

**REGULAR MEETING
PUBLIC HEARING**

CITY OF RICHMOND
BOARD OF ZONING APPEALS
CITY OFFICES
68225 MAIN STREET
THURSDAY, AUGUST 12, 2004
7:00 P.M.

AGENDA

CALL TO ORDER

ROLL CALL

APPROVAL OF MINUTES

Board of Zoning Appeals Meeting of June 10, 2004

CORRESPONDENCE

City Council Meeting of June 7, 2004
Planning Commission Meeting of June 10, 2004
City Council Meeting of June 21, 2004
City Council Meeting of July 6, 2004
Planning Commission Meeting of July 8, 2004
City Council Meeting of July 19, 2004

ADOPTION OF AGENDA

PUBLIC HEARING

- There are no scheduled Public Hearing Items.

ITEMS FOR CONSIDERATION

- 1) Variance Request for 35414 Monroe Street (Parcel Number 50-07-03-35-455-005), more commonly known as Ken's Oil Fueling Bulk Plant, to permit the installation of an additional underground fuel tank where Section 1402, Subsection 5a of the Richmond Zoning Ordinance prohibits the expansion of a nonconforming structure/use.

ADJOURNMENT

Please contact the City Clerk's office at (586)727-7571 if you are unable to attend this meeting. Thank You!

August 12, 2004

Board of Zoning Appeals
City of Richmond
68225 Main Street
P.O. Box 457
Richmond, MI 48062-0457

**Subject: Ken's Oil Company
35414 Monroe Street
Parcel Number (50-07-03-35-455-005)
Variance.**

Applicant: Richard and Vivian Mac Martin

Dear Board Members:

The City of Richmond Planning Department has reviewed the above referenced proposal for a Variance for a new 10,000 gallon underground fuel tank for the site. The property is located at 35414 Monroe Street, which is adjacent to the south side of Monroe Street, just west of Parker Street.

EXPLANATION

The subject property is located at 35414 Monroe Street and the fuel storage use on this site began in 1929. The business can be termed as an industrial use (*Petroleum or other inflammable liquids, production, refining, or storage*) on the site.

The site is located within an ***R-3 (One Family Residential)*** Zoning District. Furthermore, the City of Richmond Master Plan states that the future land use of this property is planned as ***High Density Single Family Residential***.

Therefore the use is termed as a legal, non-conforming use in that it existed on the site prior to the enactment of this portion of the zoning ordinance.

The applicant is requesting approval of this variance to allow one additional underground fuel tank to comply with a United States Internal Revenue Service requirement. The requirement states that for each grade of fuel sold, there needs to be an individual tank to store the fuel. Ken's Oil has been selling both dyed and un-dyed fuel for many years. Prior to the year 2000, an operator was able to sell both dyed and un-dyed fuel from one tank. The operator would store un-dyed fuel, load it into a truck from the bulk plant and dye the fuel in the truck. The Internal Revenue Service and the Motor Fuel Tax Act (Act 403 of 2000) changed the way dyed fuel is handled and now the operator needs to have individual tanks for dyed fuel and un-dyed fuel grades.



Picture of Ken's Oil Bulk Plant.

In the State of Michigan, the Michigan Department of Environmental Quality and the Michigan State Police are in charge of overseeing fuel operators. Ken's Oil had been storing dyed fuel at their service station on the corner of Park Street and Parker Street and loading their truck from that site. However, the loading of a bulk truck from a service station is illegal and is a safety hazard, according to the MDEQ. Therefore, the applicant is requesting an additional underground tank within their bulk plant so that they can be in conformance with the MDEQ requirements. Conversely, there is nothing that requires Ken's Oil to sell both dyed and un-dyed fuel from their business.

The Zoning Ordinance is clear in explaining the jurisdiction of the Board of Zoning Appeals and when a variance request is appropriate. Section 1904 of the Zoning Ordinance states:

The board of zoning appeals shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms

of this ordinance, but does have power to act on those matters where this ordinance provides for an administrative review, interpretation, exception or special approval permit and to authorize a variance as defined in this section and laws of the State of Michigan. Said powers include:

“To authorize, upon an appeal, a variance from the strict application, of the provisions of this ordinance where by reason of exceptional narrowness, shape or area of a specific piece of property at the time of enactment of this ordinance or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to or exceptional undue hardship upon the owner of such property, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this ordinance... In granting a variance, the board shall state the grounds upon which it justifies the granting of a variance.”

Additionally, the Zoning Ordinance explains how legal, non-conforming sites are handled within the City. Section 1402 subsection 5.a of the Zoning Ordinance states:

*“No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, **constructed, reconstructed, moved or structurally altered** except in changing the use of the structure to a use permitted in the district in which it is located..”*

The Board should consider all of the following criterion and base its decision on the applicant’s ability to prove the following criteria.

- 1. That exceptional or extraordinary circumstances exist that are peculiar to the property involved and that are not generally applicable to other properties in the same district.** There is no evidence of a unique or extraordinary circumstance that exists on this site that does not exist elsewhere in the city. The site could easily be occupied as a residential property. The non-conformity of the property was not caused from the shape or topographical conditions of the site, and therefore there is no hardship being presented.
- 2. That literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district.** The literal interpretation of the provisions of the Zoning Ordinance would not deprive the applicant of rights commonly enjoyed by other property owners within the same district since this is a residential district and this use is non-conforming. If anything, the applicant is granted broader use of the property than anyone else within the same district.
- 3. The special conditions and circumstances do not result from the actions of the applicant.** The applicant chooses to sell a fuel grade that they do not have ample space for within their bulk plant, and the non-conforming status of the property prevents them from expanding.

4. **The granting of the variance will not impair the general purpose and intent of the Zoning Ordinance.** The granting of this variance will impair the general purpose and intent of the zoning ordinance by allowing a non-conforming use to expand within a residential zoning district.
5. **The variance will not be injurious to the adjacent property or surrounding neighborhood.** Based on the request of the applicant, it is hard to determine whether or not the requested variance will cause the operations on the site to be injurious to the adjacent property or surrounding neighborhood. However, it would be safe to assume that the additional fuel tank would increase the truck traffic to and from the site. The Michigan Department of Environmental Quality oversees the installation and regular inspections of fuel tanks within the state, and therefore would assure a certain level of safety.

RECOMMENDATION

To provide additional assistance on this matter, I asked for an interpretation on this matter from our Planning Consultant (McKenna Associates, Inc). Their written conclusion is included following this report.

Based on the information available, we determine that the storage tanks and related improvements are “Structures” as defined in the Zoning Ordinance. Section 201 (Page CDA:25) defines a structures as “Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.” Additionally, Section 1402, subsection 5.a states the following: “No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.

It is our opinion that these provisions would allow the maintenance and repair of the existing storage tanks and support facilities on the site, but they would prohibit the construction of new storage tanks, even in cases where the purpose is to “replace” storage capacity that previously existed on the site but was removed by the operator of the nonconforming use.

Therefore, the City Planner recommends denial of the above referenced variance request to allow an additional 10,000 gallon underground fuel tank, based on the following reasons:

1. Section 1402, subsection 5.a states that no structures devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered, which would not allow the applicant’s request.
2. There is no evidence of a unique or extraordinary circumstance that exists on this site that does not exist elsewhere in the city. The site could easily be occupied as a residential property. The non-conformity of the property was not caused from the shape or topographical conditions of the site, and therefore there is no hardship being presented.

3. The literal interpretation of the provisions of the Zoning Ordinance would not deprive the applicant of rights commonly enjoyed by other property owners within the same district since this is a residential district and this use is non-conforming. If anything, the applicant is granted broader use of the property than anyone else within the same district.
4. The applicant chooses to sell a fuel grade that they do not have ample space for within their bulk plant, and the non-conforming status of the property prevents them from expanding.
5. The granting of this variance will impair the general purpose and intent of the zoning ordinance by allowing a non-conforming use to expand within a residential zoning district.
6. It would be safe to assume that the additional fuel tank would increase the truck traffic to and from the site and could potentially be injurious to the adjacent property or surrounding neighborhood.
7. There is nothing requiring the applicant to sell both dyed and un-dyed grades of diesel fuel from the site, therefore this Variance request is financial in nature and cannot be approved.

RECOMMENDED MOTION

Motion made by _____, seconded by _____ to deny the requested Variance to allow one 10,000 gallon underground fuel tank for the following reasons:

1. Section 1402, subsection 5.a states that no structures devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered, which would not allow the applicant's request.
2. There is no evidence of a unique or extraordinary circumstance that exists on this site that does not exist elsewhere in the city. The site could easily be occupied as a residential property. The non-conformity of the property was not caused from the shape or topographical conditions of the site, and therefore there is no hardship being presented.
3. The literal interpretation of the provisions of the Zoning Ordinance would not deprive the applicant of rights commonly enjoyed by other property owners within the same district since this is a residential district and this use is non-conforming. If anything, the applicant is granted broader use of the property than anyone else within the same district.
4. The applicant chooses to sell a fuel grade that they do not have ample space for within their bulk plant, and the non-conforming status of the property prevents them from expanding.

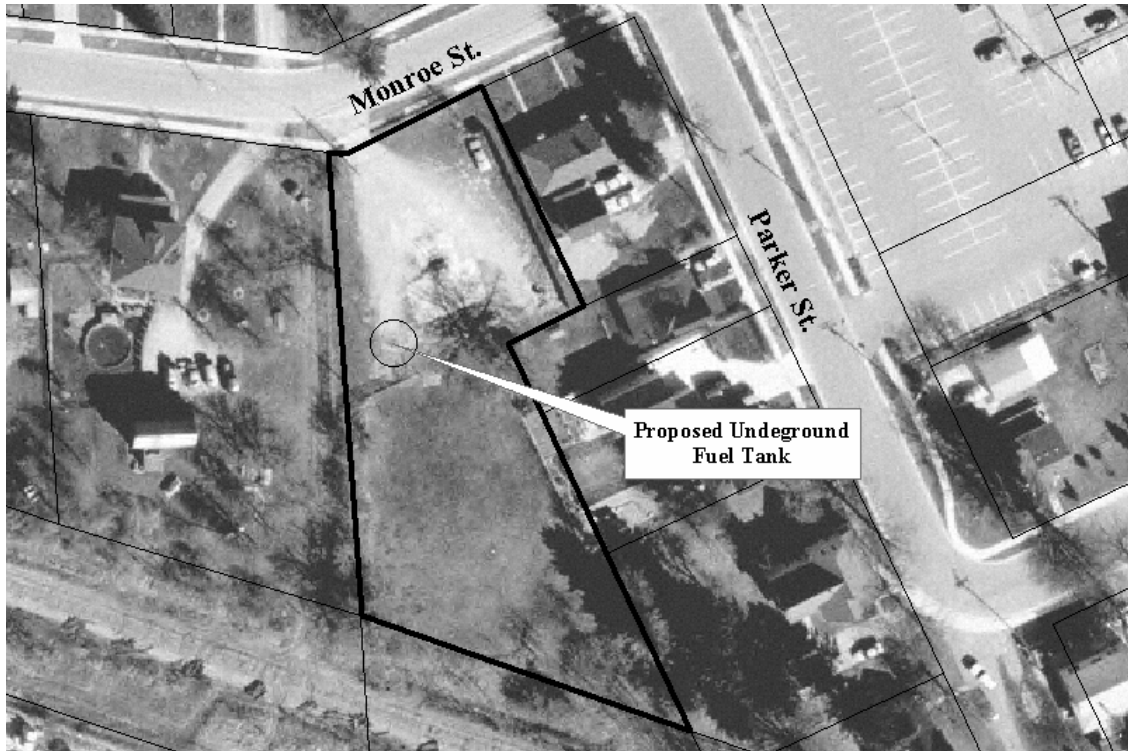
5. The granting of this variance will impair the general purpose and intent of the zoning ordinance by allowing a non-conforming use to expand within a residential zoning district.
6. It would be safe to assume that the additional fuel tank would increase the truck traffic to and from the site and could potentially be injurious to the adjacent property or surrounding neighborhood.
7. There is nothing requiring the applicant to sell both dyed and un-dyed grades of diesel fuel from the site, therefore this Variance request is financial in nature and cannot be approved.

Respectfully Submitted,

Troy S. Jeschke
Planning and Zoning Administrator

ATTACHMENTS

- Legal Interpretation from McKenna Associates.
- Letter from Richard MacMartin dated June 7, 2004.
- Variance application.



Aerial Photograph of site from the year 2000.



Photograph of Bulk Plant.