

## MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD JULY 13, 2022

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Present: John Kolb, Alderman Brickner, Dennis Besler, Richard Grubanowitch, Richard Lentz, Richard Adamczewski

Also Present: City Administrator Johnsrud, City Attorney Alexy, City Clerk/Treasurer Uecker

Chairman Brickner called the meeting to order at 6:00 p.m.

### **Minute Approval:**

Moved by Richard Adamczewski, seconded by Dennis Besler to place on file the minutes of the Zoning Board of Appeals meeting held January 11, 2022. Motion carried.

### **4267 South Packard Avenue:**

City Clerk/Treasurer Uecker read the "Notice of Public Hearing" as posted and published.

Reese Barbosa, the architect for the project, spoke to the members of the Board. He stated that the owner would like to add an addition to the west side of the building. The setback is 20 feet but they are requesting less. There will be a fence and trees along the property line for screening. They also have 15 parking spaces, but per Code need 17. They are requesting the setback in the rear yard be 10 feet not 20.

Some of the driveway entrances will be closed to create more greenspace and new asphalt will be installed. The canopy will also be redone.

The purpose of the expansion is to allow for the increase in grocery items and will basically double the size of the existing business. The expansion/addition will improve the area.

City Attorney Alexy gave the statutory reasons for the Board to grant the appeal.

Richard Grubanowitch asked if eliminating two drive entrances would benefit the City as far as safety. City Administrator Johnsrud stated that it is a corner lot and the building configuration doesn't meet the requirements with a Packard Avenue address but would with a Lunham Avenue address. He also stated that the 2 driveway entrances would be safer for vehicles and pedestrians. City Administrator Johnsrud also stated that the plans address all five of the points made by the City Attorney to grant the appeal to the zoning.

Moved by Richard Adamczewski, seconded by John Kolb to grant the variance as it meets the five conditions in the Zoning Code. Motion carried.

### **2320 East Layton Avenue:**

Attorney Rodney Carter appeared for the QC Holdings, LLC.

City Attorney Alexy that the hearing is an appeal to non-conforming use standards and the Zoning Administrators denial of the occupancy permit. He also reviewed the State Statutes covering non-conforming use as well as related, relevant court cases.

Attorney Rodney Carter, representing QC Financial stated that he reviewed the history of this property and the 2002 Certificate of Occupancy that was issued stating Pay Day Loans was classified as a financial institution and zoning at that time allowed for that. The business continued for 20 years with no issues. His client acquired Pay Day Loans and contacted the City to notify them of the change in ownership. The zoning change was denied by the Zoning Administrator and the Planning Commission. A staff report dated April 26, 2022 to the Planning Commission from the Zoning Administrator stated that Pay Day Loans is a non-conforming use and doesn't fit in the City's Comprehensive Plan. Attorney Carter felt that the staff was exercising will, not judgement. He felt that the zoning should be grandfathered use as the services aren't changing from what Pay Day Loan has done and no additional services will be offered.

Attorney Carter had conversations with City Attorney Alexy and the concession was that Pay Day Loans was always there and that the usage with the change to QC Financial isn't expanding services. The Certificate of Occupancy is clear as it was issued for a financial institution although no definition of a financial institution was found in the file with the permit. Attorney Carter did read a definition of a financial institution that he got from Wikipedia. He didn't feel that this would withstand an appeal in front of a judge. He is asking for the Zoning Board of Appeals reverse the Zoning Administrator's decision.

City Attorney Alexy defined the legal non-conforming use per the 1962 Zoning Ordinance and Municipal Code 239.13. The B-2 District definitions covers banks, financial institutions, brokers and pawn brokers. There is no definition in the 1962 code as to what a financial institution was.

City Administrator Johnsrud stated that QC Holdings, Inc. submitted an occupancy permit application for short-term loans. The rezoning application was submitted on March 7, 2022 and he referenced the current City zoning code. On April 27, 2022 the Planning Commission recommended denial based on the City's Comprehensive Plan. He also felt that this situation is blending zoning and variance issues. He did further investigation into the 1962 Zoning Code and the 2004 revision and felt that the 2002 Occupancy Permit was an illegal non-conforming use of B-2 zoning. City Administrator Johnsrud reviewed his process and recommendation of the application with the Board members. He also stated that in 1964 Webster Dictionary defined a financial institution as an institution that takes deposits and makes loans, which would support his decision. He also stated that contrary to previous correspondence, his position has been consistent that it is a non-conforming use. Zoning is based on use, not the name of the business. It was not legal use in 1964 B-2 zoning and is a non-conforming use. City Administrator Johnsrud asked the Zoning Board of Appeals to uphold his determination that based on the 1964 definition of financial institution it doesn't meet the definition. He also stated that he did not know what was presented to the Zoning Administrator in 2002 as to what it would be used for.

Alderman Brickner asked if using the 2004 zoning code, would this still be considered an illegal use. And is the City obligated to follow the 2004 code? City Attorney Alexy responded that his questions are a Zoning Board of Appeals decision and that the current Zoning Administrator does not know what the original application for occupancy described as far as what would be done in that location. Alderman Brickner stated that his issue with the 1964 law is that these types of businesses weren't around then – so it clouds the issue today.

Attorney Carter felt that the issue is the definition of a financial institution as well as reading the 1964 zoning code and that if this would go to Circuit Court, and they find a definition that supports his claim, the City will lose.

Moved by Richard Adamczewski, seconded by Dennis Besler to uphold the decision of the Zoning Administrator regarding 2320 East Layton Avenue. Motion carries with John Kolb voting “nay”.

**Adjourn:**

Moved by Richard Grubanowitch, seconded by Richard Adamczewski to adjourn. Motion carried.

Time: 7:13 p.m.

DRAFT