

**VILLAGE OF PLEASANT PRAIRIE  
ZONING BOARD OF APPEALS  
Tuesday, April 15, 2008  
5:00 PM**

Members Present: Christine Genthner, Chairperson; Bill Morris, Secretary; Tom Glassman, David Hildreth and Sheryl Berner. Mark Riley and Jennie Holman were excused.

Also Present: Tom Shircel, Assistant Planner; and Jan Petrovic, Executive Secretary.

- 1. CALL TO ORDER.**
- 2. ROLL CALL.**
- 3. CORRESPONDENCE.**
- 4. CITIZEN COMMENTS.**

Christine Genthner:

This is an opportunity for citizens to come forward. We will open the matter for a public hearing, but if anybody wants to come forward to discuss something other than what's on the agenda?

- 5. CONSIDER THE MINUTES OF THE FEBRUARY 26, 2008 BOARD OF APPEALS MEETING.**

Christine Genthner:

Before I take a motion, are there any corrections, deletions, additions? Seeing none, do I have a motion?

Bill Morris:

I'll move to approve the minutes as presented.

Tom Glassman:

I'll second.

Christine Genthner:

All in favor of adopting the minutes as presented say aye.

Voices:

Aye.

Christine Genthner:

Anybody opposed? No one opposed.

**6. NEW BUSINESS**

- A. PUBLIC HEARING AND CONSIDERATION OF A NONCONFORMING USE SUBSTITUTION for the request of Mark Damit of A & M Painting, LLC, on behalf of Thomas Peterson, owner of the property located at 9042 39<sup>th</sup> Avenue, to operate a painting contractor's office/shop (a nonconforming substitute use) on an R-6, Urban Single-Family Residential District zoned property pursuant to Section 420-140 I. of the Village Zoning Ordinance.**

**The property is located in a part of the Southwest One Quarter of U.S. Public Land Survey Section 14, Township 1 North, Range 22 East of the Fourth Principal Meridian, in the Village of Pleasant Prairie, County of Kenosha, State of Wisconsin and further identified as Tax Parcel Number 92-4-122-144-0049.**

Christine Genthner:

With that do I have an application by staff?

Tom Shircel:

Yes, you do.

Christine Genthner:

Please state your name for the record, and do you swear to tell the truth, the whole truth and nothing but the truth?

Tom Shircel:

Tom Shircel, Assistant Village Planner, and I do. These are the findings of facts for this case.

1. This is the request of Mark Damit of A & M Painting, LLC, on behalf of Thomas Peterson, owner of the property located at 9042 39th Avenue, to operate a painting contractor's office/shop (a nonconforming substitute use) on an R-6, Urban Single-Family Residential District zoned property pursuant to Section 420-140 I. of the Village Zoning Ordinance.

So right off the bat this is not an application for a variance. It's not an application for a temporary use. What Mr. Damit is applying for is a substitute use, a non conforming substitute use.

2. The property is situated at the northwest corner of 91st Street and 39th Avenue and is located in a part of the Southwest One Quarter of U.S. Public Land Survey Section 14, Township 1 North, Range 22 East of the Fourth Principal Meridian, in the Village of

Pleasant Prairie and further identified further identified as Tax Parcel Number 92-4-122-144-0049.

3. The subject property does not contain any wetlands, 100-year floodplain or shoreland jurisdictional area.
4. On May 6, 2002, as some background information, as a part of a comprehensive, Village-wide rezoning effort, this property was rezoned from the then B-1, Neighborhood Business District, to the current R-6 Residential District. The year 2002 rezonings were to commence Village efforts for eventual compliance with the State's Smart Growth law, which requires that all municipalities who participate in planning, development and zoning activities prepare, adopt and maintain a Comprehensive Plan and, further, that all land use related ordinances shall be consistent with the Comp. Plan on or before January 1, 2010.
5. The parcel is improved with a 30' x 24', 720 square feet, flat-roofed, concrete block building east building, a 30' x 21', 630 square feet, gable-roofed, wood-framed garage, which is the west building and a gravel parking area.
6. The current property owner, Mr. Peterson, uses the property for the storage of electrical contracting equipment associated with Wind Point Electric, Mr. Peterson's employer, and for personal storage, which is a current, legal, nonconforming use on this R-6 residentially zoned property.
7. With this application, Mr. Damit is seeking to use the property for the operation of his A & M Painting contractor's shop and perhaps as the business office at some point in the future, which are also nonconforming uses in the R-6 District. A & M Painting is a full-service painting and decorating company that performs commercial and light industrial jobs. Mr. Damit has an option to purchase the property from Mr. Peterson.
8. Similar to the current use of the building, Mr. Damit is requesting a similar nonconforming substitute use to house business-related and personal items within the two buildings. These items to be stored inside the buildings include, but are not limited to: paint and paint-related products, spray paint pumps, scaffolding, ladders, a small fishing boat, a lawn tractor and related lawn/property maintenance equipment and miscellaneous tools. An enclosed job trailer would also be parked outside on the site.
9. Pursuant to the table in your staff memorandum and as shown on the screen, A & M Painting's hours and employment are seasonal and vary depending on the time of year. So you can see during the months of April through November during regular business hours, 8 a.m. to 5 p.m., employees are two to three, and the number of employees with access to the buildings are also two to three. Then December through March, which is the busier time of the season for the painting business, the hours are extended by one hour from 8 a.m. to 6 p.m. and the number of employees increased slightly from four to nine employees with three to four of those employees having access to the building.
  - a. For efficiency, scheduling and drive-time purposes, employees will typically meet at the job site, not at this office/storage location. Employee access to the

two buildings will be limited to a few persons. The A & M Painting office is currently located at Mr. Damit's residence in the City of Kenosha. There are no current plans to move the office to this site.

- b. A & M Painting does not have a showroom and there are no plans to construct a showroom. As information to the applicant, this site would not be allowed to have a showroom. Deliveries to the site would be limited, about once per month, during business hours only. You can look in the attached business operation plan for additional information regarding A & M Painting.
10. Pursuant to Village Code of Ordinances, Article V, Section 18-35 entitled Jurisdiction and Powers, part A. (3) grants authority to the Zoning Board of Appeals to hear and grant applications for substitution of more or equally restrictive nonconforming uses for existing nonconforming uses, provided that no structural alterations are to be made. Whenever the Zoning Board of Appeals permits such a substitution, the use may not thereafter be changed without application and hearing to the Board of Appeals.
11. Furthermore, Section 420-140 I. of the Village Zoning Ordinance, entitled Changes and Substitutions states: Once a nonconforming use or structure has been changed or altered so as to comply with the provisions of this chapter, it shall not revert back to a nonconforming use or structure. Once the Zoning Board of Appeals has permitted the substitution of a more or equally restrictive nonconforming use for an existing nonconforming use pursuant to the provisions of Chapter 18, Article V of the Village Code, the existing use shall lose its status as a legal nonconforming use and become subject to all the conditions required by the Board.
12. The proposed change of nonconforming uses from the current electrical contractor's office or shop to a painting contractor's office or shop is considered by the Village staff to be an equally restrictive nonconforming use for the purposes of the substitution of an existing nonconforming use.
13. All of the abutting and adjacent property owners within 100 feet were notified of the Nonconforming Use Substitution request via regular U.S. mail on April 1, 2008. The Board of Appeals' agenda was published in the *Kenosha News* on April 1, 2008 as well.

With that we can return to the public hearing.

Christine Genthner:

Thank you. Is there anybody else who would like to approach and address the Board? Seeing nobody else, are there any questions of the Board to staff before we proceed?

David Hildreth:

Is this in a residential area right now?

Tom Shircel:

Yes. I'm showing some pictures on the screen here, on the wall, of the existing building. And if I can go back here, you'll notice on this slide you can see the property outlined in blue. And you can see to the north is a single family dwelling unit, to the south across 91<sup>st</sup> Street there are single family dwelling units. East across 39<sup>th</sup> Avenue single family, and then to the immediate west there's a four unit dwelling.

David Hildreth:

Okay, and then the other thing is from the standpoint of deliveries typically what's the size of truck that's going to be delivering product to the area typically?

Christine Genthner:

Could you come forward? Could you please state your name for the record and then your address.

Mark Damit:

Mark Damit. My home address or office address is 6807 93<sup>rd</sup> Court, Kenosha, Wisconsin.

Christine Genthner:

Mr. Damit, do you swear to tell the truth, the whole truth and nothing but the truth?

Mark Damit:

Absolutely.

David Hildreth:

So these are typically a van and not these large tractor trailers?

Mark Damit:

No, no, that would be I think maybe for a larger contractor than myself. Actually typically I don't even really get deliveries. I just put that in there saying maybe they'll happen. I usually go to the paint store and pick up the products we need on a daily or bi-weekly basis. We use them as the warehouse.

David Hildreth:

And then lastly it looks like you're saying that there's just a few cars that may be parked there?

Mark Damit:

The only reason I would say that is it would be myself, interior lead and my exterior lead. I'm

not going to give everybody access to the buildings. Being security conscious I would keep that to a minimum.

David Hildreth:

Is there any kind of a restriction on how many people could park at something like this, Tom, from your standpoint?

Tom Shircel:

If you read a little further into the staff memo, if the Board does vote to approve this substitution use, there are 17 conditions that the staff has outlined here, and I'm hoping that Mr. Damit read these conditions. And I'm hoping that if the Board approves of this that he'll be in a position to agree to these conditions. And if you look, Mr. Hildreth, at number 3 of those conditions, no more than 3 painting contractor's vehicles shall be parked on the site at any one time. Furthermore, only one enclosed job trailer associated with the painting contractor's office/shop shall be allowed to be parked on the site. This trailer shall be parked at an inconspicuous place on the property either between the two buildings or on the west side of the garage structure. If you read on number 4 relates to parking vehicles on the site, and number 6.

David Hildreth:

My only question was the difference between contractor vehicles and employee parking if they were coming to the site rather than going to the job site first. That was the question but that answers it. Very good, those are the only questions I had.

Christine Genthner:

Any additional questions while Mr. Damit is here?

Bill Morris:

I just have one. I'm not sure if it's for Mr. Damit or staff, but I see both in his operational plan and even in the findings of facts you reference the potential storage of paint and related products. My only concern would be from the Village's standpoint paints can be, of course, certainly latex based non flammable, but also painting contractors deal with a lot of solvents and highly flammable products. Fire department has reviewed and has no concern on the quantities or the storage of the products or how much they will be and the potential exposure to our community?

Tom Shircel:

Correct. I did discuss this with Chief Guilbert. Our main focus was on aerosol paints. Again, if you look at condition 7 should this be approved, it states all aerosol paint storage shall be within the easternmost concrete block-constructed building. The amount of aerosol paint shall be limited to 12 standard sized cans. The Village Fire and Rescue Department considers this type of aerosol storage as incidental. In other words, it's nothing more than probably what you'd find in a typical single family home.

Bill Morris:

Okay.

Tom Shircel:

So yes, the Fire Chief did look at this. And I think according to Mr. Damit that would be the maximum you'd have on the site at any one time.

Mark Damit:

I even counted, we had seven.

Tom Shircel:

And those are the typical—

Mark Damit:

Mostly primers.

Bill Morris:

So you aren't buying 20 gallon drums of laquer—

Mark Damit:

No, and reselling them or anything like that.

Bill Morris:

Or, using it for brush cleaning.

Mark Damit:

Right, or spraying. We wouldn't be spraying or doing anything like that.

Bill Morris:

Okay, thank you.

Christine Genthner:

Any other questions. Thank you, sir.

Mark Damit:

Thank you.

Christine Genthner:

Do we have a staff recommendation?

Tom Shircel:

Yes, we do. The Village staff recommends approval of the Nonconforming Use Substitution request to operate a painting contractor's office or shop, a nonconforming use on the property, because the proposed nonconforming use of a painting contractor's office and shop can be considered an equally restrictive nonconforming as the current nonconforming electrical contractor's office or shop use on the site right now. Therefore, from the perspective of the adjacent neighbors, there will be no discernible difference between the existing nonconforming electrical contractor's office as compared to the proposed painting contractor's shop or office. Therefore, the Village staff recommends that the nonconforming use substitution request be approved subject to those 17 conditions as listed in the staff report. Again, if the Board elects to approve this, I'd like to have Mr. Damit again approach the mic and state that he's read those conditions and that he's agreeing to them. With that, back to the Board.

Christine Genthner:

Mr. Damit, do you want to step forward? You're still under oath. You've seen these 17 conditions that Mr. Shircel has talked about?

Mark Damit:

Certainly. I've read them and I think they're all understandable and certainly make sense. I can understand all of them and I can certainly abide by them.

Christine Genthner:

That was my question if you could abide by them.

Mark Damit:

Yes.

Tom Shircel:

One more thing. You've all driven past that site. Mr. Peterson keeps it very clean, very neat. There's nothing laying around and that's what we're looking for from Mr. Damit as well to keep a nice clean site.

Mark Damit:

That's what attracted me to it also, the cleanliness and how he kept it up. I don't have to put any time into it because it was neglected.



Christine Genthner:

Thank you, Mr. Damit.

Mark Damit:

Thank you.

Christine Genthner:

Any questions of the staff recommendation before I proceed to close the public hearing? Seeing none I'll close the public hearing. At this time do I have a motion?

David Hildreth:

Motion to approve.

Christine Genthner:

Subject to the 17 conditions set forth in the staff recommendation?

David Hildreth:

Correct.

Christine Genthner:

I have a motion from Mr. Hildreth to approve subject to the 17 conditions set forth in the staff recommendation. Do I have a second?

Sheryl Berner:

I'll second.

Christine Genthner:

Ms. Berner has seconded. Any discussion on the motion before I proceed to a vote? With that, can we have a vote. I approve.

Bill Morris:

Approve.

Tom Glassman:

Approve.

Sheryl Berner:

Approve.

David Hildreth:

Approve.

Christine Genthner:

With that the motion has been approved subject to the 17 conditions set forth on staff recommendation.

**7. SUCH OTHER MATTER AS AUTHORIZED BY LAW.**

**8. ADJOURNMENT**

Bill Morris:

I'll so move to adjourn.

Tom Glassman:

I'll second.

Christine Genthner:

Mr. Glass has seconded. With that, all in favor say aye.

Voices:

Aye.

Christine Genthner:

Anybody opposed? Seeing none the meeting is concluded.