

**APPROVED MINUTES OF THE REGULAR MEETING
OF THE KENTWOOD ZONING BOARD OF APPEALS
CITY COMMISSION CHAMBERS
MARCH 18, 2024, 6:30 P.M.**

1. Commissioner Spalding called the meeting to order.
2. Pledge of Allegiance (Le)
3. Roll Call
MEMBERS PRESENT: Robert Houtman, Joshua Elliott, Amanda Le, Robert Spalding, David Fant, Mary VanNoord and Susan West
MEMBERS ABSENT: Les Derusha (with notification)
OTHERS PRESENT: Planning Director Terry, Schweitzer, Planner Joe Pung, Planning Assistant Monique Collier, City Attorney Jeff Sluggett, City Attorney Blake Clonklin, the applicants, and about 35 citizens.

Motion by Houtman, supported by West to excuse Derusha from the meeting.

- Motion Carried (7-0) –
- Derusha absent -

4. 6:30p.m. Closed Session
Motion to enter closed session to discuss a written legal opinion which is exempt from discussion or disclosure under state law as permitted under Section 8(1)(h) of PA 267 Michigan Open Meetings Act of 1976. (roll call vote)

Motion by Houtman, supported by West, to enter into closed session.

- Motion Carried (7-0) –
- Yays: Fant, Houtman, West, Spalding, VanNorrd, Elliott, West
- Nays: none

5. Return from closed session.
6. Declaration of Conflict of Interest
7. Approval of the Minutes and Findings of Fact

City Attorney Jeff Sluggett stated that in our February 19, 2024 minutes Lynn Garreau presented application V-24-01. He stated the board voted 3-2 to deny the request. Based on the understanding of the board and staff at that time the board interpreted the vote to

mean that the motion had failed. There was then a follow up vote to approve the variance and that failed 2-3. Sluggett stated the matter was then tabled. Staff was asked to contact the City Attorney's office and investigate the voting requirements. He stated that based on his office's review of the city Zoning Ordinance, the Bylaws, and the State statute that governs zoning in Michigan, they concluded that the relevant language, MCL 125.3603(2), stands for the proposition that the concurring vote of the members of the ZBA is necessary to reverse an order, requirement, decision, or determination of an administrative official, to decide in favor of an applicant on a matter upon which the Zoning Board of Appeals is required to pass, or to grant a variance.

Sluggett stated the statute and our opinion is clear that a vote of 4 is not required to deny a variance, it is required to approve a variance but not to deny; based on that he told staff that in his opinion the 3-2 vote to deny was in fact valid and effective and that variance request has in fact legally been denied.

Sluggett stated his recommendation is that the proposed correction to the minutes to be added immediately after the sentence on Page 5 beginning "Due to the motion to approve..." The following will be inserted: Following the February 19, 2024 meeting, the City Attorney's office was contacted and advised that the motion to deny was, in fact, effective and valid as four votes are only required to approve a variance. Based on this, the minutes shall be amended to reflect that the motion to deny the variance was approved on a vote of (3-2).

Motion by Fant, supported by West to accept the amendment to the minutes of the February 19, 2024 meeting.

- Motion carried (7-0) –
- Derusha absent -

Motion by Fant, supported by West, to approve the minutes of February 19, 2024 as amended.

- Motion Carried (7-0) –
- Derusha absent -

8. Acknowledge visitors and those wishing to speak to non-agenda items.

There was no public comment.

9. Public Hearing

Appeal #V-23-10 (Postponed from January 22, 2024)

Applicant: Church of Jesus Christ of Latter-day Saints
Location: 2400 Forest Hill Avenue, SE

Request: The applicant wishes to construct a 112-foot high spire as part of a proposed temple. Section 3.03.A of the Kentwood Zoning Ordinance limits the height of the spire to 50-feet. The requested variance is for an increase in height of 77-feet to the maximum height permitted by the Zoning Ordinance.

David Cauldon, Varnum LLP Counsel for the Church of Jesus Christ of Latter Day Saints, and David Case with the church and Ned Baxter with Progressive AE project Architect and engineer were present.

Cauldon stated when they were before the board in December, they presented a request for a variance to allow the church to construct a 112-foot-tall steeple on its property. He stated at that time there was some concern expressed about a steeple at that height. While it had been their opinion at Varnum that a variance at that height is appropriate under both the City's variance standards and the constitutional principles and federal statutes and that the church would be within its legal rights to seek a steeple variance at that height, he stated the church wanted to go the extra mile and try to work cooperatively with the City to come up with a solution that would really address the concerns and the needs of the City. He stated as a result they have met several times with the City Attorney's office and the city staff. He stated they discussed potential conditions of approval that staff thought would hopefully be acceptable to the Zoning Board to resolve their previously expressed concerns. He stated there are three conditions of approval that have been discussed.

Cauldon stated they are going to lower the height of the steeple to 95 feet. The lighting rod is not counted in height per the City of Kentwood's code interpretation of height. He stated what that does, is reduce the height of the steeple by 17 feet from what was originally proposed.

Cauldon stated they are going to lower the grade of the entire building by 2 feet. What that does is effectively reduce the overall height of the steeple by 19 feet from what was originally proposed.

Cauldon stated they are going to turn off the lights on the spire at night from 11pm-5am. He stated under the code there is no restriction or requirement of exterior façade lighting at night; however, this additional restriction on them was requested by Planning staff to further limit any potential impact of the variance.

Ned Baxter with Progressive AE displayed images of how the conditions of approval would work and what they would look like in practice with some renderings and studies from various locations around the site.

Baxter displayed images of where they were with the 112 foot spire and where they are now with the current 95 foot proposal that also takes into consideration the conditions of approval that Cauldon outlined.

Baxter displayed a photo of the proposed temple at 112 feet and then at the proposed 95 feet with the idea that the ball of the cupola is at 95 feet and the additional 3 feet up to 98 feet is purely for the lightning control piece of the project. He stated as the conditions states it will be less than 2 ¾ inch in diameter.

Baxter stated there was discussion of how to preserve the character and the neoclassical style and the formality of the building while also making in concessions to the City and to the community.

Baxter displayed both temple concepts together at 112 feet and the proposed 95feet where you can see all three items that were mentioned.

Baxter stated by pushing the temple down into the earth reducing its height as perceived from the street they get the first 2 feet, then there is 14 feet from that line to the top of the lighting rod and the additional 3 feet of that lightning rod to a total 95 feet versus 112 feet. There is a significant difference being suggested from several months ago to where they are now.

Baxter stated with the concept at 95 feet tall, the one other design element is the spire is no longer over the center of the temple. In order to maintain suitable and harmonious proportion between the mass of the building and the spire itself (when the spire is at 95 feet in the center of the temple it was too small they couldn't go down as far as has been requested) the spire has been shifted over the front portion of the entrance to the building. What they see now is a more balanced relationship by moving the spire forward. They are able to have a smaller spire by putting it in a different location to make the building better proportioned overall.

Baxter displayed the current concept.

Baxter stated the first floor of the church is at an elevation of 800 feet and what they are proposing now is that the 1st floor of the temple be at 798 feet 2 feet lower than what they presented previously.

Baxter also displayed a series of views that were taken on the site with images of the temple superimposed beyond them. The images didn't show every tree and garden element or fence that will be part of the project but they showed the size and impact of the temple on the community.

*From Burton Forest Hill Ave it was visible at 112 feet and it is not visible in the proposed concept. *Burton just past Farnhan Ct. the spire is moving away from the homes in the community who have expressed concerns about the height of the spire. *Furter along Burton towards the highway * Views from the neighborhood of Forest Meadows drive looking up the street towards the temple * Down Bluff Meadows Drive *further along Bluff Meadows Drive not visible from this view at 95 feet * Forest Hill

Avenue on the sidewalk just past the driveway into the condominium project south of the site.

Baxter stated their belief is that these changes still allow for a temple that is architecturally consistent, architecturally harmonious, and a real asset to the City and the community.

Cauldon stated the church wanted to try to be a good neighbor and to find some solution that would address the City's concerns. He stated working together with the City staff and City Attorney they have been able to do that and respectfully request the Boards approval of the variance understanding that it may be subject to the additional conditions of approval that they have just laid out should they elect to impose them.

Spalding opened the public hearing.

Lois Devries, 2504 Forest Bluff Drive was present. She stated the proposed temple would be immediately in her backyard. She stated they are thrilled about the idea of the beautiful temple being built in their backyard. She stated the height does not bother them. She stated there is a condo association that is lit all night long so the idea that the temple would turn their lights off at 11pm is great. She thinks it will be a tremendous asset to the area.

Mr. Diaz was present. He stated he is a member of the Church of Jesus Christ of Latter day Saints. He stated he is excited about the temple coming to Grand Rapids. He states that it is is going to be a true asset to the community

Houtman read 3 letters from citizens that were submitted from:

Ingrid Anastasiu, 2371 Shadtree Lane is opposed to the request.

Doug Keaton, 2520 Forest Bluff would like to see the temple be no more than 50 feet as their view is directly looking at the church property.

Nicole Burdick, 2388 Shadtree is in opposition of the request. She thinks it will set a dangerous precedent to the zoning regulations. She would like the Board to deny the request.

Natalie Terry, 5505 Wilmont Ct was present. She stated she has had the privilege of being a neighbor of a temple for 15 years with a spire of 214 feet. She stated never once did she hear a complaint. She stated it was something that they treasured.

Jeff Lippert, 2364 Shadtree was present. He stated the light could come through their bedroom windows and there are young kids in the neighborhood he would like to see the lights turned off at 9pm. He welcomes them into the neighborhood, just doesn't want them to interfere with their neighborhood.

Jim VanSolkema, 2552 Forest Bluff stated he couldn't be happier to see this coming. He stated this will be a big addition to the neighborhood.

Julie Dunakim, 2497 Bluff Meadows was present. She stated she welcomes them to the community. She stated neighbors bedroom windows will face by the church and doesn't want the church lit up after 9pm. She likes the idea that the spire has gone down to 95feet and asked that they turn lights off earlier.

VanNoord questioned what their thoughts were about stopping the lighting at 9pm versus 11pm. Cauldon stated they want to be sensitive to the neighbors, but this lighting is not lighting that shines out from the property this is lighting that is directed on the façade itself. It is not lighting that would be intrusive in someone's windows or that you would notice unless you are looking at the church out of your window. The lighting is important to the church, and it is subject to all of the city's code regulations. Cauldon stated the zoning ordinance doesn't have any restrictions on lighting this is a specific limitation that is not provided by the zoning ordinance that has been requested by staff and the church is agreeable to try to limit any impact from the variance. The hours and the visibility are important to the church.

Motion by Houtman, supported by West, to close the public hearing.

- Motion Carried (7-0) –
- Derusha absent -

Motion by Houtman supported by West, to adopt resolution 1-24

1. There are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district.

Exceptional or extraordinary circumstances or conditions include by way of example:

a. Exceptional narrowness, shallowness, or shape of the property on the effective date of this ordinance; or

b. Exceptional topographic or environmental conditions or other extraordinary situations on the land, building or structure.

Finding: The Applicant may, in theory, meet this standard by demonstrating that a literal application of the Zoning Ordinance would result in practical difficulties for the Applicant. Practical difficulties may be found when either: 1) a denial of the variance deprives an owner of the use of the property, 2) literal application of the Zoning Ordinance would be unnecessarily burdensome, or, 3) granting the variance would do substantial justice to the applicant. Practical difficulties need not be inherent to the land.

The ZBA finds that this standard is met because the Applicant has demonstrated through competent, material, and substantial evidence on the record that a literal application of the Zoning Ordinance would result in practical difficulties to the Applicant. The Applicant will be unable to utilize the Property consistent with its

religious practices without the grant of the conditional variance. The ZBA places considerable weight on the written and verbal submission of the Applicant that the Property is not useable for the Applicant's intended purpose as a religious house of worship with a spire without the grant of the conditional variance. Additionally, the ZBA finds based on the written and verbal comments of the Applicant that the Zoning Ordinance as written is burdensome and the granting of the variance would do substantial justice to the applicant.

2. The condition or situation on which the requested variance is based does not occur often enough to make more practical adoption of a new zoning provision.

Finding: The ZBA finds that this standard is met because the construction of large freestanding places of worship with steeples or spires is not a common occurrence in the City of Kentwood, such that the condition or situation on which the requested variance is based would not occur often enough to warrant an amendment to the Zoning Ordinance.

3. The literal application of the provisions of the Zoning Ordinance would deprive the applicant of property rights commonly enjoyed by other properties in the same zone district.

Finding: The ZBA finds that since the Property cannot be utilized by the Applicant consistent with its religious practices without the grant of the conditional variance, this standard is met.

4. The variance will not be detrimental to adjacent property and the surrounding neighborhood.

Finding: The ZBA finds that this standard is met, as the granting of the conditional variance would not be detrimental to adjacent properties as well as the surrounding neighborhood. The proposed temple constructed to a height of 95.00, the reduction of the grade at the building wall perimeter to comply with the maximum elevation, and the compliance with the lighting restrictions would greatly reduce the visibility of the proposed temple to the surrounding residential properties. The ZBA further finds that the proposed temple, if constructed to a height of 95.00 would not be out of character with the surrounding properties. The ZBA places considerable weight on the written and verbal comments received from the Applicant related to the requested conditional variance and the minimal resultant visibility of the temple from adjacent residential properties.

5. Taken as a whole, the variance will not impair the intent and purpose of the Zoning Ordinance.

Pursuant to Section 1.02 of the Zoning Ordinance, the purpose of the Zoning Ordinance, in part, is to promote and safeguard the public health, safety, prosperity, and

general welfare of the people of the City. In light of the requested variance with the conditions imposed, the ZBA finds that the variance will not impair the public health, safety, prosperity, and general welfare.

6. The exceptional conditions or circumstances do not result from the actions of the applicant. Thus, by way of example, the exceptional circumstances result from uses or development on an adjacent property or the exceptional shape of the property is the result of an unrelated predecessor's split of the parcel.

Finding: The ZBA finds that the Applicant's need for the requested variance is not the result of the actions of the Applicant.

3 Conditional Approval of the Variance.

In light of the fact that the Applicant has provided competent, material, and substantial evidence on the record that the proposed variance request, as conditioned, meets all of the variance standards, the variance application is conditionally approved by the ZBA. The variance is granted expressly subject to the following conditions:

- A. That the total height of the structure constructed on the property shall not exceed 95.00 feet in height as measured pursuant to the Zoning Ordinance, provided that up to 3.0 feet of any portion of the structure less than or equal to 2 and ¾ inches in diameter may exceed the 95.00-foot maximum height.
- B. That the established mean grade at the building wall perimeter shall not exceed 798.0 feet above sea level.
- C. That any portion of the structure exceeding 44.00 feet above grade shall not have any exterior façade lighting between the hours of 11:00 PM and 5:00 AM.

The vote on the motion to adopt this Resolution was as follows:

YEAS: Le, Elliott, Fant, VanNoord, Spalding, Houtman, West,

NAYS: None

ABSENT/ABSTAIN: Derusha absent

RESOLUTION DECLARED ADOPTED

Appeal #V-24-01 (Tabled from February 19, 2024)

Applicant: Lynn Garreau
Location: 1677 Gentian Drive

Request: The applicant wishes to install a second driveway off of Gentian Drive for the property. Section 17.11.B of the Kentwood Zoning

Ordinance limits the number of driveways to one (1). The requested variance is to permit a second driveway for the property.

[Following the February 19, 2024 meeting, the City Attorney's office was contacted and advised that the motion to deny was, in fact, effective and valid as four votes are only required to approve a variance. Based on this, the minutes shall be amended to reflect that the motion to deny the variance was approved on a vote of (3-2).]

Appeal #V-24-04

Applicant: Reinaldo Gonzalez
Location: 319 Montebello Street, SE

Request: The applicant wishes to construct an 840 square foot detached accessory building. Section 3.15.D.2.a limits the size of the accessory building to 768 square feet in area. The requested variance is for an increase in area of 72 square feet.

Isabella Gonzalez, daughter of Reinaldo Gonzalez was present. She stated they are asking to build a 35x24 foot garage. She stated it would meet the requirements as far as the space between the home and the garage and also the surrounding homes as well. She stated it would not invade the neighbors.

Houtman questioned if the driveway next to the house would go straight into the garage or is it going to turn are they going to put the garage more in the middle of the backyard. Reinaldo Gonzalez stated it will straight just a little over not much. Just enough to be far enough away from the neighbors. Pung stated they have to stay 5 feet away from the property line.

Spalding opened the public hearing.

There was no public comment.

Motion by Houtman, supported by West, to close V-24-04.

- Motion Carried (7-0) –
- Derusha absent -

West stated point 1 is not met. West stated point 2 has been met. West stated point 3 has not been met.

VanNoord and Le stated points 1, 2 and 3 have not been met.

Houtman, Elliott, Fant and Spalding stated points 1,2 and 3 have been met.

West stated point 4 has been met. West stated point 5 has been met. West stated point 6 has been met.

VanNoord and Le stated point 4 has not been met. Point 5 has been met. Point 6 has not been met.

Houtman, Elliott, Fant, Spalding stated points 4, 5 and 6 have been met

Motion by West supported by Fant, to approve V-24-04

1. **There are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district.**
2. **The condition or situation on which the requested variance is based does not occur often enough to make more practical adoption of a new zoning provision.**
3. **The literal application of the provisions of the Zoning Ordinance would deprive the applicant of property rights commonly enjoyed by other properties in the same zone district.**
4. **The variance will not be detrimental to adjacent property and the surrounding neighborhood.**
5. **Taken as a whole, the variance will not impair the intent and purpose of the Zoning Ordinance.**
6. **The exceptional conditions or circumstances do not result from the actions of the applicant.**

- Motion Carried 5-2) –
- VanNoord and Le opposing –
- Derusha absent -

10. Commissioners Comments

11. Adjournment

Motion by supported by to adjourn the meeting.

- Motion Carried (7 -0) –
- Derusha absent -

Meeting adjourned at 8:00 p.m.

Respectfully submitted,

Robert Houtman, Secretary