

PLANNING COMMISSION

January 5, 2012

The City of Portage Planning Commission meeting of January 5, 2012 was called to order by Chairman Cheesebro at 7:00 p.m. in Council Chambers of Portage City Hall, 7900 South Westnedge Avenue. Approximately 50 citizens were in attendance.

MEMBERS PRESENT:

Bill Patterson, Wayne Stoffer, Miko Dargitz, Paul Welch, Mark Siegfried, Allan Reiff and Chairman James Cheesebro.

MEMBERS ABSENT:

None.

MEMBERS EXCUSED:

Rick Bosch.

IN ATTENDANCE:

Christopher Forth, Deputy Director of Planning, Development and Neighborhood Services; Michael West, Assistant City Planner and Randall Brown, City Attorney.

PLEDGE OF ALLEGIANCE:

Chairman Cheesebro led the Commission in the Pledge of Allegiance.

APPROVAL OF MINUTES:

Chairman Cheesebro referred the Commission to the November 22, 2011 meeting minutes. A motion was offered by Commissioner Welch, seconded by Commissioner Patterson, to approve the minutes as submitted. The motion was approved 7-0. Chairman Cheesebro referred the Commission to the December 1, 2011 meeting minutes. A motion was offered by Commissioner Reiff, seconded by Commissioner Patterson, to approve the minutes as submitted. The motion was approved 7-0.

SITE/FINAL PLANS:

None.

PUBLIC HEARINGS:

1. Special Land Use Permit: Kalamazoo Choppers, 9820 Portage Road. Mr. West summarized the staff report dated December 29, 2011 regarding the request by Mr. Michael Kasten, on behalf of Kalamazoo Choppers, to establish a motorcycle repair facility at 9820 Portage Road. Mr. West stated the applicant has been operating from 9820 Portage Road since October 2011 without knowledge that a special land use permit was needed. Mr. West summarized the nature of the business activities and the conflicting land use screening that exists between the site and the adjacent residential condominiums to the west. Mr. West indicated the application satisfies the criteria for issuance of a special land use permit and staff was recommending approval subject to all fabrication, repair and maintenance activities occurring inside the enclosed buildings.

The Commission and staff discussed how the use was established at the site without a special land use permit, how the city discovered the use and the conflicting land use screening that exists between the site and the residential condominiums located to the west within the Sterling Oaks Planned Development.

Mr. Michael Kasten (property owner) and Mr. Andy Boersma (owner of Kalamazoo Choppers) were present to explain the use and support the application. Chairman Cheesebro asked whether an overhead door was present along the west side of the west building and where within the building motorcycle fabrication would occur. Mr. Boersma stated an overhead door was present along the west side of the west building but only the eastern portion of the building was used for fabrication. The west half of the building is used for storage purposes. Mr. Boersma also explained the fabrication process he utilizes, which produces little, if any, noise.

Chairman Cheesebro opened the public hearing. Two citizens spoke in regard to the proposed motorcycle repair facility. Mr. Brian Blair (property manager representing the Sterling Oaks community) stated the residents of Sterling Oaks were concerned about noise, hours of operation and monitoring of the business. Ms. Heather Ingram (9847 Fort Myers) also expressed concerns about noise and hours of operation. Mr. Boersma stated the business is quiet with all repair and fabrication activities occurring indoors. Mr. Boersma indicated summer hours of operation (April-October) were Mondays, Tuesdays, Thursdays and Fridays from 10:00 a.m. to 7:00 p.m. The facility is closed on Wednesdays. Saturday hours of operation are from 10:00 a.m. to 4:00 p.m. and Sundays from 10:00 a.m. to 1:00 p.m. During the winter (November-March), hours of operation are Monday thru Friday from 10:00 a.m. to 5:00 p.m. and closed on the weekends. No additional citizens spoke regarding the proposed motorcycle repair facility. A motion was made by Commissioner Welch, seconded by Commissioner Dargitz, to close the public hearing. The motion was unanimously approved.

The Commission and staff discussed various aspects of the proposal including noise standards for the use at the west property line and the adequacy of the conflicting land use screening located between the site and the residential condominium buildings. After a brief discussion, the Commission concluded that existing screening was effective and additional installation was not necessary. Commissioner Reiff stated he has visited the Kalamazoo Choppers facility on Lovers Lane and found the business owner to be reputable, dependable with no early morning business hours. Attorney Brown asked Commissioner Reiff if he had any special relationship with Mr. Boersma that might affect his ability to render an impartial decision. Commissioner Reiff clarified that he did not and had only met Mr. Boersma on one occasion. After a brief discussion, a motion was made by Commissioner Patterson, seconded by Commissioner Dargitz, to approve the Special Land Use Permit for Kalamazoo Choppers, 9820 Portage Road, subject to all fabrication, maintenance and repair activities being conducted inside the enclosed buildings. The motion was unanimously approved 7-0.

2. Modified Active Home Occupation Permit: Arrow Car/Taxi Service, 3617 Wedgewood Drive. Mr. Forth summarized the staff report dated December 29, 2011 regarding a modified Active Home Occupation permit application submitted by Robert and Kimberly Tatum to operate a car/taxi service business (Arrow Car Service) from their residence located at 3617 Wedgewood Drive. Mr. Forth reviewed the Planning Commission consideration and denial of the original application at the November 22, 2011 meeting and summarized the changes to the business operation proposed in the modified application. Mr. Forth stated the modified application proposes a reduction in the number of on-site fleet vehicles from three to one and no non-occupant employees will visit the residence for business purposes. Prior to taking action on the modified application, Mr. Forth indicated the Planning Commission first needed to conclude whether or not the modified application represented a change in circumstance from the original application.

The Commission discussed whether the modified application represented a significant change from the original application. Commissioner Welch asked what aspect of the modified application makes the proposed business an active home occupation, as opposed to a passive home occupation. Mr. Forth and Attorney Brown responded by stating the majority of the Commission at the November 22nd meeting concluded the fleet vehicles were "equipment" and the passive home occupation regulations do not allow for the storage of equipment outdoors or within an attached/detached accessory building. After a brief discussion, a motion was

made by Commissioner Patterson, seconded by Commissioner Welch, that the modified active home occupation permit application had changed and circumstances were different than the November 2011 request. The motion was unanimously approved 7-0.

Mr. Robert Tatum was present to support the application and explain the modified active home occupation permit application. Mr. Tatum indicated he has changed the business operations to reduce impacts on the neighborhood. Mr. Tatum stated he has a permanent, off-site commercial location (hotel parking garage) to park his other fleet vehicles and stated the modified application involves only one on-site dual purpose fleet/personal vehicle that would be parked inside the attached garage. Also, Mr. Tatum explained that no non-occupant employees or shift changes would occur at his residence. Mr. Tatum stated he and his wife currently only have one personal vehicle and the requested dual purpose fleet/personal vehicle would be utilized to coordinate off-site employee shift changes, paperwork/cash exchange, client driving and sales/marketing activities, in addition to personal use. Mr. Tatum indicated the business activities conducted at his residence do not occur 24 hours a day as stated by neighborhood residents. Mr. Tatum explained how client calls and appointments are coordinated and how fleet vehicles are dispatched. Mr. Tatum stated his Yukon Denali has an Arrow Car Service advertisement in the window, however, is not registered or utilized as a fleet vehicle due to insurance/liability reasons. Mr. Tatum indicated the requested dual purpose fleet/personal vehicle would generate a maximum of eight trips per day, which is fewer than a neighborhood child day care home.

The public hearing was convened by Chairman Cheesebro. A total of five citizens spoke regarding the modified active home occupation permit: 1) Yvone Asken, 3707 Wedgewood Drive; 2) Pam Wesley, 3828 Wedgewood Drive; 3) Melody Nedrud, 3427 Wedgewood Drive; 4) Roberta MacCallum, 3610 Wedgewood Drive and 5) Jim Stordell, 3427 Wedgewood Drive. Ms. Asken spoke in opposition to the application citing concerns about the ordinance, a business operating from a residential cul-de-sac street, enforcement and associated impacts. Ms. Asken stated the applicant has been operating the business from the residence since August 2011 without the necessary approval and did not comply with the Planning Commission's original denial of November 22, 2011. Ms. Wesley expressed concerns about safety and the lack of sidewalks in the neighborhood and children walking to/from Angling Road Elementary School. Ms. Nedrud also spoke in opposition to the application citing concerns about a commercial business operating in a residential neighborhood, staff recommended conditions of approval and enforcement. Ms. MacCallum spoke in opposition to the application stating the ordinance is not consistent with community objectives contained in the City of Portage Vision 2025 Plan. Mr. Stordell also spoke in opposition to the application citing enforcement challenges and suggested the ordinance be revisited to consider specific uses that are allowed/not allowed along with best practices to protect neighborhoods. No additional citizens spoke regarding the modified active home occupation permit application. After additional discussion, a motion was made by Commissioner Reiff, seconded by Commissioner Patterson, to close the public hearing. The motion was unanimously approved 7-0.

The Commission, staff and Attorney Brown discussed the proposed application and the specific ordinance requirements for active home occupations. Commissioner Welch asked if eliminating the one on-site fleet vehicle would make the business a passive home occupation. Mr. Forth responded yes. The Commission discussed whether the application could be adjourned until the ordinance was reconsidered by the city. Attorney Brown stated adjourning the application to consider additional information or facts would be acceptable, however, an extensive delay to consider possible changes to the ordinance could present legal issues. Attorney Brown indicated an application has been received pursuant to a recently adopted ordinance and the Commission should follow the ordinance provisions. Attorney Brown discussed several issues expressed by the Commission and the citizens regarding the application including enforcement, prior violations, ordinance provisions and conditions of approval to mitigate adverse impacts. Attorney Brown stated many ordinances require enforcement so the fact that enforcement will be necessary and may be difficult is not a reason to deny the application. Attorney Brown also indicated that prior violations should not be the basis for denial, and, if shown the ordinance requirements have been satisfied by the facts presented, then the ordinance provides the applicant the right to establish the active home occupation. In making a determination, Attorney Brown stated the Planning Commission should first determine that conditions 1 through 9 of the ordinance, which are more or less tangible conditions, have been satisfied. Attorney Brown then indicated the

Commission should analyze the use under the remaining sections of the ordinance which include more discretionary standards of review. If aspects of the use are determined to cause unreasonable or undue impacts, Attorney Brown stated the ordinance allows the Planning Commission to impose conditions to mitigate these impacts.

Commissioner Dargitz discussed the original version of the ordinance that was prepared by the Planning Commission that included a requirement that an active home occupation be located on a major thoroughfare, which would have addressed many of the concerns expressed by the neighborhood. Commissioner Dargitz discussed the number of residents that signed a petition and/or provided a letter opposing the active home occupation permit and stated she believes the use is not a good fit for the neighborhood. Commissioner Welch stated the distinguishing characteristic of whether the use is an active or passive home occupation is the one on-site fleet vehicle and conditions such as number of permitted vehicle trips can be imposed to address potential impacts and concerns. Attorney Brown stated the Commission should not deny an application merely based on the number of people who have signed a petition or the personalities involved and indicated the facts of the application and the ordinance standards should be the focus of the review. To support a denial, Attorney Brown stated there needs to be evidence on the record that concludes the use will cause adverse impacts on the neighborhood and imposed conditions would not mitigate these impacts. Commissioner Patterson concurred with Commissioner Welch and suggested a maximum number of vehicle trips be established for the fleet vehicle and on-site vehicle repair/maintenance be prohibited. Commissioner Dargitz reviewed condition #11 of the ordinance regarding the “conduct of the use” and the “harmonious” nature of the use and expressed concerns regarding the proposed car/taxi service business. Commissioner Stoffer also expressed concerns with the application in regards to condition #11 and the lack of sidewalks in the neighborhood, safety of pedestrians and children, proximity to Angling Road Elementary School, no outlet nature of the street, size of lots and closeness of homes. Commissioner Welch discussed day care homes which are regularly approved in residential neighborhoods that can generate more vehicular traffic than the proposed car service business. Chairman Cheesebro stated a typical residential home can generate 8-12 vehicle trips a day and the Commission can establish conditions including a maximum number of vehicle trips and hours of operation to address concerns.

After additional discussion, a motion was made by Commissioner Welch, seconded by Commissioner Patterson, to approve the Modified Active Home Occupation Permit for Robert and Kimberly Tatum (Arrow Car Service), 3617 Wedgewood Drive, subject to the following conditions: 1) No more than one dual purpose fleet/personal vehicle shall be present at the site and such vehicle shall be parked inside the attached garage at all times when located on the property or in the Wedgewood plat; 2) No non-occupant employees of Arrow Car Service shall be permitted at the residence for purposes of conducting business activities. Employee/vehicle shift changes are to occur at an off-site location; 3) The Arrow Car Service dual purpose fleet/personal vehicle not be operated for business purposes between the hours of 8:00 p.m. and 6:00 a.m.; 4) No vehicle repairs or maintenance of the Arrow Car Service dual purpose fleet/personal vehicle, other than cleaning activities, be conducted on-site. Cleaning activities must be conducted inside the attached garage; 5) The Arrow Car Service dual fleet/personal vehicle is permitted a maximum of 24 vehicle trip ends per day for business-related purposes. The applicant must record all business trips to/from the residence on official daily run sheets and provide copies to the Department of Community Development on a monthly basis; 6) The car/taxi service business must maintain a license from the Michigan Department of Transportation; and 7) The Planning Commission conduct a four month review of the Active Home Occupation permit. Upon a roll call vote: Reiff (yes), Seigfried (yes), Dargitz (no), Welch (yes), Stoffer (no), Cheesebro (yes) and Patterson (yes), the motion was approved 5-2.

PLATS/RESIDENTIAL CONDOS:

None

OLD BUSINESS:

None

NEW BUSINESS:

1. Historic District Modification: Van Riper Property, 3821 West Milham Avenue. Prior to discussion of this agenda item, Commissioner Dartiz indicated she would be abstaining due to a personal acquaintance with the applicant. Commissioner Stoffer also indicated he would be abstaining from discussion due to residing within 300-feet of the subject property. Mr. Forth summarized the staff report dated December 29, 2011 regarding a request received from Patrick and Lisa Lynch to remove approximately 1.51 acres of land from the existing Van Riper Historic District property located at 3821 West Milham Avenue. Mr. Forth stated the 1.51 acre property is located along the southeast perimeter of the district, adjacent to McGillicuddy Lane, and was proposed to be divided to create three single family residential building sites. In accordance with the Local Historic Districts Act (Public Act 169 of 1970), Mr. Forth indicated the preliminary report prepared by the Portage Historic District Study Committee is provided to the Planning Commission for review and comment.

Following a brief discussion involving the size of the lots and the history of the site, the Commission concluded the proposed modification would have minimal impact on the overall historic district. A motion was offered by Commissioner Welch, seconded by Commissioner Patterson, to recommend to the Historic District Commission approval of the modification involving the Van Riper Historic District Property located at 3821 West Milham Avenue. The motion was approved 5-0-2 with Commissioner Dargitz and Commissioner Stoffer abstaining.

STATEMENT OF CITIZENS:

None

ADJOURNMENT:

The Commission discussed the current active home occupation ordinance and how recommended changes should be conveyed to the City Council. Commissioner Patterson suggested a work session where the Commission can review the background information and decide whether to draft a memorandum to the City Council. Mr. Forth stated a workshop meeting to discuss the Romence Road Parkway Corridor was tentatively scheduled for the February 2, 2012 meeting and this item could be added to the agenda. The Commission concurred and asked that staff provide background information regarding the development of the active home occupation ordinance prior to this meeting.

There being no further business to come before the Commission, the meeting was adjourned at 10:35 p.m.

Respectfully submitted,

Christopher Forth, AICP
Deputy Director of Planning, Development and Neighborhood Services