature, no noteworthy traffic or noise generation.
  - Recommendation is to deny request to expand the motor vehicle and engine repair, but approve the use of the building for rental storage.

Mr. Bitnar asked to respond to these recommendations with a power point presentation read by Jennifer Garnett.

Mr. Bitnar first explained that he was unaware that he was in violation of his first Zoning Board of Appeals use variance when he rented out his building to Caudill Diesel. Mr. Bitnar originally thought the property was commercial when he first bought it.

Mr. Bitnar explained that Caudill Diesel's use of pneumatic tools wouldn't cause added noise, due to the business and traffic that is already in the area. The diesel shop can operate with the doors closed, but he does not find it unreasonable for the doors to be open on nice days during business hours. Idling vehicles outdoors would be no different than other idling vehicles that are out during the cold winter months.

Mr. Bitnar explained that Caudill Diesel's hours of operation are 8 a.m. to 5 p.m. Tuesday thru Saturday to accommodate the public that have 9-5 jobs. These are similar to other businesses in town with Saturday hours.

Mr. Bitnar discussed how the property was zoned industrial prior to 1965. This property was included in a mass rezoning, even with the unattractiveness of the property as a housing site, especially given its historical use and proximity to the lime piles.

Mr. Bitnar showed four (4) pictures to demonstrate the quality of his buildings, how he has cleaned up the property, and the condition of the property. He also discussed plans to add more fencing to limit the impact on surrounding properties.

### **6. Public Comment:**

There were three telephone calls received in regard to these requests. Two calls were in favor of the request, and one call was against the request.

Andrew Barnebey opened up the floor for public comment.

Rick Clerc, of 1420 E. Easterday Ave, lives two (2) doors over from Mr. Bitnar's property. He stated that the property looks great. He personally runs machinery including snow plows and tractors. There are other businesses in the area including a body shop. He believes the noise level from this property is normal and he has no issues with the building's current use.

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Jim McLeod owns rental property across the street and plans to build a home in the area. He has not received any complaints from his tenants and finds Mr. Bitnar's current use of the property acceptable. He has some concerns if ownership would ever change hands. Mr. McLeod is also concerned about adjoining buffer to the residential area.

Jenny Gillotte lives across the street and is concerned about the noise and bigger vehicles on the road. She wants to be able to have her windows open during nice weather and enjoy her property.

Mr. Bitnar asked to address some of those public issues. He stated he is willing to work on some of the noise issues with Caudill Diesel. He also has plans to build a duplex adjoining to the residential property to provide a buffer to that area.

Bruce Burton owns industrial property to the south west of Mr. Bitnar's property. He's in industrial zoning and understands the hardships that come with buying property without understanding the full picture. He addressed the noise in that area saying that all responsible property owners will try to be as cautious as possible with their noise. Trucks are routed on that street due to weight restrictions so there will always be noise from vehicles on that street.

Jim McLeod asked to speak again. He's had circumstances where property he has purchased was misrepresented. He feels for Mr. Bitnar's situation. After hearing the comments he feels good about the buildings current uses and that there will not be additional buildings.

Rick Clerc added that the majority of the noise from that property came from the construction of those buildings. Since the buildings are now complete the noise will be reduced.

Mr. Freeman clarified that there was not misrepresentation from the city regarding the zoning of this property. When Mr. Bitnar was purchasing this property from an estate, he looked at the tax classification at the assessing office which was commercial. If a property is taxed commercial it does not mean that is how the property is zoned.

Andrew Barnebey closed public comment and opened up board discussion.

Beverly McCready asked if a factory could be built if this property was zoned industrial. Mr. Freeman responded that the property would have to be zoned I2. Mr. Bitnar is hoping to have the property re-zoned as I1. Gary Dean asked if Mr. Bitnar consulted with the building department in regards to the diesel shop. Andrew Barnebey clarified asking if it was built without a permit. Mr. Freeman explained that the diesel shop was brought to light during an investigation of a noise complaint, in which the Caudill Diesel signage on the building was noticed. Steve Twardy asked what hours the noise ordinance covers, in which Gary Dean and Robert Casey determined to be 7:00 a.m. to 10:00 p.m. Larry Bitnar commented in regards to the building without a permit. He was in the permit process and the building was inspected by engineers during the build, but the permit was not finalized.

The board opted to do the motions on the buildings use separately.

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*It was moved by Gary Dean and supported by Steve Twardy to approve Building I for Administrative / Medical / Retail use. This motion passed unanimously.*

*It was moved by Robert Casey and supported by Beverly McCready to table the use variance request on Building II & Building III until the next meeting, while information is obtained on doing a 6 or 12 month temporary use variance. Mr. Freeman will discuss this with City Attorney, Steve Cannello.*

*It was moved by Beverly McCready and supported by Robert Casey to approve Building III for rental storage use. This motion passed unanimously.*

Jeremy Gagnon returned to the meeting.

### **7. Other Matters Presented by the Board or Staff:**

Nomination of Vice Chair – Previously held by Eric Wedesky

Andrew Barnebey was nominated for Vice-Chair and Beverly McCready nominated for Secretary.

*It was moved by Jeremy Gagnon and supported by Gary Dean to accept Andrew Barnebey as Vice-Chair and Beverly McCready as Secretary. This motion passed unanimously.*

The next scheduled meeting of the Zoning Board is scheduled for Thursday, May 18, 2017.

### **8. Adjournment:**

*It was moved by Jeremy Gagnon and supported by Andrew Barnebey that the meeting be adjourned at 6:36 p.m. The motion carried.*

Respectfully submitted,

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Jeremy Gagnon, Chair  
Zoning Board of Appeals