



Zoning Board of Appeals Regular Meeting Minutes, Monday, May 29, 2012

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Tuesday, May 29, 2012 at 7:00 p.m. at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT: Loren Yaros, Chairman; Joe Geraci, Vice-Chairman; Don Walker, PC Rep. to ZBA; Dan Durham

ZBA MEMBER ABSENT: Mark Crane, TB Rep. to ZBA

CONSULTANT PRESENT: None.

OTHERS PRESENT: Donald E. Mock, David Barkeley, Eric Peplowski, Chris Land, Nate Johanson, Kevin Vaughan, Gene McNabb, Jr., Eugene McNabb, Phoebe Schutz

1. **OPEN MEETING:** Chairman Yaros called the meeting to order at 7:00 p.m.
2. **ROLL CALL:** All members were present, except Mark Crane.
3. **MINUTES:** Moved by Vice-Chairman Geraci, supported by Board Members Walker and Durham to approve the May 14, 2012 regular meeting minutes as presented. **Motion carried 4-0** (Crane was absent).
4. **AGENDA REVIEW AND APPROVAL:** No changes were made to the agenda.
5. **ZBA BUSINESS**

A. AB-2012-07, Mark Joseph/Fireworks Paradise, Temporary Use Permit, 685 S. Lapeer Road (NE corner of S. Lapeer Road and Goldengate), Sidwell #09-11-430-005: Chairman Yaros noted that the Petitioner is seeking a Temporary Use Permit, per Zoning Ordinance No. 78, Article 30.11, F, 1, to sell 1.4 consumer fireworks from a tent erected in the parking lot from May 22, 2012 to July 8, 2012.

Mr. Kevin Vaughan, of Fireworks Paradise, commented that his business partner, Mr. Mark Joseph, was not able to attend tonight, so he will be representing Fireworks Paradise tonight.

Chairman Yaros commented that the drawings appear to be in accordance with the State statute. However, members do want to have the directional signage included to indicate the entrances and exits.

Vice-Chairman Geraci noted that his concern was an ingress/egress path. It appears that it is very well protected between the curb area and the building, so we don't have an issue with any cars in the localized area of that tent. Our main concern is pedestrian traffic and the public safety. It seems that everything else is in order as far as the ZBA is concerned.

Mr. Vaughan noted that the lighting on the site is fantastic, so they are fortunate in that regard. They now want to be open from June 1, 2012 to July 8, 2012 from 10:00 a.m. to 10:00 p.m. He then

inquired if it would be an issue to reduce the size of the tent to 30-foot by 40-foot. He also noted that the State law is written so that whatever size your tent is, you can only utilize half of that space for sales.

Chairman Yaros replied that it would not be an issue since it would be smaller, but that the petitioner would need to submit a revised drawing to the Building Department.

Board Member Durham inquired whether Mr. Vaughan is aware that if the Fire Marshall should find anything that concerns him, he would have authority to close it down temporarily until things are fixed.

Mr. Vaughan stated, whatever the State says, we will do, we will comply to.

Board Member Durham stated, in these situations, their authority extends to local Fire Marshalls. Sometimes these things vary a little bit once they're set up and it's just an extra layer of protection for the residents and everyone else.

Mr. Vaughan stated, absolutely and we will certainly comply with all rules and regulations set forth.

Chairman Yaros offered time for public comments on this case.

Mr. David Barkeley, of 3068 Angelus Drive, Waterford, Michigan 48329, handed out papers (not written by the Petitioner) to members showing Mr. Barkeley's opinions of the subject site drawing and zoning ordinance*. He then overviewed them to members.

Ms. Phoebe Schutz, Recording Secretary, noted that the handouts (which were not submitted by the Petitioner) did not go through the Building Department to be date stamped received and reviewed for accuracy by the Planning and Zoning Coordinator before the meeting.

Chairman Yaros informed Mr. Barkeley that this case is for a temporary use permit and not for a site plan review, which would be for a permanent business. The temporary use permit regulations in the zoning ordinance are what members will utilize to determine their action on this case.

Board Member Walker inquired whether Mr. Barkeley took his handouts to the Building Department.

Mr. Barkeley stated, no, does that make what I've said invalid?

Board Member Walker noted that members don't know if what he is saying is valid.

Chairman Yaros noted that this wasn't verified by the Building Department, so members don't know if his drawing and other information (which was not submitted by the Petitioner) is accurate.

Board Member Durham noted that this is for a temporary use permit and not a site plan review, which would be for a permanent business, so the regulations are different as stated in the zoning ordinance.

Mr. Barkeley continued overviewing his handouts regarding his opinions of the subject site drawing and zoning ordinance*.

Mr. Eric Peplowski, of 2851 Walmsley, commented that he has been a resident in Orion Township for twelve years and that he agrees with everything Mr. Barkeley has said tonight about the safety issues.

Mr. Nate Johanson, of 2636 Millcrest Court, commented that he has been a resident in Orion Township for 28 years. He is opposed to this proposed temporary use and is concerned with safety should anyone decide to cross M-24 (Lapeer Road) to get to the subject site. He is also interested in possibly going into this type of business in the future.

Chairman Yaros noted his concern for the light pole and the driveway that is right in front of the tent.

Mr. Vaughan noted that the driveway is off to the side and is not right in front of the tent. He was under the assumption that the entrance would be on Goldengate. There is also adequate parking that is on the asphalt. The light pole has been there for many years. He noted that their tent will be a 30-foot by 40-foot tent with 600 square feet to be used for sales. He noted that Mr. Mark Milosch has stated that they will move the vehicles out of there so that they will certainly have ample parking for their customers.

Chairman Yaros inquired whether it would be a problem if the petitioner barricaded the driveway entrance on M-24.

Mr. Vaughan noted that it would not be a problem at all.

Board Member Durham inquired whether Mr. Vaughan would be willing to accept a 30'x40' tent as a condition of an approval if that is what is decided.

Mr. Vaughan replied, absolutely.

Vice-Chairman Geraci commented that if the M-24 entrance were blockaded off, there would need to be enough directional signage to direct people to Goldengate. Since all those vehicles will be removed, there would also be parking all the way around the existing empty building.

Mr. Vaughan replied, correct.

Vice-Chairman Geraci stated, if you don't utilize those two end parking spaces and direct the traffic to the Goldengate entrance and barrel up that corner and get that tent as far to the north of that entrance as you can, I don't have a problem. As far as people crossing M-24, if people want to take that risk and that is a known issue to go down to the stop light to cross. Again, it's getting the flow in the parking and getting the tent moved to the north as far as you can get it over there and barricading the M-24 entrance.

Board Member Durham inquired of the Chairman, would barricading that M-24 entrance have any MDOT ramifications?

Chairman Yaros replied, no. They have jurisdiction over the road and the right-of-way, but barricading an existing entrance is the option of any owner.

Mr. Barkeley noted that his opinion is that he is not in support of barricading the M-24 entrance.

Vice-Chairman Geraci stated to the petitioner, the two parking spaces identified as V8 (the two northernmost spaces along M-24, on the drawing that Mr. Barkeley handed out to members tonight) those will be non-functional right? Those will be blocked off and those are for the entrance/exit ingress/egress area.

Mr. Vaughan stated, absolutely. That would be an obstruction of view I would say if there were a vehicle there.

Vice-Chairman Geraci stated, the proposed tent location is going to go as far north as you can drag it.

Mr. Vaughan stated, absolutely.

Vice-Chairman Geraci stated, you're going to barricade off the entranceway off of M-24 where the light pole is, at the curb line.

Mr. Vaughan stated, correct.

Vice-Chairman Geraci stated, it's going to be a large barricade. It's not going to be something that somebody would pull into, a piece of tape. It's going to be barrels, snow fence, whatever.

Mr. Vaughan stated, I'll come up with orange snow fence, they'll see it.

Moved by Vice-Chairman Geraci, supported by Chairman Yaros regarding case AB-2012-07, Mark Joseph/Fireworks Paradise Temporary Use Permit, per Zoning Ordinance No. 78, Article 30.11, F, 1, to allow sales of 1.4 consumer and low-impact fireworks from a 30-foot by 40-foot flame-resistant tent erected in the parking lot from June 1, 2012 to July 8, 2012 from the hours of 10:00 a.m. to 10:00 p.m. with no sales to anyone under the age of eighteen. The subject site is located at 685 S. Lapeer Road and is Sidwell #09-11-430-005. I move that the petitioner's request, Mr. Kevin Vaughan, of Fireworks Paradise, at 685 S. Lapeer Road, requesting the temporary use permit, **be granted under the following conditions:** 1)the petitioner must be within compliance of the Michigan Fireworks Safety Act 256, NFPA 1124, local public safety ordinances, and applicable Fire Codes; 2)that the Orion Township Building Department and/or Fire Marshall must sign off on the revised site plan that will be submitted to the Building Department as we discussed here tonight from the petitioner's original drawing that was date stamped received by the Township on April 20, 2012; 3)before opening the business to the public, the Township Building Department can change the setup as issues pertaining to parking, ingress/egress, and public safety occur; 4)the petitioner must provide to the Township before June 1, 2012 a valid consumer fireworks certificate from the Department of Licensing and Regulatory Affairs (LARA), which must have been applied for no later than April 1, 2012 and issued by the State of Michigan pursuant to MCL 28.454(6); and, 5)the petitioner must show proof before June 1, 2012 that each retail location has been added as an additional insured to a liability insurance policy of the host retailer or public liability and product liability insurance coverage of its own in the amount of not less than \$10 million per occurrence as required by MCL 28.455. The petitioner has established that compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose or would render conformity with the ordinance unnecessarily burdensome because of Public Act 256 of 2011. The petitioner has established that granting these variance requests will not be a detriment to the public safety or welfare and would do substantial justice to the petitioner as well as the other property owners in the district, because they will be in compliance with the Michigan Fireworks Safety Act 256, NFPA 1124, local public safety ordinances, and applicable Fire Codes. Also, that the tent location on the site will be moved to the north blockage of M-24 (Lapeer Road). Roll call vote was as follows: Geraci, yes; Durham, yes; Walker, yes; Yaros, yes. **Motion carried 4-0** (Crane was absent).

B. AB-2012-08, Donald E. Mock/USA Fireworks, Inc., Temporary Use Permit, 1290-1298 Lapeer Road, Sidwell #09-14-201-021: Chairman Yaros noted that the Petitioner is seeking a Temporary Use

Permit, per Zoning Ordinance No. 78, Article 30.11, F, 1, to sell consumer fireworks from a tent erected in the parking lot from June 23, 2012 to July 9, 2012.

Mr. Donald E. Mock, of USA Fireworks, Inc., 10435 E. Washington Street, Indianapolis, Indiana 46229, was present. Mr. Mock would be leasing a temporary area at a plaza located at 1290-1298 Lapeer Road, from that property owner, Mr. Michael Khami, of 2010 Auburn Road, Rochester, Michigan 48309.

Chairman Yaros commented regarding a revised drawing of the proposed site that was given to members tonight. He noted that members need more information than what is shown on the plan. They need to show all measurements around the tent. The biggest problem that he sees is that they need to know what the distance will be between the west edge of the tent or your work area and then where the people would park for that building.

Mr. Mock noted the landlord had requested that they place the tent in the current location shown on the plans. The distance between the edge of the drive approach and the tent will be 14-1/2 feet. They will take up about four parking spaces with the 40-foot width of the tent and put the 10-foot barrier around and have pylons on the corners of the area channeling people so that they would not walk out on traffic.

Vice-Chairman Geraci commented that members just received the revised drawing tonight and it's different from the original plan, which is what they used when they went out to the site to review it and how tight the site is to maneuver around in as far as visibility and everything goes. He was more comfortable with the site being north of the island, plus the Fire Marshall hasn't had a chance to review this revised plan. Also, the original application did not meet the requirement of the State for the site plan. He would prefer to postpone this case until the June 11, 2012 regular meeting to allow the Building Department and the Fire Marshall time to review the revised plan to assure compliance with the standards. We members also need to go back out to the site to evaluate the new location for the tent.

Mr. Mock commented that the landlord wanted the tent moved, because he wanted the focus in that area for those two businesses. He personally feels that either location serves the purpose.

Vice-Chairman Geraci noted that the original application showed just a location, but none of the dimensions, none of the other requirements that are part of those rules are in your application. We did get a note back from the fire department where the Acting Fire Chief states that the site plan is incomplete of showing dimensions and barricades as required by the NFPA 1124.

Mr. Mock commented that his revised plan shows some dimensions.

Chairman Yaros noted that the State is specific on their requirements, such as, minimum distances from public right-of-ways, buildings, other facilities, motor vehicle dispensing stations, propane, vehicle access, parking areas, location and types of portable fire extinguishers, floor plan and layout of your interior displays including aisles, proposed flame break locations, means of egress/ingress construction details, fire-related construction, etc. We also need the distance to the next building, the old Arby's. We also need to visit the site regarding the south side and take a close look at that since the location of the tent has changed.

Board Member Walker noted that he is still concerned that the Fire Marshall has not seen the revised site plan and that the Fire Marshall needs to say that it meets all the requirements of this Michigan Fireworks Safety Act before taking action on this case.

Chairman Yaros noted that whether you sell fireworks or flowers, we're looking at the tent to make sure it's right.

Vice-Chairman Geraci noted that the interior plan of the tent is fine.

Mr. Mock asked what he needs to provide for their next meeting.

Chairman Yaros replied, the dimension of the distance to the edge of the drive, you mentioned 14 feet. Also, the width of the drive.

Board Member Durham commented that the one thing that he'd like to see is the fact that the Fire Marshall has seen, applied NFPA and has signed off as satisfied, as Board Member Walker also stated.

Vice-Chairman Geraci noted that the petitioner needs to update the drawing, add the dimensions that Chairman Yaros just asked for and another dimension they need is for on the west side of the buffer zone between that buffer zone and the end of the parking space to make sure what that distance is for cars backing out of the spaces that are right up along the building, the barricades, and all other requirements.

Mr. Mock commented that he will make all those revisions and will get it to the Building Department.

Chairman Yaros offered time for public comments.

Mr. Christopher Land commented that he is the owner of Oakland Hydroponics and Gardening Center at 1290 and 1292 S. Lapeer Road located within the same shopping plaza. The applicant is proposing to put the fireworks tent in front of their front door and their parking that they have. There are only 15 spaces up front that they share with four businesses. There are no extra parking spaces there. The reason the landlord didn't want him in front of Enterprise Rent-a-Car is because it's them and they take up so many spaces in that lot it is ridiculous. There is a huge parking lot out back that they are required to leave open for semi-trucks, pop trucks, beer trucks, etc. for deliveries. There are people that buy pizza and sit in their cars to eat. There are also two automotive stores that are running blow torches with their doors open, so how can you put a fireworks tent there and there is just no room. They are packed on parking on a busy day as it is now. There are six parking spaces gone just from employees and there is no fire lane marked right now. They park in the grass between our building and Arby's, because that's how tight it is. There are no empty buildings to rent space, it's full. It's packed already. We have a 3-year lease on two buildings. The landlord does not care that we don't have enough parking. This temporary business will negatively impact our businesses directly both monetarily and also the fact that passers-by will not be able to see their storefronts with the big tent in front of them blocking the view. There are also a lot of customers' vehicles that come in that are pulling boats behind them, so it's very crowded already. The semi's already have a hard time maneuvering on the site and it would be worse with the added business especially during the holiday coming up.

Chairman Yaros noted that this site will be again reviewed by members since the plan has been revised. He then advised Mr. Mock that he also needs to write the dimensions to any propane or open flames for the Fire Marshall as required in the State law.

Moved by Vice-Chairman Geraci, supported by Chairman Yaros regarding case AB-2012-08, Donald E. Mock/USA Fireworks, Inc., Temporary Use Permit, 1290-1298 Lapeer Road, Sidwell #09-14-201-021, **to postpone this case until the June 11, 2012 regular meeting**, where the petitioner will then present a revised site plan drawing that has the dimensional requirements that are needed by the National Fire Protection Association (NFPA) 1124 and that the Building Department and the ZBA receives a letter of compliance from either the Fire Chief or Fire Marshall by that date. Roll call vote was as follows: Durham, yes; Walker, yes; Geraci, yes; Yaros, yes. **Motion carried 4-0** (Crane was absent).

Mr. Land inquired whether they could look into getting a fire lane on the site and they also don't have any handicapped parking spaces and the parking spaces need to be re-stripped. He is concerned about being in compliance to keep their customers safe and the landlord has not addressed these issues.

Members suggested that they contact the Building Department and tell them all the concerns that need to be addressed since it is not in this Board's purview to address them.

Mr. Mock commented that he believes that there are handicapped parking spaces and lined parking spaces in the front and back. He doesn't know if there is a fire lane.

6. PUBLIC COMMENTS: Mr. Eugene McNabb, of 2981 Judah Road, and Mr. Eugene McNabb, Jr., of 680 E. Silverbell Road, commented regarding fill material at a gravel and mining site in the Township as well as ordinance enforcement. Mr. McNabb, Jr. would like to know if there is a report yet regarding the materials within the fill being used in the pit.

7. COMMUNICATIONS: None.

8. COMMITTEE REPORTS: None.

9. MEMBERS' COMMENTS: None further.

10. ADJOURNMENT: Moved by Board Member Walker, supported by Board Member Durham to adjourn at 8:14 p.m. **Motion carried 4-0** (Crane was absent).

* on file